

*Statute*

# STATUTE LAW

OF THE

*Provincial Legislative Assembly of*  
CAPE OF GOOD HOPE,

COMPRISING THE

## PLACAATS, PROCLAMATIONS,

AND

## ORDINANCES,

ENACTED BEFORE THE ESTABLISHMENT OF THE COLONIAL PARLIAMENT  
AND STILL WHOLLY OR IN PART IN FORCE.

*Printed by Authority.*

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## PREFACE.

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THIS Volume is published in compliance with the Report of a Commission appointed by His Excellency the Governor to inquire into the Laws enacted by Legislature of this Colony, for the purpose of reprinting such as are still in force, presented to both Houses of Parliament in April, 1859.

The Commission and Report were of the following tenor:

- “ SIR GEORGE GREY, K.C.B., Governor and Commander-in-Chief of the Colony of the Cape of Good Hope,
- “ To Sir WILLIAM HODGES, Knight, Chief Justice of the said Colony ;
- “ The Honourable SYDNEY SMITH BELL, Esq., First Puisne Judge of the said Colony ;
- “ The Honourable HENRY CLOETE, Esq., Second Puisne Judge of the said Colony ;
- “ The Honourable EGIDIUS BENEDICTUS WATERMEYER, Esq., Third Puisne Judge of the said Colony ;
- “ The Honourable RAWSON WILLIAM RAWSON, Esq., Her Majesty’s Colonial Secretary ; and
- “ The Honourable WILLIAM PORTER, Esq., Her Majesty’s Attorney-General,

“ GREETING :

“ Whereas, by a commission, bearing date the 4th of March, 1857, I did for the reasons therein set forth, constitute and appoint Sydney Smith Bell, Henry Cloete, Egidius Benedictus Watermeyer, Rawson William Rawson, and William Porter, to be commissioners for the purpose of forming a collection of the laws and ordinances passed by the legislature of this colony during such period as should be determined upon after due inquiry by them made and reported excluding from such collection all laws and ordinances which have been repealed or have become obsolete: And whereas I have thought fit that my commission aforesaid should be revoked and cancelled, in order that the commissioners thereby appointed may be reorganized and constituted anew, and that you, Sir William Hodges, be associated with such commissioners in the execution of the purpose contemplated by my commission aforesaid: Now, know

“ you that I have revoked and cancelled, and by these presents do  
 “ revoke, cancel, and make void, my said commission of the 4th  
 “ March, 1857, and that I have appointed, and hereby do consti-  
 “ tute and appoint, you, the said Sir William Hodges, the said  
 “ Sydney Smith Bell, the said Henry Cloete, the said Egidius  
 “ Benedictus Watermeyer, the said Rawson William Rawson,  
 “ and the said William Porter, or any three or more of you, to  
 “ be commissioners for the several purposes following, that is to  
 “ say :

“ For the purpose of forming a collection of the ordinances and  
 “ laws enacted by the legislature of this colony during such period  
 “ as shall, after inquiry, be determined, excluding from such col-  
 “ lection all ordinances and laws which have been repealed or have  
 “ become obsolete.

“ For the purpose of inquiring as to and determining the period  
 “ aforesaid, and the form and order in which the said ordinances  
 “ and laws should be arranged, and for selecting the laws which  
 “ should be excluded from such collection, as being repealed or  
 “ obsolete.

“ For the purpose of considering and reporting whether it is  
 “ expedient to obtain the sanction of the legislature for such a  
 “ collection.

“ And I do hereby desire and request that you do, as soon as  
 “ the same can be conveniently done (using all diligence), report  
 “ to me, in writing, under your hands or under the hands of any  
 “ three or more of you, your special proceedings in virtue of this  
 “ commission ; and I further will and direct, and by these presents  
 “ ordain, that this commission shall continue in force until you, or  
 “ any three or more of you, shall have finally reported upon the  
 “ matter aforesaid, or otherwise until this commission shall be by  
 “ me revoked, and that you, the said commissioners, or any three  
 “ or more of you, shall and may, from time to time, proceed in the  
 “ execution of this commission, although the proceedings under  
 “ the same may not be continued from time to time by adjourn-  
 “ ment: And I do hereby direct and appoint that you or any  
 “ three or more of you have liberty to report to me your several  
 “ proceedings from time to time, as the same, or any part thereof  
 “ may respectively be completed and perfected ; and lastly, I do  
 “ hereby desire that all officers in this colony, as well as all her  
 “ Majesty’s subjects, be assistant to you, and each of you, in the  
 “ execution of these presents, by giving to you all such informa-  
 “ tion as it may be in their power to impart.

“ In witness whereof I have caused this commission to be  
 “ issued on this thirtieth day of August, in the year of our Lord,  
 “ 1858.

“ By Command of His Excellency the Governor,

“ RAWSON W. RAWSON, Colonial Secretary.

“In obedience to the commission which your Excellency was pleased to direct to us for the purpose of inquiring within what period the ordinances and laws which have from time to time been enacted by the legislature of this colony should be reprinted, and the form and order in which they should be reprinted, and for selecting the laws which should be omitted from such collection, as being repealed or obsolete, and reporting whether it is expedient to obtain the sanction of the legislature for such a collection, we have to report to your Excellency that the laws and ordinances enacted by the legislature of the colony from the year 1652, when it was first taken possession of by the Dutch government, till the year 1806, when it was ceded to the British government, are to be found in eleven volumes, all of which are in manuscript with the exception of a part of the eleventh, which is printed, and are duly authenticated by the seal of the colony and signatures of the respective governors for the time being. These volumes are to be found in the office of the Colonial Secretary, and are in some respects defective from omissions, which, however, we have been enabled to supply from a copy in the hands of Mr. Jan Christoffel Berrangé, which came into his possession as the son of the secretary to the late court of justice, and which he very readily gave us the use of. The laws contained in the MS. volumes consist of placata and proclamations, and of advertisements having the effect, though not the form, of proclamations.

“We have further to report that there are also about three volumes containing an alphabetical digest of the laws for the government of the Dutch East India possessions, which were passed by the Dutch East India Company in Holland and by the government of Java—known as the Statutes of India; and that these laws, so far as applicable to the colony, had force within it, as having been part of the Dutch East India Company’s possessions.

“With regard to the laws passed by the legislature of the colony from 1806 to the year 1853, when the colony received the constitution from her Majesty, these, up to the month of May, 1825, consist of proclamations and advertisements issued from time to time by the governors of the colony. In May, 1825, a Council of Government was established in the colony. From that time until 1853, the laws assumed the form of ordinances, which, until the year 1834, were passed under the authority of the Governor in council. In 1834, a Legislative Council was established in the colony, and from that time forward the ordinances were passed by the Governor with the advice and consent of the Legislative Council. This body of laws, so far as it consists of proclamations and advertisements, is also to be found in the office of the Colonial Secretary, bound up in volumes. The ordinances are duly recorded in the Supreme Court, in compliance with the royal instructions to each Governor, and are to be found in the office of the Registrar of the court.

“ We have perused and considered carefully these several  
 “ bodies of laws, with the exception of the contents of the MS.  
 “ volumes, which, as they are all in Dutch, were perused by Mr.  
 “ Justice Cloete and Mr. Justice Watermeyer alone. The Chief  
 “ Justice had just left on circuit when the commission was sent to  
 “ us. Under these circumstances, we have now to report to your  
 “ Excellency, as the result of our deliberations, that, in our opinion,  
 “ the laws strictly colonial or enacted by the legislature of the  
 “ colony, which have not been either repealed or become obsolete,  
 “ and which are now in force within the colony, except in so far as  
 “ they have been affected by British statute law, are to be found  
 “ in the list which we have appended to this report.

“ We have divided this list into two heads—the first embracing  
 “ laws applicable to the whole colony and the general community  
 “ of its inhabitants; the second confined to laws merely of a local or  
 “ personal nature; but this list does not extend further back than  
 “ the year 1806, because of the difficulty, and almost impossibility,  
 “ of doing this, as to the eleven volumes of MS. As to these, we  
 “ have brought everything in them, local or personal, now in force,  
 “ within the first division mentioned in this paragraph.

“ The Roman-Dutch law, which consists of the Civil or Roman  
 “ laws as modified by the laws passed by the legislature of Holland,  
 “ and by the customs of that country, forms the great bulk of the  
 “ law of the colony, and there is also a large body of statute law  
 “ scattered throughout the British imperial statute book which  
 “ has force within the colony. We have not touched any of these  
 “ bodies of law, as the terms of our commission are confined to  
 “ the ordinances and laws which have been enacted by the legis-  
 “ lature of the colony. Moreover, it is one which would be of very  
 “ difficult and doubtful accomplishment; indeed, we do not think  
 “ that any amount of labour would enable us to say safely and with  
 “ confidence what part of that statute law has force and what part  
 “ has not force within the colony. There are also a few orders  
 “ in council having especial reference to and force within the  
 “ colony. These, for obvious conveniency, we have incorporated  
 “ into the laws passed by the legislature of the colony, though not  
 “ coming strictly under that denomination.

“ Some years ago the laws passed from time to time by the  
 “ legislature of the colony, including the orders in council to  
 “ which we have referred, were brought into one collection by  
 “ Mr. Harding, now Chief Justice of Natal, and printed in con-  
 “ secutive volumes. We understand that these volumes have all  
 “ been sold and their contents are out of print.

“ It is urgently desirable therefore that these laws, together  
 “ with what has been abstracted from the MS. volumes as still in  
 “ force, should be reprinted, and that from such reprint of Har-  
 “ ding's volumes there should be excluded what has either been  
 “ repealed or become obsolete; but we see no reason for limiting  
 “ the printing to the laws of any particular period, except that it  
 “ should not extend beyond the period at which the parliamentary

“ legislature of the colony came into operation. We have there-  
“ fore begun our selection from the first constitution of the  
“ colony, but have not extended our inquiries into the period last  
“ indicated.

“ In regard to the form and order in which the laws should be  
“ reprinted, we see no reason to depart from the order and form  
“ which have hitherto been observed, to wit, printing each parti-  
“ cular law in the form in which it exists, and all the laws chrono-  
“ logically in the order in which they were passed. This, in our  
“ opinion, is the best for all practical purposes, if it be accompanied  
“ by a very full index, carefully prepared, and having for heads  
“ not only the particular matter embraced in the title of the  
“ particular law, but every matter which forms the subject of  
“ provision, with special references to the particular law—its section  
“ and page. We should also recommend that while the marginal  
“ notes to the sections are continued, these should all be brought  
“ together in their numerical order and printed at the head of the  
“ particular law, so that the reader should be able to see at one  
“ view what the law contains and how far any matter which he has  
“ discovered by the verbal index to be in any particular section is  
“ infringing upon or modified by any other section.

“ A scientific, methodical arrangement of the laws under certain  
“ artificial heads, indicating the particular department of polity in-  
“ tended to be embraced, might be useful for the philosopher, and  
“ perhaps for the legislator, but for all practical uses by the public in  
“ general or by the practitioners of the law, we apprehend it would  
“ be of little use. Moreover, there is not sufficient body of law to  
“ render necessary or admit of such a scientific arrangement in a  
“ collection confined to the laws passed by the legislature of the  
“ colony, which laws are but a fraction of the laws under which  
“ the colony is governed,—the great body of its laws being  
“ derived from the Roman Dutch law and the statute laws of  
“ of Holland.

“ Our commission desires us to report to your Excellency upon  
“ the expediency of obtaining the sanction of the legislature to the  
“ collection we have recommended. It must be obvious that if we  
“ are correct in reporting that the laws which we have placed in  
“ the list appended to this report are in operative effect, no legis-  
“ lative sanction can be necessary in order to give them efficacy;  
“ but if, by the terms of the commission, it is desired that we  
“ should give our opinion as to the expediency of obtaining a  
“ legislative declaration that all laws passed by the legislature of  
“ the colony hitherto in force, but not to be found within the  
“ collection we have recommended, should in all time to come  
“ cease to have force and effect, we can have no doubt of the  
“ expediency and propriety of obtaining such an enactment; but  
“ we must at the same time, express our opinion that very great  
“ care and caution will have to be used in framing the terms of  
“ such an enactment, so as not to do away with the effect of some  
“ laws, which, though they have ceased to have operative effect

“in regard to anything to be done in time to come, and have  
 “therefore been excluded from the collection we have suggested,  
 “are nevertheless operative, and should continue to be operative,  
 “in regard to matter done in time bygone.

“It would certainly be desirable that a considerable part of the  
 “laws to be found in this new collection should be re-enacted, so  
 “as to bring them into a better and more accessible form; but we  
 “throw this out only as a suggestion not to be overlooked at the  
 “proper time for its consideration. We apprehend that the pre-  
 “sent urgency existing for a reprint of the laws in question, their  
 “codification or re-enactment would not be attainable but at a very  
 “inconvenient loss of time.

“SYDNEY S. BELL.

“H. CLOETE, Sen.

“E. B. WATERMEYER.

“W. PORTER.

“RAWSON W. RAWSON.

“Chambers, Cape Town, 10th Nov., 1858.”

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The recommendations of the report have been substantially carried out, although it was found necessary to depart from them in some of the minor details. The work is divided into four parts, the first of which contains the Colonial Proclamations and Placaats from 1652 to 1806, which are not obsolete: Part II contains the unrepealed Proclamations from 1806 to 1824: Part III the unrepealed Ordinances of the Council of Government from 1824 to 1834, when the Legislative Council was established: Part IV the unrepealed Ordinances from the establishment of the Legislative Council to 1853, when the Constitution Ordinance, amended by Order in Council, became Law.

Appendix I embraces abstracts, in chronological order, of the Placaats, Proclamations, &c., from 1652 to 1806.—Appendix II contains certain regulations as to rights of water in Table Valley, which may still be of importance.

In addition to the full Index at the end of the Book, a table of Contents has been supplied, giving the various laws in the order in which they have been printed,—together with such later laws as refer to the same subject, in a separate column. The changes effected by Acts of the Colonial Parliament are included in this column up to the Session of 1861.

# ORDINANCES OF THE CAPE OF GOOD HOPE.

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**ORDINANCES**  
**OF THE**  
**CAPE OF GOOD HOPE.**

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**PART I.**

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**PLACAATS** and other **LEGAL ENACTMENTS**, from the Establishment of the Colony of the Cape of Good Hope in 1652 to its Surrender by General **JANSSENS** to Sir **DAVID BAIRD** in 1806, which still have, wholly or in part, the force of **Law**.

**NOTE.**—The Appendix I to this part contains a Chronological Index of all the **Laws** to this period, which are, with the exception of the few in the text, obsolete.

# ORDONNANTIEN VAN DE KAAP DE GOEDE HOOP.

## DEEL I.

### INSTELLING VAN HET SCHULD-REGISTER.

Maurits Pasques de Chavonnes, Raad Extraordinaris van Nederlandsch India, en Gouverneur wegens der Vereenigde Nederlanden G'octrooyeerde Oost Indische Compagnie aan Cabo de Goede Hoop, en derzelve Ressorte, benevens den Raad, doen te weten :

Hoe tot onzer kennisse gekomen is, dat deze en gene Ingezetenen zig niet en ontzien, &c., &c. [*Dit eerste gedeelte heeft betrekking tot de Opvoeding van Minderjarigen onder voogdyschap van Weesmeesteren, en is vervallen.*]

Inleiding.

Wyders ondervonden zynde, dat in dit Gouvernement als nog in onbruik gebleven en niet werkstellig gemaakt is, het registreeren der Custingbrieven, Schepen-of Weesmeester Kennissen en andere verbanden voor Gecommitteerden uit den Raad alhier gepasseerd, waardoor van tyd tot tyd deze en gene Landeryen, Huysen, Erven, en andere goederen, zoo speciaal als generaal, in behoef van de houders van dien verbonden zyn, waardoor niet alleen veel moeilyke processen veroorzaakt worden, maar ook den goeden Ingezetenen of 's Compagnies dienaaren, genegen zynde om hunne gelden tegens een behoorlyk Interest tot voortzetting dezer Colonie uitzetten, wederhouden worden, vermits nooit kan gezien worden, wat een ieder volgens Custingbrieven, Schepen-of Weesmeester Kennissen en verband schriften op hunne vaste goederen schuldig zyn, het gun't ten beste dezer goede Ingezetenen zoo niet en behoort.

Zoo is het : dat wy by dese daar inne al mede willende voorzien, ten hoogsten noodig geoordeeld hebben allen en een iegelyk, het zy Compagnies dienaren ofte Ingezetenen, onder dit Gouvernement gehoorrende, te ordonneeren en te gelasten, gelyk wy alle dezelve en een iegelyk van dien in't byzonder ofte die geen of genen, dien het eenigzints mag aangaan, ordonneeren en gelasten mits dezen, dat een ieder zal gehouden zyn omme alle zulke Custing Brieven, Schepen of Weesmeester Kennissen en andere voor gecomitteerdens alhier verleende verbandschriften waarby eenige vaste goederen

Schepenken-  
nissen moeten  
vertoond wor-  
den ter Secre-  
tarye.

# ORDINANCES OF THE CAPE OF GOOD HOPE.

## PART I.

### ESTABLISHMENT OF THE DEBT REGISTRY.

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

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

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

Now, therefore, we, desiring to provide by these presents in the premises, have considered it highly necessary to order and command all Company's servants, or inhabitants belonging to this Government, as we order and command all of them and each in particular and every one whom in any respect it may concern, that all persons shall be bound, within the period of four months, or before the 19th of the ensuing month of October, to exhibit at the Secretary's office at this place, all such Kusting Brieven, obligations before Schepenen, Orphan Masters, and other writings of Mortgage, Mortgage Bonds must be exhibited at the Secretary's office.

verbonden, verhypothecert zyn, binnen den tyd van vier maanden, of voor den 19den van de naastkomende maand October, te dezer Secretarye te vertoonen, en den Secretaris opgeven de somma ofte den inhoud van hunne verbandschriften en die onder haar ter zake van dezen en geenen berustende zyn, en het gun't ieder reis by verkryging van eenig der genoemde verbandschriften in vervolg van tyd mede tevens zal moeten geschieden,—ten einde dat van hetzelfde een behoorlyk register kan geformeerd en gehouden worden, en men altyd mag zien, wanneer deze en geene vaste goederen wettelyk verbonden zyn, op dat een iegelyk in het uitzetten van geld zich daarna kan reguleeren, op pœne dat diegene die van hetzelfde te doen nalatig blyft, verstoken zal zyn van de praeferentie die hem uit dien hoofde anderzints voor andere crediteuren zoude mogen competeren.

Ongeregistreerde Schepenkennissen van praeferentie verstoken.

En op dat niemand hiervan eenige onwetenheid zoude mogen voorwenden, zoo ordonneeren wy, dat deze alomme ten behoorlyken tyd en plaatse zal worden gepubliceerd en geafficheerd, alzoo het zelve goed gevonden is ten meesten nutte van het gemeene best en ten dienste der Edelen Compagnie hier zoodanig te behoren.

Aldus gedaan en gearresteerd in het Casteel de Goede Hoop, den 19 Juny, 1714, mitsgaders gepubliceerd den ——— daarna.

M. P. DE CHAVONNES.

Ter Ordonnantie van den Heer Gouverneur en Raad,

(Geteekend) PIETER DE MEYER, Sec.

ZEGEL ORDONNANTIE.—ZEGEL OP GROSSEN.

Maurits Pasques de Chavonnes, Raad Extraordinaris van India, en Gouverneur wegens der Vereenigde Nederlanden G'octrooyeerde Oost Indische Compagnie aan Cabo de Goede Hoop, en derzelve Ressorte, benevens den Raad,—doen te weten :

Alsoo, &c. [*Dit Placaat de Tarief van Zegels op publieke Instrumenten, &c., instellende, is afgeschapt of in onbruik geraakt, met uitzondering alleen van de volgende sectie.*]

executed before Commissioners of the Court, whereby any immovable property has been bound or hypothecated, and to give in to the Secretary the amounts or contents of their writings of Mortgage and of such as may be from any cause in their possession, and which shall in future be required to take place in every case when any such writings of Mortgage shall be obtained, to the end that a proper Register may be formed and kept thereof, and it may always be possible to see when any immovable property is lawfully mortgaged, so that all persons may, in the putting out of money, regulate themselves accordingly; under the penalty that whoso neglects doing this shall forfeit the preference which would otherwise, Unregistered Bonds deprived of preference. in that respect, be awarded to him before other creditors.

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

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

(Signed) M. P. DE CHAVONNES.

By Order of the Governor and Council,

(Signed) PIETER DE MEYER, Sec.

STAMP ORDINANCE.—STAMPS ON “GROSSES” OR AUTHENTIC COPIES OF PUBLIC INSTRUMENTS.

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

Whereas, &c. [*This Placaat, fixing the Tariff of Stamp Duties on Public Instruments, &c., is obsolete, or has been repealed, except as to the following section.*]

\* This date is not filled in in the MSS.

Grossen van  
publieke in-  
strumenten  
moeten ge-  
schreven zyn  
op zegels de  
helft minder  
als die der  
minute.

Ende (wy gelasten en ordonneren dat) grossen of authentique afschriften van dien (zullen geschreven zyn) op zegels, de helfte minder als die der minute, op pøene van drie Rds. te verbeuren op yder Acte ofte instrument dat ongesegelt gevonden zal worden, en dat daarenboven op d'zelve geen regt sal werden gedaen, met interdictie aan alle regteren ende justiciereren op d'selve geen regt te mogen doen, of te gedogen dat in regten geproduceert ofte overgelegd werden op eene boete tot lasten van dengenen die zulke documenten voortaan zal overleggen, zonder opgedrukt te hebben het behoorlyk zegel van twee Rds. op elk document, te decreteeren in de vonnissen ofte sententien, daer d'selve anders overgelegd zullen werden, boven dat daer op geen reguard sal mogen werden genomen, tot tyd dat het zegel daerop sal zyn gestelt.

\* \* \* \* \*

Aldus gedaan en g'arresteerd in 't Casteel de Goede Hoop,  
den 26 Juny, 1714.

M. P. DE CHAVONNES.

Ter Ordonnantie van gem. Heer Gouverneur en den Raad,

P. DE MEYER, Rd. en Sec.

(Gepubliceerd den 9 July, 1714).

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## WATER-REGELMENT AANGAANDE HET WATER VAN DEN TAFELBERG AFKOMENDE.

### INTERDICTIE.

Inleiding.

Alsoo nu seedert eenigen tyd herwaards, continueele klagten aan ons zyn gedaan geworden, dat d'eygenaars of besitters der boven 's E. Compagnies Coorn-moolen leggende thuynen, zig niet koomen t'ontsien, om het water, waarmede deselve moolen moet werden gedreeven, met het leggen van dammen als andersints op te houden, en naar hunne thuynen af te leyden, niet teegenstaande men, om voorsz. thuynen een genoegsaam genot van 't gedagte water te doen hebben, aan dies besitters heeft geaccordeerd gehad, hetselve dagelyks vier uren, te weten, des morgens van vyf tot seeven uren, en

And [we do enjoin and order] that grosses or authentic copies thereof [shall be written] on stamps of half the value of those required for the minute,—under the penalty of a fine of three rixdollars on each deed or instrument which shall be found unstamped, and that in addition thereto no effect shall be given to such instrument in law,—with prohibition to all courts and justices to give any effect to them in law or to allow that they be produced or delivered in under a penalty upon all persons who shall hereafter produce such documents not being stamped with the proper stamp, of two rixdollars on each document, to be decreed by the judgment or sentence of the court where the same shall be produced; and, further, no notice shall be taken of such document until the proper stamp shall have been placed thereon.

Grosses of public instruments to be written on stamps of half the value of the stamps required for the minute.

\* \* \* \* \*

Thus done and decreed in the Castle Good Hope, the 26th June, 1714.

M. P. DE CHAVONNES.

By order of the aforesaid Governor and Council,

P. DE MEYER, Councillor and Secretary.

(Promulgated 9th July, 1714.)

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REGULATION RESPECTING THE WATER FLOWING FROM TABLE MOUNTAIN.\*

INTERDICTION.

Whereas, for some time past, continual complaints have been made to us that the owners or possessors of the gardens lying above the Honourable Company's corn mill presume to stop the water wherewith the mill must be driven, by placing dams and otherwise, and to lead it off to their gardens, notwithstanding that, in order to give a sufficient enjoyment of the said water to these gardens, it was granted to these possessors that they might use the same daily for four hours, to wit, in the morning from five to seven o'clock, and in the evening for the same time between the same hours: Now,

Preamble.

\* *Vide* page 14, *infra*. Regulation of 3rd April, 1787.

Water van den Tafel Berg afkomende niet op te dammen buiten de bepaalde uren.

Boete, vyftig ryxds.

des avonds meede soo lang op dien selfden tyd te moogen gebruyken, zoo is 't, dat wy, om teegens dier gelyk onbehoorlyk gedoente te voorsien, goedgevonden hebben, de eygenaars en besitters der meergem. boven de moolen leggende thuynen, by deesen t'interdiceeren en te verbieden, om 't naar de moolen loopend water teegen te houden, op te dammen of in en naar hunne thuynen te leyden, nog 't zelve op eenigerhande wyze te gebruyken, als alleenlyk des morgens en 's avonds van vyf tot seeven uren, geduurende welken tyd men deselve 't gebruik daarvan uyt bysondere gunste als nog wel heeft willen laten behouden, op pœne wyders, dat de geene, die bevonden zullen worden, hier teegens aan te gaan, of 't water buyten den voorsz. gestipuleerden tyd afgeleyd, opgedamt, of tegen gehouden te hebben, telkens in een boete van vyftig Ryxds., *pro fisco* zullen weesen vervallen, terwyl de meesters hieromtrent ook voor derselver slaven moeten instaan.

Aldus gedaan ende gearresteerd in het Casteel de Goede Hoop, den 15 Dec., 1761.

Ter Ordonn. van den Edelen Heer Gouverneur en Raadt,

O. M. BERGH, Rd. en Sec.

AFSCHAFFING VAN ALLE WETTEN EN GEBRUIKEN  
AANGAANDE DE CONFISCATIE DER GOEDEREN  
VAN DELINQUENTEN.

PLACAAT.

De Staaten Generaal der Vereenigde Nederlanden, allen den geenen die desen sullen sien of hooren leesden, salut :

Inleiding.

Doen te weten, dat, ofschoon van de eerste tyden af tot den huidigen dag toe, in de Colonien van deesen Staat, soo in Oost- als Westindien, ressorterende onder het bedryf en geleege binnen de limiten van de Octroyen van de Oost- en Westindische compagnien deeser landen, is geëxerceert het regt van confiscatie van Goederen der Delinquanten, welke uit hoofde van gepleegde misdaad hun lyf en leeven hadden verbeurt, egter aan ons is voorgekomen, dat niet alleen van dat recht misbruik soude kunnen werden gemaakt, maar dat



therefore, we, to provide against such improper proceedings, by these presents interdict and forbid the owners and possessors of the aforesaid gardens lying above the mill, to stop the water running to the mill, to dam up or lead the same in and towards their gardens, or to use the same in any way whatever, except only in the morning and evening from five to seven o'clock, during which time the use thereof is by special grace allowed to be retained by them; under the penalty that those who shall be found to act in opposition to this order, and to have led away, dammed up, or stopped the water beyond the above stipulated time, shall, in each case, be fined in the sum of fifty rixdollars, while masters shall be held responsible for their slaves.

Water flowing from Table Mountain not to be dammed up beyond the regular hours.

Penalty fifty rixdollars.

Thus done and decreed in the Castle of Good Hope, 15th December, 1761.

By Order of the Honourable the Governor and Council,

O. M. BERGH, Councillor and Sec.

**ABOLITION OF ALL LAWS AND USAGES AUTHORIZING THE CONFISCATION OF THE PROPERTY OF CRIMINALS.**

**PLACAAAT.**

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

Know ye that, although from the earliest times unto the present day, in the colonies of this State, as well in the East as West Indies, comprised under the style and situated within the limits of the charter of the East and West India Companies, the power has been exercised of confiscation of goods of delinquents, who, in consequence of crime committed had forfeited liberty and life, yet it has appeared to us, not only that abuse might be made of that power, but likewise that, in its exercise, several disputes and

Preamble.

ook uit het gebruik van dien, verscheide disputeren en moeyelikheden telkens ontstaan; dat boven dien daarin ook een weesentlyke hardigheid is geleege, dewyl door soodanige confiscatien, de vrouwen, kinderen, of naastbestaande bloedvrienden van diergelyke delinquenten, in de straffen, deselve opgelegd, door het verlies der geconfisqueerde goederen, schoon selfs onschuldig, mede deelen.

Dat om die en andere reedenen ten algemeenen nutte der ingezeetenen, en om weg te neemen de voorsz. hardigheid, reeds in verscheide Ryken en Staaten, en speciaal binnen de provincien van Holland en Zeeland, alwaar voorheen van dat recht op gelyke wyse wierd gebruik gemaakt, daarvan afstand was gedaan, of in het geheel is afgeschaft geworden.

Confiscatie van goederen van delinquenten in alle colonien afgeschaft.

Soo is 't, dat wy daar in, ten algemeenen nutte van onse voorsz. Colonien, mitsgaders onzer ingezeetenen van dien, meede willende voorsien, by deliberatie van den Raad van State en na voorgaand overleg en communicatie met Zyne Hoogheid den Heere Prince van Orange en Nassau, onsen Erfstadhouder, hebben goedgevonden te statueeren, gelyk wy uit onse souveraine magt en gezag statueeren by deesen, dat van nu voortaan geen confiscatien van goederen van Delinquenten, in het geheel of ten deele sal mogen werden gedecerneert in onse voorsz. Colonien, hetzy by de Hoven van Justitie, of by eenige andere subalterne Regtbanken in deselve, om welke oorsaak of delict het ook soude mogen weesen, groot of klein, geene altoos uitgesondert, en selfs niet het *Crimen Perduellionis* of *Læsæ Majestatis*, aboleerende, casseerende ende te niet doende insoo verre alle wetten, placaaften, privilegien, costumen en usantien, welke hieraan souden mogen contrarieeren, niet willende, dat deselve in dat opsigt voortaan meerder van gebruik sullen mogen werden gemaakt, met last en expres bevel aan alle hooge en subalterne Rechters binnen de voorschrevene onse Colonien, sig na dit ons Placaat punctueel te reguleeren.

In alle gevallen zelfs by overtuiging van *Crimen Perduellionis* of *Læsæ Majestatis*.

En opdat niemand daarvan ignorantie moge pretendeeren, lasten en beveelen wy de Bewindhebberen van de geocroyeerde Oostindische Compagnie, den Repræsentant van zyne Doorlugtige Hoogheid en Bewindhebberen van de Westindische Compagnie, de Directeuren van de Colonie van Suriname, mitsgaders de Directeuren van de Colonie te Berbice, om dit ons Placaat alomme in de respective Colonien onder haar Ressort behoorlyk te doen publiceeren en affigeeren, ter plaatsen, alwaar men gewoon is soodanige publicatien en

difficulties constantly arise; and that, moreover, actual injustice is inherent in it, inasmuch as by such confiscation the wives, children, or near relations of such delinquents are made, although themselves innocent, to share in the punishments imposed on them by the loss of the goods confiscated.

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

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

Confiscation of the property of criminals abolished in all colonies.

In all cases, not excepting conviction for treason.

And in order that no person may pretend ignorance of the same, we order and command the authorities of the chartered East India Company, the representative of his Royal Highness and authorities of the West India Company, the directors of the colony of Suriname, as also the directors of the colony of Berbice to cause this our placat to be published and affixed in all directions in the respective colonies under their authority, at the places where it is customary to make such publications and affixions, and to cause the same to be observed

affixien te doen, en om hetselve door alle de hooge en subalterne Rechtbanken van de voorsz. Colonien te doen observeren en naarkomen.

Gegeven in den Hage onder het Cachet van den Staat, de Paraphure van den Heer Præsiederende in onze Vergadering, en de Signature van onsen Griffier, op den 10 Augusty 1778. Was gearapheert, G. J. D. Pallandt, vt. Onder stond, Ter Ordonnantie van de hooggemelde Heeren Staaten Generaal. Was geteekend H. Fagel. Zynde op het spatium gedrukt het Cachet van haar Hoog Mog., op een rooden Ouwel, overdekt met eene papiere ruite.

[*In dorso.*] 'T ommestaande Placaat is den 22sten April, 1779, alhier *more solito* gepubliceert geworden.

In 't Casteel de Goede Hoop, den 23sten April, 1779.

C. L. NEETHLING, Secretaris.

RENOVATIE DER VOLGENDE WAARSCHOUWING AANGAANDE HET LATEN LIGGEN VAN DOODE PAARDEN, OSSEN, ENZ., OP EN NABY 'S HEEREN WEGEN.

Inleiding.

Nademaal men dagelyks komt t' ondervinden dat de geene deeser Ingeseetenen, welkers Paarden, Ossen, en andere Lastdieren, 't zy door onmagt als anderzints, op 's Heeren wegen, en andere plaatsen koomen needer te vallen, en ook te verrekken, deselve aldaar, sonder er meer na omtezien, laten leggen en verrotten, waardoor dan de Lugt g'infecteerd word, en andere ongemacken meer komen t' ontstaan, soo is 't, dat wy hietegens willende voorsien, goedgevonden hebben t' ordonneeren ende te statueeren, gelyk wy ordonneeren en statueeren by deesen, dat voortaan wanneer soo in dit Caabsche als in de buyten Districten, eenige der bovengem. Dieren of andere Vee, door ziekte of andere toevallen, op 's Heeren weegen, en daaromtrent sullen koomen neer te vallen, of moeten gelaaten worden; sodanig, dat men niets anders zal hebben te wagten, als dat dusdanig dier of dieren, aldaar sullen koomen te verrekken, deselve als dan door de geene die sulx aangaat, 't zy Europeaanen of slaven, in een daarby te maakene kuyl sullen moeten

Vee op's Heeren wegen verrekkende moet begraven worden.

and acted upon by all superior and inferior courts of justice of the aforesaid colonies.

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

Certified.

G. J. D. PALLANDT.

By order of the abovementioned States-General,

(Signed)      H. FAGEL.

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

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

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

C. L. NEETHLING, Secretary.

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

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

Boete vyftig  
ryxda.

gedompelt, en met aarde gedekt worden, op pœne, dat de geene, die hier inne nalatig sullen werden bevonden, sullen weesen vervallen in een boete van vyftig Ryxd., ende Lyff Heeren der hieromtrent misdoende slaven voor deselve moeten instaan : des kan zig een yder voor schade hoeden.

In 't Casteel de Goede Hoop den 4den September, 1742.

Ter ordonn. van den Edelen Heer Gouverneur en den Raad.

J. DE GRANDPREEZ, Rt. en Secretaris.

Aldus Gedaan en Gerenoveert in 't Casteel de Goede Hoop, den 22 April, 1783 mitsgaders gepubliceerd en g'affigeerd den 30 ditto daaraan volgende.

Ter ordonn. van den Edelen Heer Gouverneur en den Raad.

O. M. BERGH, Rt. en Secretaris.

#### WATER REGELMENT.

Cornelis Jacob van de Graaff, Gouverneur wegens der Vereenigde Neederlanden geoctroyeerde Oost Indische Compagnie aan Cabo de Goede Hoop, met den ressorte van dien, benevens den Raad, doen te weten :

Inleiding.

Eigenaars van  
tuinen, enz.

Vermits by de op heeden in onze vergaderinge nader gearresteerde schikkingen omtrent het gebruik van het water het welk van het tafel gebergte na dit vlek afkomt, voor de langs of aan de onderscheydene gedeeltens daarvan geleegene Thuinen en ook voor de Looyeryen, in het vervolg, gedurende de maanden van het drooge seizoen zal kunnen werden gemaakt, onder anderen, zo wel aan de bezitters der gemelde Thuinen, als aan de particuliere Looyers, verboden is, dat water buiten den tyd daartoe voor een yder van hun vastgesteld, in het minste afteleiden ofte tot hun gebruik aantewenden, maar hetzelfde als dan onverhindert haren loop te laten behouden, en dat speciaal des Saturdags en Zondags al het gemelde water zig zal moeten verzamelen, om, van onder de oude molen, na de onderscheiden gragten in dit vlek tot verversching en opvulling derzelve te werden afgelaten, zoo werd niet alleen de eigenaars der gemelde Thuinen en de particuliere Looyers, maar ook de Baasen in 's Compagnies Thuin, 's Compagnie's Steen en Pottebakkers, den Opzigter en de Looyers in 's Compagnies Stal, en zoo meede de geene

a fine of fifty rixdollars ; and masters of slaves who shall offend herein shall be liable for such slaves. Wherefore let every one beware. Penalty fifty rixdollars.

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

By order of the Honourable the Governor and Council,

J. DE GRANDPREEZ, Councillor and Sec.

Thus done and renewed in the Castle of Good Hope, 22nd April, 1783. Published and affixed on the 30th of the same month.

By order of the Honourable the Governor and Council,

O. M. BERGH, Councillor and Sec.

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#### WATER REGULATIONS.

Cornelis Jacob van de Graaff, Governor on behalf of the United Netherlands Chartered East India Company at the Cape of Good Hope with its Dependencies, and the Council thereof, make known :

Whereas, by the arrangements further resolved upon this day in our session, respecting the use of the water which flows down from Table Mountain to this valley, which shall in future be made in the months of the dry season for the purposes of the gardens lying beside or at the different parts thereof,—it hath been among other things forbidden, as well to the possessors of the aforesaid gardens as to the private tanners, to lead off that water beyond the time fixed for each of them in the slightest degree ; but (they have been ordered) to allow the same to keep its course unobstructed, and that, especially on Saturdays and Sundays, all such water shall be collected in order that it may flow from below the old mill to the several canals in this valley for the refreshing and filling of such canals : Now, therefore, not only the owners of the said gardens and the private tanners, but likewise, the head gardeners in the Company's Gardens, the Company's brickmakers and potters, the superintendent and the tanners in the Company's stables, and likewise the persons who are at present engaged in building on the erven above the house Preamble.  
Proprietors of gardens, &c.

Mogen het water niet opdammen of afkeeren tenzy binnen de uren door de resolutien van den Raad bepaald.

Boete, een hondert ryxds. Dubbele boete, indien het water gehinderd word by gelegenheid van brand.

die thans met het betimmeren der Erven, over de Thuin van den Burger Lourens Biel bezig zyn; en voorts een ieder zonder onderscheyd, op het nadrukkelykste geinterdiceerd en verboden, het meergemelde water des Saturdays en Zondags in den tusschen tyd dat zulks ten voortz. einde strekken moet, zelfs voor het minste gedeelte afte leiden, ofte in haren loop te stuiten; maar dat integendeel de geene die het zelve tot de aan hun gepermitteerde afleidingen, zouden mogen komen optedammen, verplicht zyn als dan, dadelyk na de gezette uren van hun gebruik, dezelve dammen door te steeken; zo dat het water haren vryen en onverhinderden loop hebben kan: op pøene dat de geene de hier tegen zal komen aantegaan, vervallen zal zyn in eene boete van een hondert Ryxdaalders; te verdeelen de helfte voor 's Colonies Cassa: welke boete zal weezen verdubbeld ten aanzien der geenen die zig zouden mogen verstouten, om, wanneer er binnen dit vlek brand onstaat, het water na zyn Thuin afte leiden, en hetzelve; ingevalle zulks aleens voorvallen mogt op den tyd, geduurende welke hem het gebruik daar van is gepermitteerd, niet afgekeert en onverhindert in haren loop gelaten hebben zal.

[*Het overige van dit placaat heeft betrekking tot het schoon houden van Straaten in de Kaapstad en andere zaken van municipalen aanbelang.*]

Aldus gedaan en gearresteert in 't Casteel de goede Hoop, den 3 April, 1787, mitsgaders gepubliceerd den 13 dito, daarna volgende.

C. J. VAN DE GRAAFF.

Ter ordonn. van den Edelen Heer Gouverneur en den Raadt.

O. G. DE WET, Rt. en Secretaris.

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### INTERDICTIE VAN LOTERYEN.

Inleiding.

Aangezien het trekken van Loteryen thans te deezer plaatse zoo sterk in zwang gaat, dat, by aldien hetzelve niet by tyds gestuit en tegengegaan wordt, daaruit niet anders dan groote



of the citizen Lourens Biel,—and further, all other persons without distinction, are, in the most express manner, interdicted and forbidden, even in the very slightest degree, to lead off, or obstruct in its course, the aforesaid water on Saturdays and Sundays, during the time when it should be applied to the aforesaid end; but that, on the contrary, those who shall dam up the same for the purpose of the waterleadings to which they are entitled, shall, in that case, immediately after the fixed hours of this right to use it, be bound to open the said dams, under penalty that whoever shall act in opposition hereto shall be mulcted in a fine of one hundred rixdollars, to be divided so that the half shall go to the Company's treasury; which penalty shall be doubled in respect of those who, if fire should break out in this valley, shall venture to lead off the water to their gardens, and shall not have allowed the same to flow down unobstructed in its course, even though this may take place during the time for which the use thereof is permitted to them.

Not to dam up or divert water except during the hours fixed by the resolution of the Council.

Penalty, one hundred rix-dollars.

Double penalty if the water be obstructed in case of fire.

*[The rest of the Placaat has reference to the cleansing of streets and other matters purely municipal.]*

Thus done and decreed in the Castle of Good Hope, the 3rd April, 1787, and published on the 15th of the same month.

C. F. VAN DE GRAAFF.

By order of the Honorable the Governor and Council,

O. G. DE WET, Councillor and Sec.

[NOTE.—In Appendix II to this part, at the end of the volume, the Water Regulations referred to in this Placaat and those of previous date, are given at full length. To the proprietors of land in the gardens in Table Valley, and to the public of Cape Town, they are still, in part, of importance.]

#### PROHIBITION OF LOTTERIES.

Having observed that the drawing of lotteries in this place Preamble. is carried to such a height, that unless the practice be timely checked and opposed, the greatest irregularities cannot fail to

Loteryen verboden.  
Boete vyf-en-twintig rds. buiten verbeurte van de ter verloting aangeboden goederen.

Dubbele boete op Herbergiers.

ongeregeltheeden zouden gebooren worden, en dus de allernadeligste gevolgen voor de algemeene samenleving zouden te dugten zyn; zoo is 't dat wy goedgevonden en verstaan hebben, by deezen aan een iegelyk het uitvylen van eenige goederen by wege van Loterye op 't scherpste te interdiceren en verbieden, op poene, dat de geenen, die hierop zullen worden achterhaald, buiten en behalven de verbeurte van de ter verloting aangeboden goederen, noch zullen weezen vervallen, in een boete van vyf-en-twintig ryxdaalders, ten behoeve van den Heer Officier; hoedanige boete almeede zullen hebben verbeurt, die geenen die in zoodanige Loteryen een of meer Loten zullen hebben genomen, zullende die geenen die onvermogend zyn gemelde boete te kunnen betaalen, strengelyk met laarsing of spitsroeden worden gestraft; terwyle voorts een iegelyk zoo Herbergiers en Tappers, als anderen die hetzelfde Loterye-speelen, in hunne huizen zullen hebben toegelaaten, zonder conniventie, in een dubbele boete vervallen, en de Herbergiers of Tappers voor altoos van de tapneering verstoken zullen zyn.

Aldus gedaan en gearresteerd in 't Casteel de Goede Hoop, den 19 Mey, 1789, mitsgaders gepubliceerd en geaffigeerd den 27 daaraanvolgende.

C. J. VAN DE GRAAFF.

Ter ordonn. van den Edelen Heer Gouverneur en den Raad.

C. VAN AERSSSEN, Pr. Secretaris.

## MAATREGELN TOT VOORKOMING VAN CONFUSIE IN HET SCHULD REGISTER.

### PUBLICATIE.

Inleiding.

Nademaal ontdekt en ter onzer kennisse is gekoomen, dat by het registreeren van Scheepenen- en Weesmeesteren kennissen waarby vaste goederen speciaal worden verbonden, by 't register het welk ten dien eynde ter Politicque Secretarye word gehouden, voorheen meenigvuldige abuisen syn begaan, waar uit niets dan confusie en nadeel zoo voor de geldschietters als debiteuren-zelfs kan gebooren worden, en 't dus voor het algemeen belang noodzakelyk komt te zyn, zoo wel dat een iegelyk die gelderen onder hypotheecq van vaste goederen heeft geschooten, de verzeekering en bewustheid heeft

arise, and the most baneful consequences will be entailed on the public in general, we have thought fit and determined hereby peremptorily to prohibit and forbid all persons whomsoever from disposing of any property by way of lottery, under the penalty, in case of detection, of a fine of twenty-five rixdollars, in behalf of the fiscal, over and above the forfeiture of the property proposed to be raffled for; which penalty shall likewise be incurred by all persons who shall have taken one or more tickets in such lottery; and in case of default of payment of the said fine, the parties convicted shall be severely flogged. And all tavern-keepers and publicans, or others, who shall have permitted lotteries to take place in their houses, shall forfeit a double fine, and such tavern-keepers or publicans shall ever be precluded from obtaining a renewal of their licence.

Lotteries forbidden.  
Penalty, twenty-five rds. and forfeiture of articles raffled.

Double fine on publicans.

Thus done and decreed in the Castle of Good Hope, the 19th May, 1789, and published and affixed on the 27th following.

C. J. VAN DE GRAAFF.

By order of His Excellency the Governor and Council,

C. VAN AERSSSEN, Pr. Secretary.

#### REGULATIONS FOR THE PREVENTION OF CONFUSION IN THE DEBT REGISTRY.

##### PUBLICATION.

Whereas it hath been discovered and hath come to our knowledge that, in the registration of bonds passed before magistrates and orphan masters whereby landed property is specially hypothecated, numerous abuses have heretofore taken place in the register, which is for this purpose kept at the Political Secretary's office, from which nothing but confusion and injury can result, as well to the creditors as debtors, and it has therefore become necessary for the public interest as well, that every one who has advanced money upon hypothec of landed property should have the certainty

Preamble.

dat dezelve verbanden behoorlyk zyn bekend gesteld, om zyn regt van præferentie te behouden, als, dat een iegelyk deezer ingezeetenen gerust kan zyn, dat by 't gemeld schuldregister ten zynen lasten geene andere schulden staan bekend als die hy weezentlyk komt te hebben.

Soo is 't, dat wy, om het register der schulden hier vooren vermeld, behoorlyk te kunnen effen stellen, en van de fouten daar by voorkomende te zuiveren, zoodanig, dat een ieder zig met volkoomen fidutie, op het zelve voortaan zal kunnen verlaaten, goedgevonden hebben te ordonneeren en te statuereeren zoo als geordonneert en gestatueerd word by deesen ;—

Commissie ter naziening van verbanden benoemd.

Dat alle houders van Scheepen-kennissen, Kustingen, welke aan hen mogten zyn gecedeert, en onder alle welke vaste goederen speciaal zyn verbonden, gehouden en verpligt zullen zyn te compareeren voor gecommiteerde Leeden uit den Raade van Justitie dezes Gouvernements, (dewelke daartoe te beginnen met den 8ste der aanstaande maand Mey, des Woensdags en Vrydags, ter Justitieele Raadzale, des morgens ten 9 tot 12 uren gratis zullen vacereen) te vertoonen, alle de Scheepen-kennissen, Kustingbrieven, dan wel Weesmeesteren kennissen welke hen toebehooren, ten einde te werden nagezien of al dezelve Schuldbrieven zig behoorlyk geregistreerd koomen te bevinden, om, wanneer die formaliteit mogt weesen geobserveert, *in dorso* dier Schuldbrieven daar van onder hunne handtekening behoorlyk bewys te geeven, ende zoodanige waarvan de registratie mogt weezen verzuimd directelyk te doen geschieden onder den datum waar op de exhibitie zal gedaan worden en daar van al meede *in dorso* der Schuldbrieven onder hunne handtekening notitie te doen,—

Dat, om hier toe aan een iegelyk der in- en opgezeetenen deezer Colonie genoegzame tyd en gelegenheid te geeven aan de houders van Schuldbrieven in 't Kaapse vlek en dies omtrek woonachtig, gelaaten word de tyd van ses weken, en aan de bewoonders der buiten districten, de tyd van drie maanden, beide te reekenen van den 8ste Mey aanstaande, wanneer gecommiteerde Leeden uit den Rade van Justitie daartoe het eerst zullen vacereen, op poene, dat de geen die verzuimen mogten de gevorderde naziening voor het afloopen der evengemelde termynen te laten doen, voortaan verstookken zullen zyn en blyven van de præferentie welke hen anderzints uit kragte der registratie van de schuldbrieven waar van zy houders zyn, zou kunnen competeeren, en dat de

Verbanden niet ge-exhibeerd van præferentie verstoppen.

and knowledge that these hypothecs have been properly notified, in order to retain his right of preference; as also that every one of the inhabitants may be satisfied that in the aforesaid register of debts no other debts are entered against him than those actually due by him.

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

That all holders of mortgages, bonds before magistrates, and of Bonds passed for the residue of purchase money under which landed property hath been specially hypothecated, shall be held and bound to appear before commissioned members of the Court of Justice of this Government (who shall attend gratis for this purpose, to commence from the 8th of the next month of May, on Wednesdays and Fridays, in the Judicial Court-room, in the morning, from nine to twelve o'clock), to exhibit all the bonds passed before magistrates (mortgages), and Kusting Brieven, and bonds passed before orphan masters belonging to them, in order that it may be examined whether all these obligations are found to be duly registered, so that, if this formality have been observed, proof thereof, under their signature, may be thereon endorsed, and those of which the registration may have been neglected, may at once be registered of the date on which the exhibition shall be made, and in like manner notice hereof under their hand shall be given by endorsement of the instruments.

Commission to  
examine bonds.

That, in order to give sufficient time and opportunity for this purpose to the inhabitants of this colony, a period of six weeks be left to the inhabitants of the Cape Valley and its neighbourhood, and to the inhabitants of the country districts a period of three months,—but to count from the 8th May next, when commissioned members of the Court of Justice shall first attend for the purpose,—under the penalty, that those who neglect to cause the required examination to be done before the expiration of the beforementioned terms, shall henceforward be and remain deprived of the preference to which they would otherwise be entitled by virtue of the registration of the bonds of which they are holders; and that the debts which thereafter may be created on the property

Bonds not ex-  
hibited de-  
prived of pre-  
ference.

schulden die na dien tyd gelegd mogten worden op de hypotheecquen by hen verbonden zonder dat de reeds daarop hegtende langs de voorschreeve middelen zullen weezen geconstateerd, præferent zullen zyn booven de geenen welke bevoorens mogten zyn gecontracteert en in der tyd bevonden worden door toedoen van de houders der verbandschriften ongeregistreerd te zyn gebleeven.

Rooieering van af betaalde ongerooieerde schulden.

Dat het voorts aan iegelyk deezer Ingezetenen binnen de hier voren bepaalde termynen en ter gezegde dage en plaatse vry zal staan zich te adresseeren aan gecommiteerde Leeden uit den raade van Justitie, ten einde al meede gratis informatie te bekomen voor welke schulden zy by het meergemelde schuldregister staan belast, omme wanneer bevonden mogt worden, dat hunne afbetaalde schulden niet behoorlyk mogten zyn geroieerd, dezelve onder vertooning van daartoe vereischt wordende bewyzen te laten roieeren en hunne goederen daar van te ontheffen, waarvan hen als dan al meede behoorlyke bewyzen zullen worden verleend.

En op dat een iegelyk van onze heilzaame oogmerken in deezen het nodig gebruyk zal kunnen maaken en het heilzaam effect genieten, zal deze ter gewoone plaatse worden gepubliceert en g'affigeert, alomme waar men gewoon is zoodanig affixie te doen.

Aldus gedaan en g'arresteerd in 't Casteel de Goede Hoop, den 22 April, 1793, mitsgaders gepubliceert en geaffigeert daags daar aan volgende.

RHENIUS.

## HERVORMING VAN HET SCHULD REGISTER.

### PUBLICATIE.

Jan Willem Janssens, Gouverneur en Generaal en Chef, benevens de Raaden van Politie voor de Colonie de Kaap de Goede Hoop, en den ressorte van dien, in Zuid Africa, &c., &c., &c., aan alle en een iegelyk, die deze zullen zien of hooren leezen, salut! doen te weeten:

Inleiding.

Dat, nademaal uit de Retroacta ter Gouvernements Secretary is gebleken, dat de publieke Schuld Registers, waarby alle Hypotheken, legaaie Verbanden, en Notarieele of Secretarieele Obligatien, worden bekend gesteld, zig geenzints in

hypothecated to them, unless the forementioned hypothec already existing shall have been confirmed according to the manner above prescribed, shall be preferent before those which may have been previously contracted and shall be found to have remained unregistered through the fault of the holders of the bonds.

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

Cancellation of  
paid debts re-  
maining un-  
cancelled.

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

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

RHENIUS.

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## REFORM OF THE DEBT REGISTRY.

### PUBLICATION.

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

That whereas, it appears from the past records of the Government Secretary's office, that the public debt registries, whereby all mortgages, legal hypothecations, and notarial or secretarial obligations are made public, are by no means in

Preamble.

zodanige order bevinden, dat men zig met gerustheid op dezelve zoude kunnen verlaaten; also men soms bevonden heeft, dat niet alleen nog open staande schulden reeds voor lang waren afgelost, maar zelfs, dat onafgeloste schulden, door het gewoon byvoegsel *in margine*, SOLVIT, by de Schuld Registers, als reeds voldaan, voorkwamen; dat hier uit natuurlyk eene zeer groote onzekerheid en verwarring, mitsgaders ruineuse procedures, tusschen de goede in- en opgezetenen dezer Colonie, moeten proflueeren, en bovendien een wantrouwen op het publiek Schuld Register moet ontstaan, waar door de zekerheid van eigendommen, en het onderling vertrouwen in particuliere handelingen, op losse schroeven zouden worden gesteld; dat deze zelfde oorzaken reeds in den jaare 1793, anleiding hebben gegeven dat het toenmalig Gouvernement, op den 23 April, van dat jaare, eene publicatie heeft geëmaneerd, ten einde de ingesloopen abuizen te herstellen, en de publieke Schuld Registers, voor het vervolg, op een meer reguleren voet interichten; dat dit nuttig werk ook onmiddelyk begonnen, en vervolgens met naauwkeurigheid is voortgezet, tot dat in den jaare 1795, door den aanval der Engelschen, hetzelfde heeft moeten worden gestaakt, en na den overgang der Colonie, geheel is afgebroken geworden; dat de wyze, waar op het werk begonnen en voortgezet is, in allen opzichte, ten goede strekte, en der halven met vrugt thans zoude kunnen worden hervat, ware het niet, dat door den tyd, welke tusschen beiden is verlopen, en waarin de oude Schuld Registers zyn gecontinueerd, eene geheele terugtrekking en herziening derzelve, noodzaaklyk was geworden; dat deze herziening te meer noodzaaklyk is, om dat de toenemende bevolking der colonie, de nuttigheid en het groot belang van naauwkeurige publieke Schuld Registers vermeerderd, terwyl daarentegen de voortdoring der tegenwoordige het ingesloopen kwaad dagelyks minder herstelbaar maakt, en de zekerheid van eigendommen, hypothecken, enz., meer en meer doet pericliteeren. Zo is 't, dat Gouverneur en Raaden, om hierinne kragtdadig te voorzien, noodzaaklyk geoordeeld hebben, de publieke Schuld Registers met alle mogelyke naauwkeurigheid te doen revidieren, en daarna in zodanige order te doen brengen, dat niet alleen alle onzekerheid omtrent de thans geregistreerde schulden ontruimd, maar ook voor het toekomstige, het gevaar van onzekerheid en verwarring, zo veel immers doenlyk, worde voorgekomen, en hebben dezelve, ten dien



such order as that would be possible safely to rely on them, inasmuch as it has sometimes been found that not only have debts standing open been long since paid, but even that unpaid debts through the ordinary affix in the margin, "*solvit*," appeared in the registry as already liquidated, that hence, repeatedly, very great uncertainty and confusion, and besides ruinous lawsuits, must arise between the several inhabitants of the colony, and, in addition, distrust in the public debt registry be created, by which the certainty of ownership and mutual confidence in private transactions would be weakened; that these same causes in the year 1793, led the Government of the day to issue a publication on the 23rd of April of that year to reform the abuses which had crept in, and to establish the public debt register on a more certain footing for the future; that this useful work was immediately begun and further accurately set forth, until, in the year 1795, it became necessary to stop it temporarily, on account of the attack on the colony by the English, and after the surrender of the colony it wholly ceased; that the manner in which the work was begun and continued was in every respect of a good tendency, and therefore, could at present be usefully proceeded with, were it not that from the time which has elapsed and during which the old debt registers have been continued, an entire retracing of steps and revision thereof became necessary; that the revision is the more necessary, because the increasing population of the colony has enlarged the utility and the great importance of accurate public debt registers; while, on the contrary, the continuance of the present renders the evil, which has crept in, daily less capable of cure, and more and more endangers the certainty of ownership, hypothecs, &c.:

Now, THEREFORE, the Governor and Council, in order to effectually provide herein, have considered it necessary to cause the public debt register to be revised with all possible accuracy, and thereafter to be brought into such order, that not only all uncertainty concerning the present registered debts may be removed, but in future, the danger of uncertainty and confusion as far as may be possible shall be

einde, goed gevonden te ordonneeren en te statueeren, gelyk zy ordonneeren en statueeren by dezen :

Eerste Commissie aangesteld.

1. Dat gedurende de maanden Juny, July en Augustus eerstkomende, eene Commissie bestaande uit een lid van den Raade van Justitie, en een lid uit de Coloniale Weeskamer, daar toe, door deze respective Collegien expresselyk te benoemen, tweemaal 's weeks, op zodanige tyden, als dezelve onderling zal convenieeren, en aan het Publiek nader bekend maaken, ter Gouvernements Raadzale in 't Casteel zal vacceeren, om te onderzoeken, of alle Kustingbrieven, Schepenen, Weesmeesteren en Bank-kennissen, mitsgaders andere publieke Schuldbrieven, al of niet behoorlyk zyn geregistreerd.

Vertooning van Schuldbrieven aan de Commissie.

2. Dat ten dien einde alle houders van zoodanige Schuldbrieven, waarvan men alhier gewoon is,—by de publieke Schuldregisters aantekening te doen, verplicht zullen zyn, dezelve op de bepaalde dagen, aan deze Commissie te exhibeeren, of door behoorlyk gequalificeerde personen te doen exhibeeren, omme met het Schuldregister te worden geconfronteerd.

Schuldbrieven behoorlyk geregistreerd.

3. Dat de Commissie, *in dorso*, dan wel aan den voet van alle zodanige Schuldbrieven, als zy bevinden zal behoorlyk geregistreerd te zyn, deze bevinding, onder de handtekening van twee Leden der Commissie, zal bekend stellen.

Registratie van Schuldbrieven niet op het Register bekend gesteld.

4. Dat, wanneer by onderzoek, eenige Schuldbrieven mogen bevonden worden, niet op het Schuldregister bekend te zyn gesteld, de Commissie dit verzuim zal redresseeren, door de registratie *in forma* te doen, en hier van ten bewyze *in dorso*, of aan den voet des geëxhibeerden Schuldbriefs, met byvoeging van de ondertekening der geheele Commissie, te noteeren, dat de Schuldbrief is geregistreerd, met byvoeging van den datum der exhibitie.

Nieuw Schuldregister.

5. Dat na verloop van den voorsz. tyd van drie maanden, het onderzoek zal worden gehouden voor geëindigd :—en dat alsdan Gouverneur en Raaden eene *tweede* Commissie zullen benoemen, ten einde een geheel nieuw Schuldregister te formeeren, waarop alleen zullen worden bekend gesteld zodanige Schuldbrieven, als aan de eerste Commissie zyn geëxhibeerd.

Schuldbrieven niet ge-exhibeerd van præferentie verstoken.

6. Dat alle Schuldbrieven, aan de eerste Commissie niet geëxhibeerd, en gevolglyk op het nieuw te formeeren Schuldregister niet bekend gesteld, zullen verstoken zyn van het recht van præferentie; ten ware de houders, nog voor het

prevented. And now, therefore, to this end, resolved to order and decree, and order and decree by these presents :

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

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

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

4. That whenever, on examination, any bonds are found to be unentered in the debt registry, the commission shall redress this omission by formally making the registration, and in proof hereof, shall note on the back, or at the foot of the exhibited bond, with the addition of the signatures of the entire commission, that the bond is registered, with the addition of the date of the exhibition. Registration of bonds not duly registered.

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

6. That all bonds not exhibited to the first commission, and consequently not entered in the new debt registry, shall be deprived of the right of preference, unless the holders before the end of the present year shall, in a satisfactory Bonds not exhibited deprived of preference.

einde van dit loopend jaar, aan den Raade van Justitie, of eene voldoende wyze zullen hebben doen blyken, dat zy, door in rechten erkende wettige oorzaaken, zyn verhindert geweest, om aan dit besluit te voldoen; wanneer Gecommitteerde Leden van den Raade van Justitie, wekelyks tot het passeeren van scabinale actens vaccerende, geauthoriseerd zullen zyn zodanige Schuldbrieven op het nieuw Register bekend te stellen.

Hoe registratien en rooya's moeten ondertekend worden.

7. Dat in het toekomende alle registratien, door den Chartermeester en eerste Commis ter Gouvernements Secretary, zullen worden ondertekend, zo wel als alle roya's welke niet gelyk tot nu toe, met alleenlyk het woord *solvit, in margine* van de registratie te stellen, zullen mogen geschieden, maar integendeel, zullen moeten worden gedaan, door eene behoorlyke afschryving aan de overzyde van het Schuldregister, zodanig, dat ieder debiteur by hetzelfde, voortaan zal moeten hebben een behoorlyk *Debet* en *Credit*.

Bekendstelling van hypotheek in dorso van Brieven van Eigendom.

8. Dat, in zelve voegen als by de Bank van Leening, naar luid van het 5 Art. der Instructie op dezelve, plaats heeft, *in dorso* van alle Brieven van Eigendom, door den Chartermeester en eerste Commis, dadelyk na de registratie het Hypotheek of de belasting zal worden bekend gesteld.

Verpanding van Slaven.

9. Dat voortaan geene verpandingen van Slaven zullen worden geregistreerd, dan onder exhibitie van een behoorlyk Notarieel Transport, ten bewyze, dat de Slaaf waarlyk in eigendom aan den debiteur toebehoord; terwyl alsdan verder ter voorkoming van frauduleuse alienatien en verbanden, het geregistreerd verband, *in dorso* of aan den voet van het Transport in voegen voorsz., zal worden aangetekend.

Rooijeering van afbetaalde schulden.

10. Dat gedurende de sessie der eerste commissie, en op de door dezelve te bepaalen dagen, een iegelyk de vryheid zal hebben, om zich by de commissie te informeeren, voor welke schulden hy by het publiek Register bekend staat; zullende, wanneer bevonden wordt, dat iemand voor schulden belast is, welke hy op eene voldoende wyze aan de Commissie kan doen blyken, reeds te hebben betaald op vertoon van zodanig blyk, de schuld dadelyk worden geroyeerd; welke roya, zo als ook alle overige verrigtingen der Commissie, *gratis* zal geschieden.

Registratie.

En daar het verder aan Gouverneur en Raaden is voorgekomen, dat het registreeren van Kinderbewyzen en Huwlyksvoorwaarden, ofschoon by eene publicatie van den 23ste April, 1793, uitdrukkelyk bevolen, echter niet algemeen

manner, have caused it to appear to the Court of Justice, that they were prevented for reasons valid in law from satisfying this order, in which case the Commissioners of the Court of Justice who attend weekly for the purpose of having acts passed before them, shall be authorized to enter such bond in the new register.

7. That in future all registrations shall be signed by the Master of the Records and the first clerk in the Government Secretary's office, as likewise, all cancellations, which shall not be effected as heretofore by merely placing the word *solvit* in the margin of the registration, but, on the contrary, shall be effected by a proper counter entry on the opposite page of the debt registry, so that each debtor therein shall henceforth have a proper *debit* and *credit* side.

How registrations and cancellations are to be signed.

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

Endorsement of hypothec on title deed.

9. That henceforward no mortgage of slaves shall be registered, except under exhibition of a proper notarial transfer, in proof that the slave is really the property of the debtor; while, further, for the prevention of fraudulent alienations and mortgages, the registered mortgage shall, in the manner aforesaid, be notified by endorsement upon, or by writing at the foot of, the transfer.

Mortgage of slaves.

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

Cancellation of debts proved to have been paid.

And whereas, it hath further appeared to the Governor and Council that the registration of kinder-bewyzen, and antenuptial contracts, although expressly ordered by a proclamation of the 23rd April, 1793, does, notwithstanding, not

Registration.

Van Kinderbewyzen en Huwlyks Voorwaarden.

geschied, waar door het ligtelyk zoude kunnen gebeuren dat men het legaal verband ignoreerende, wierd misleid in de estimatie van het Hypotheek op welke, 't zy by de Bank van Leening, 't zy by de Weeskamer, of by particuliere Ingezetenen, verlangd word penningen te negotieeren;—hebben deselve verder goedgevonden te ordonneeren en te statueeren, ordonneeren en statueeren by dezen :

Conventioneele speciale hypotheeken præferent voor anterieure niet geregistreeerde huwlyks voorwaarden.

11. Dat alle de geene, die reeds, uit kragte van huwlyks voorwaarden legaal hypotheek op de goederen van derzelver echtgenooten hebben verkreegen, daarvan mede aan de eerste commissie gedurende den by Art 1 bepaalden tyd, op gaaf zullen moeten doen, omme hier ontrent op dezelfde wyze, als ten opzichte van conventioneele hypothecation, te werk te gaan, op pene dat zy, die geen opgaaf doen, gepriveerd zullen zyn, van het haar andersints competeerend recht van legaal hypotheek, en dat gevolglyk alle conventioneele speciaale hypotheeken welke na dien tyd worden geconstitueerd, en naar de order geregistreeerd, aan anterieure, niet geregistreeerde huwlyks voorwaarden, zullen worden gepræfereerd.

12. Dat, op gelyke pene, alle huwlyks voorwaarden, welke na dato dezès zullen worden gepasseerd by het Schuldregister ter Gouvernements Secretary zullen moeten worden bekend gesteld.

Opgave van Kinderbewyzen door den Notaris voor wien dezelve gepasseerd zyn binnen vier-en-twintig uren na het sluiten der acte te geschieden.

13. Dat van alle Actens van Kinderbewys, 't zy ter Weeskamer, 't zy voor Notaris dan wel Secretaris en getuigen gepasseerd, door den Secretaris der Weeskamer, de respectieve Notarissen, en de Secretarissen der Buitendistrikten, binnen vier-en-twintig uren na het sluiten der acte, aan den Chartermeester, en eerste commis ter Gouvernement Secretary behoorlyk schriftelyke opgave, by den geenem, voor wien de acte gepasseerd is, ondertekend, zal moeten worden gedaan, op pene, dat by omissie van zodanige opgaven de in dit artikel vermelde amptenaaren aanspraakelyk zullen zyn voor alle schade, welke de weezen door hun verzuim mogten komen te lyden. Zullende de de opgaven der Secretarissen in de Buiten Distrikten, binnen 24 uren in gereedheid moeten zyn, om by de eerste voorkomende secuure gelegenheid naar de Hoofdplaats geexpedieert te worden,—en

Weduwnaars en weduwen niet geregigt

14. Dat eindelyk, om het belang der weezen door alle mogelyke middelen te beveiligen, commissarissen van huwlyks zaken geene huwlyks Proclamatien aan weduwnaars of

take place universally, by which means it could easily occur that those ignorant of the legal hypothec might be misled in the valuation of the mortgage on which it is desired to raise money either with the Loan Bank or the Orphan Chamber, or with private individuals, they have resolved to order and decree, and order and decree by these presents. :

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

12. That under a like penalty, all antenuptial contracts which shall be passed after this date must be publicly notified in the debt registry at the Government Secretary's office.

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

14. That, finally, in order to secure the interests of minors by all possible means, the commissioners of marriage causes may grant no publication of banns of marriage to widowers,

op Huwlyks  
Proclamatien  
voor dat het  
Kinderbewys  
is geregistreerd  
geworden.

weduwen, voor-kinderen hebbende, zullen mogen verleen, tenzy aan hen voldoende blyke, dat niet alleen, in gevolge het 19de articul der huwlyks ordonnatie, behoorlyke securiteit gesteld, maar dat ook de daar van geformeerde acte, ter Gouvernements Secretary, is geregistreerd geworden.

Lasten en beveelen den Raad van Justitie, den Procureur Generaal, en allen, die zulks zoude mogen aangaan, deze onze publicatie met alle nauwkeurigheid te agtervolgen en te doen agtervolgen; want wy zulks tot welweezen dezer volkplanting bevonden hebben alzo te behooren.

En op dat niemand hiervan eenige ignorantie, zoude mogen voorwenden, zal deze worden gepubliceerd, mitsgaders geafficheerd, alomme, daar men gewoen is, publicatie en affixie te doen.

Aldus geresolveerd en gearresteerd in Raade van Politie, aan de Kaap de Goede Hoop, den 15de Mey, 1805, en gepubliceerd den 23 daaraan volgende.

Gouverneur en Raaden voornoemd,

J. W. JANSSENS.

Ter Ordonnantie van dezelve,

J. A. TRUTER, Secretaris.



or widows, having children of a former marriage, unless it satisfactorily appears to them, that not only in accordance with the nineteenth article of the Marriage Ordinance proper security shall be given, but that the deed passed thereof has been duly registered at the office of the Government Secretary.

to publica-  
tion of banns  
before due  
registration of  
the Kinderbe-  
wys.

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

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

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

Governor and Council aforesaid.

J. W. JANSSENS.

By order,

J. A. TRUTER, Sec.



**ORDINANCES**  
**OF THE**  
**CAPE OF GOOD HOPE.**

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**PART II.**

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**PROCLAMATIONS, &c., which still have, wholly or in part,  
the force of Law, from the Surrender of the Colony, in 1806,  
to the Establishment of the Council of Government, in 1825.**



# ORDINANCES OF THE CAPE OF GOOD HOPE.

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## PART II.

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### CAPITULATION OF THE COLONY.

#### PROCLAMATION.

By His Excellency Major-General Sir DAVID BAIRD, &c.

WHEREAS Lieut.-General Janssens has last night consented to the terms of an honourable capitulation, which I was induced to offer him, not only out of respect for himself individually, and the brave troops under his orders, but also with a view to preserve the inhabitants of this country from the miseries and horrors of a protracted warfare in the bosom of the colony,—I do hereby make it publicly known, and think proper to communicate the same, to all the inhabitants of this settlement. Capitulation proclaimed.

As there are still a few trifling articles not perfectly arranged, I defer ordering a copy of the capitulation to be printed, until the whole is finally settled. The inhabitants, however, of whatever description, are hereby required to return peaceably to their usual occupations, as the tranquillity of the colony is perfectly ensured.

Given under my hand and seal, this 18th day of January, 1806.

(Signed) D. BAIRD,

Major-General, Commanding in Chief.

By Order of his Excellency,

(Signed) J. C. SMITH,

A. C. Secretary.

**ARTICLES of CAPITULATION** proposed by Lieut.-Gen. Janssens, Governor and Commander-in-Chief of the Batavian Forces of the Cape of Good Hope, to Brigadier-General Beresford, duly authorized by Major-General Sir David Baird, K.C., and Commodore Sir Home Popham, K.M., commanding the Military and Naval Forces of his Britannic Majesty.

Surrender of  
the settlement.

**Article 1.** As soon as this capitulation is signed, the whole of the Settlement of the Cape of Good Hope, with all its dependencies, and all the rights and privileges held and exercised by the Batavian Government, will be considered as surrendered by the Governor, Lieut-Genl. Janssens, to his Britannic Majesty.

Batavian  
troops march to  
Simon's Town  
with all the  
honours of war.

**2.** The Batavian troops are to march with all their baggage, arms, &c., to a place hereafter to be agreed upon, and retain every thing, as well what belongs to the state, as to individuals, and be at liberty either freely to dispose of the same, or, if they prefer, take everything away with them.

Arms, treasure,  
and public pro-  
perty delivered  
up.

**Article 1.** Agreed to.

**2.** The Batavian troops shall march from their present camp within three days, or sooner, if convenient, with their guns, arms, baggage, and with all the honours of war, to Simon's Town;—they shall retain all private property, and the officers their swords and horses.

But their arms, treasure, and all public property of every description, together with the cavalry and artillery horses, must be delivered up. In consideration, however, of their gallant conduct, the troops will be embarked and sent straight to Holland, at the expense of the British Government, and shall not be considered as prisoners of war, they engaging not to serve against his Britannic

3. The battalion of Hottentot Light Infantry shall, with the rest of the troops, march to the place to be agreed upon, and there being disbanded by General Janssens, shall be at liberty to return to their own country.

4. Under this capitulation shall be comprehended all military men, who, being wounded, have not been able to follow the army, and have fallen into the hands of the British.

5. The officers and men belonging to the Batavian army are to be subsisted at the expense of the British Government until they are embarked.

6. The troops shall be transported to such ports of the Batavian Republic as shall be selected by Lieut.-General Janssens.

7. The sick who cannot be removed with the other soldiers, are to be attended to at the expense of his Britannic Majesty, and, when recovered, sent to Holland.

8. The inhabitants of the Colony who are comprehended in this capitulation are to enjoy the same rights and privileges as have been granted to those in Cape Town, according to the capitulation of the 10th instant.

Majesty, or his allies, until they have been landed in Holland.

3. The Hottentot soldiers are to march to Simon's Town with the other troops, after which they will be either allowed to return to their own country, or be engaged in the British service, as they may think proper.

Hottentot soldiers allowed to return home or to be engaged in British service.

4. These persons being already prisoners of war, any decision respecting them belongs only to the British Commander-in-chief.

Prisoners of war.

5. Agreed to.

Subsistence of Batavian troops until embarkation.

6. The troops, as in the answer to the second article, shall be sent to some port in Holland.

Transport of Batavian troops.

7. Agreed to.

Attendance of the sick.

8. Agreed to—with the exception of not quartering troops, the country not having the same resources as the town, and this right having been always an appendage to the Batavian Government.

Rights of inhabitants of the colony.

Treatment of  
troops on board  
ship.

9. The troops whilst on board ship are to be accommodated and fed according either to the Dutch or English method, as is most beneficial to them.

9. The troops when embarked, will be treated in every respect as British troops when on board transports.

Dispatch to  
Holland.

10. Lieut.-General Janssens shall be at liberty to send home a dispatch to Holland, and will receive assistance from the British commanders in forwarding the same.

10. Agreed to.

Baron van Hogendorp's agricultural plans.

11. The Baron van Hogendorp having expended a great deal of money for the execution of agricultural plans, he shall be supported by the British Government in carrying his plans into execution; and the British Government shall grant unto him all such rights and privileges as, from the public records, it shall appear the Batavian Government meant to have given him.

11. This article must be left entirely to the discretion of the future British Governors or Commanders.

Construction of  
articles of capi-  
tulation.

12. If in this capitulation anything doubtful may occur, it shall be *bonâ fide* construed to the benefit of the Batavian Government.

12. If any doubt should arise as to any article contained in this capitulation, it shall be decided according to what shall appear to be just and honourable, without any preference to either party.

Given under our hands and seals this 18th day of January, 1806, at Hottentot's Holland.

(Signed) J. W. JANSSENS,  
W. C. BERESFORD,  
Brig.-General.

Executed in the presence of

(Signed) J. A. TRUTER,  
J. C. SMYTH,



Ratified and confirmed in the Castle of Good Hope this 19th day of January, 1806.

(Signed) D. BAIRD,  
Major-General, commanding in chief.

HOME POPHAM,  
Commodore, commanding His Majesty's Naval Forces.

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CAPITULATION OF CAPE TOWN.

ARTICLES of CAPITULATION proposed by the Lieut.-Colonel Hieronimus Casimirus von Prophalow, Commandant of the Town, Castle, and circumjacent Fortifications of the Cape of Good Hope,

TO

The Major-General in the service of His Britannic Majesty, Sir David Baird, K.C., Commander-in-Chief of His Majesty's Forces, and Commodore Sir Home Popham, K.M., Commander-in-Chief of His Britannic Majesty's Naval Forces in Table Bay.

Art. 1. The capitulation being signed, the Cape Town Surrender of Cape Town. castle and circumjacent fortifications shall be immediately surrendered to the troops of his Britannic Majesty, namely, the fortifications of the King's Block-house, Craig's Tower, and all the batteries within that circuit, and on the other side of Camp's Bay.

2. The garrison shall, at the surrender, march out with all Garrison march out with honours of war. the honours of war, and shall then lay down their arms, and become prisoners of war; but such officers as are natives of the colony, or married with natives, or in possession of sufficient landed property to become regularly and *bonâ fide* domiciliated, shall be at liberty to continue here so long as they behave themselves as becometh good subjects and citizens, or proceed to Great Britain with regular passports, and having previously passed their parole not to serve until regularly exchanged.

3. All officers who, according to the previous article, Passage of officers to Europe. must go to Europe, shall be provided with passages at the expense of his Britannic Majesty, and shall have leave to realize their property previous to their departure, and receive

the same pay as they did in their own service, till the day of their embarkation.

French subjects in the colony.

4. The French subjects who, belonging to the stranded frigate *L'Atalante*, and the stranded privateer *Le Napoleon*, were casually here, and are comprehended in the capitulation, shall be treated on the same footing as the garrison; but they must all be embarked for Europe, as well as every other French subject in the Colony.

Inhabitants of the town.

5. The inhabitants of the town who have borne arms to be considered as belonging to the town, and may immediately return to their former occupations. But the distinction between the burghers and other inhabitants is to remain the same, and subject to the same restrictions as under the Dutch laws.

Private property free and untouched.

6. All *bonâ fide* private property, whether belonging to the civil or military servants of the Government, to the burghers and inhabitants, to churches, orphans, and other public institutions of that kind, shall remain free and untouched.

Public property delivered up.

7. Public property of every description, whether consisting of treasure, or naval or military stores, buildings, estates, or merchandise, belonging to the Batavian Republic or the Government of France, shall be faithfully delivered up, and proper inventories given of them as soon as possible.

Rights and privileges of burghers.

8. The burghers and inhabitants shall preserve all their rights and privileges which they have enjoyed hitherto; public worship, as at present in use, shall also be maintained without alteration.

Public worship maintained without alteration.  
Paper currency.

9. The paper money actually in circulation shall continue current as heretofore, until the pleasure of his Britannic Majesty is known.

Public property in lands and houses security for part of paper currency.

10. The lands and houses, the property of the Batavian Republic, which must be delivered up in consequence of the present capitulation, shall remain as security for that part of the paper money which is not already secured by mortgages upon the estates of individuals, by its having been lent to them. This is, however, to be without prejudice to the free use to be made of the said lands and houses for public purposes.

Prisoners of war not pressed into service.

11. Prisoners of war comprehended in the present capitulation shall not be pressed into his Britannic Majesty's service, or engaged against their own free will and consent. With respect to other persons, they are provided for in article the 5th of this capitulation.

12. The inhabitants of Cape Town shall be exempted from having troops quartered on them. Cape Town exempted from quartering of troops.

13. Two ships having been sunk in Table Bay, to the great detriment of the roadstead, either after the Batavian Republic had sent out a flag of truce or whilst it was in contemplation to do so, they are to be raised again, and delivered over in an entire state of repair. This having been done without the sanction of the Commandant, the raising of the said ships shall be incumbent on those who sunk them. Sunken ships to be raised.

14. This capitulation shall be signed at four o'clock this afternoon, when the castle of Cape Town and all the adjacent forts previously mentioned shall be surrendered to His Britannic Majesty's troops. Subscription of capitulation.

Given under our hands and seals this 10th day of January, in the Year of our Lord one thousand eight hundred and six, at Papendorp, near Fort Knokke.

(Signed) H. C. BARON VON PROPHALOW (L.S.)  
D. BAIRD, Major-Gen. (L.S.)  
HOME POPHAM (L.S.)

Executed in the presence of

(Signed) J. A. TRUTER,  
J. PALMER.

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#### STAMPS.—LICENCES.

##### PROCLAMATION.

By His Excellency DU PRE, Earl of CALEDON, Viscount ALEXANDER, and Baron CALEDON of CALEDON, &c.

WHEREAS it has been signified to me that great inconvenience arises to the public for want of a sufficient schedule or tariff of the stamps necessary to be used in deeds or other public instruments, according to the existing laws of this colony; from which cause considerable risk is run by individuals of having their deeds invalidated, and of being themselves exposed to prosecution in such cases in which licences or other acts are necessary for them to be possessed of, on paper of a stamped value, proportioned to the value of the object; Preamble.

I have therefore thought it proper to take the same into consideration; and having carefully examined the existing

schedule, I have endeavoured to supply the deficiency complained of, and at the same time to apportion the future value of the stamps to the relative value of every other article at the present moment, in order that his Majesty's revenue may continue equal to the exigencies of the colony.

Stamps directed to be used as in schedule.

I do in consequence, by virtue of the powers vested in me, direct that the following stamps be used in the several transactions specified in the herein-after-mentioned schedule :

Unstamped deeds null and void.

And I do hereby declare every deed null and void, according to law, which shall not henceforth be drawn out upon, or covered with, the stamp now ordered ; and I call upon the Honourable Court of Justice to take especial care that the provisions of this law be properly enforced, as far as the cognizance of the Court permits.

Licences to be taken out.

And whereas great injury has been done to his Majesty's revenue by persons neglecting to take out the licences directed under the circumstances of their respective cases, I do hereby think it necessary especially to warn all

Vendue-masters,  
Butchers,  
Bakers,  
Wine-merchants,  
Clubs and societies,  
Keepers of public billiard tables,  
Retail shopkeepers in Cape Town,  
Persons grazing their cattle in the Kaapsche Vlakte,  
Carriers of fire-wood, in ditto and  
Boatmen,

Penalty, thrice the amount of licence.

not to fail in taking out such licences forthwith, on pain of being fined triple the value thereof, over and above such other penalty as has been imposed by former proclamations in each case.

And His Majesty's Fiscal is hereby directed to institute legal proceedings for the recovery of the said fines, against all persons who may be found neglecting to attend to the provisions of this enactment.

Given under my hand and seal, at the Cape of Good Hope, this 24th December, 1807.

(Signed) CALEDON.

By His Excellency's command,

C. BIRD, Act. C. Secretary.

(Vide Proclamation, 10th December, 1824, for the Schedule in force.)

## IMPRISONMENT FOR DEBT.

## PROCLAMATION.

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

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

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

And whereas it has occurred that a debtor or debtors Fifty rixdollars not more than six months. have been confined for a long and indefinite period of time for small debts not exceeding fifty rixdollars:—Be it enacted and ordained, and it is hereby enacted and ordained, that no person shall be detained in prison for more than six calendar months, for any original debt not exceeding fifty rixdollars exclusive of all costs of suit; and the fiscal, deputy fiscals, landdrosts, deputy landdrosts, and all others having the care and superintendence of jails, prisons, or places of confinement are hereby directed and commanded to liberate all and every person or persons so confined at the expiration of the six calendar months, as aforesaid, and all and every

Other remedies  
of creditor re-  
served.

person is forbidden again to arrest for such debt aforesaid, any Person or Persons so liberated; but nothing herein shall be construed to discharge such debt or debts, or to deprive the creditor or creditors of any and every other remedy against the goods, lands, or property of such debtor or debtors which now exists by law.

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

Given under my hand and seal, at the Cape of Good Hope, this 5th day of February, 1813.

(Signed) J. F. CRADOCK.

By His Excellency's Command,

(Signed) H. ALEXANDER, Secretary.

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## CONVERSION OF LOAN PLACES TO PERPETUAL QUITRENT.

### PROCLAMATION.

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

Preamble.

WHEREAS Agriculture constitutes the chief source of prosperity in this colony, and the full encouragement thereof must consequently have an immediate tendency to promote the real interests of its inhabitants: Whereas this encouragement chiefly depends on the certainty of tenures, and the confidence connected therewith, that all improvements of the soil, and all increase of fertility, should indisputably belong to the holder as his own, and that, in the ordinary course of things, all his arrangements, as well with respect to the produce as to the land itself, should, by the laws, be exclusively secured to him, his heirs, executors, assigns, or representatives: Whereas, although the establishment of loan leases might have been suitable to the early state of this colony, when the wants of Government were not foreseen, it now appears from experience that the loan tenure is injurious to that certainty, so essential to the happiness and the interest of the inhabitants, and equally injurious to the public interest, by preventing the holders from appropriating as much of their means to the improvement and extension

of agriculture as they would do, in case they had no right of re-assumption to apprehend, and might dispose of the ground as they please, *by subdividing the same among their Children, letting, selling, or otherwise alienating it in lots, cultivating it in the prospect of remote benefit, by the planting of timber, &c*: Whereas, notwithstanding a gradual re-assumption of loan lands and the re-granting of the same in lesser portions on a more certain tenure might considerably increase the colonial revenue; yet, having taken into consideration the great utility of no longer delaying the improved cultivation of land by giving security to title, and of making the same, as speedily as possible, a general measure, I have adopted the following determination: To grant to the holders of all lands on loan, who may regularly apply for the same, their places on *perpetual quitrent*, with the following rights and privileges, and on the following terms and conditions, namely.

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

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

2. No loan place shall exceed three thousand morgen; every addition to that quantity of land must be particularly mentioned to the surveyor and commission, and appear upon the face of the application, for His Excellency's consideration.

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

Right to hold hereditarily and to alienate.

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

Government reservation of precious stones, gold and silver —and of right of making and repairing roads.

5. In all places adjoining to the sea, or communicating with the sea by inlets therefrom, the rights of the Crown are reserved, with the power of re-assumption of any quantity of land, not exceeding twenty morgen, paying the proprietor

Reservation of rights of Crown in places adjoining the sea.

for such buildings as he may have erected, according to a fair valuation, provided such ground be wanted for public purposes; and if given up by the Crown, it shall not be transferred to another individual, but revert to the proprietor or his representatives.

Laws respecting freehold lands to govern decisions on perpetual quitrent.

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

Yearly rent not to exceed rixdollars two hundred and fifty.

7. That for this, in the common course of things, irrevocable title, the holders shall pay to the public revenue an increased yearly rent, to be prescribed according to the situation, fertility, and other favourable circumstances of the land; in no case, however, exceeding a sum of two hundred and fifty rixdollars.

Payment of surveyor.

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

Each holder, on division of a place, bound for the full amount of the rent.

9. On the division of any place granted on *perpetual quitrent*, each part, and its holder, shall be *severally bound* and responsible for the full amount of the rent, in such manner, however, that he who makes the payment may recover from the other holders, for as far as regards their respective shares; unless at the request of the interested parties, on making the division, Government may have been pleased to direct, that the rent shall be apportioned and registered proportionably at the time of the transfer.

Transfer *coram lege loci*.

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



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

Quitrent lands liable to same burthens only as freehold.

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

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

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

Issue of title deed.

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

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

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

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

16. Loan places attached to the respective drostdies, deputy landdrosts, or the parsonages of the clergy, remain, as they are, public property, to be transmitted to their successors. But where field-cornets, or other public functionaries, are excused from paying rent for a loan lease of their own as part of the remuneration for their public services,—in all such cases where the party solicits and obtains a change of tenure, for the purpose of dividing it amongst his family; or other motives, he shall not be liable to the raised rent during the time he is employed in the

Loan places attached to drostdies and parsonages public property.

public service, and a new rent shall commence at the expiration of such services by death or otherwise.

General tenor  
of the regu-  
lations.

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

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

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

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

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

Given under my hand and seal, at the Cape of Good Hope, this 6th day of August, 1813.

(Signed) J. F. CRADOCK.

By his Excellency's Command,

(Signed) H. ALEXANDER, Secretary.

**PROHIBITION OF PURCHASE AT SALES BY  
AUCTIONEERS.**

**PROCLAMATION.**

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

WHEREAS it was judged expedient to prohibit vendue mas- Preamble.  
ters, secretaries of the Orphan and Insolvent Estates Cham-  
bers, also all other public officers presiding officially over any  
public sale, to make any purchase at the sales they attend  
in their official capacities, and which prohibition was made  
public by the proclamation of the 27th December, 1805, I  
have thought proper to renew the said proclamation in all  
that spirit and honour due to its peculiar case (for "*misfor-  
tune*" is the most concerned), and therefore hereby order and  
command :

That from henceforth the vendue clerks or auctioneers at Auctioneers  
not allowed to  
bid for or  
purchase goods  
put up by them  
for sale.  
any of the common sales, or at such as are held by the  
Orphan Chamber, or by the Chamber for Regulating Insol-  
vent Estates, or any other sales held by public authority,  
shall not be allowed to bid for, much less to purchase, any  
goods put up by them to sale, either directly or indirectly,  
either in the name or through the means of any other person,  
be it who it may, or in their own names, or in trust for them-  
selves or their children, on pain of the bargain being void and  
the forfeiture of their situation, and a fine of three times the  
real value of the article so purchased, besides the offending  
party being declared "infamous" ever more. Penalty,—  
thrice the  
value of the  
article pur-  
chased, and  
perpetual "in-  
famy."

That also the vendue masters, the secretaries of the Orphan  
Chamber and Insolvent Estates Chamber included, and like-  
wise other public officers presiding officially over any public Officers presid-  
ing officially  
over sales not  
to purchase in  
person.  
sale, shall not themselves come forward at the sale they  
attend in their official capacities to make any purchase, but  
shall be obliged, if they are so inclined, to give permission,  
without the knowledge of the auctioneer, to any other person  
to purchase for them, so that neither the auctioneer nor the  
public shall know at the time of sale that the articles are  
bidden for on behalf of the vendue master, commissioner,  
&c., on pain of nullity, exposure to infamy, and arbitrary  
correction.

It is the imperious duty of all the above public officers to  
lend their utmost aid that the goods and effects of the parties  
interested be disposed of as advantageously as possible.

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

Given under my hand and seal, at the Cape of Good Hope, this 3d day of September, 1813.

(Signed) J. F. CRADOCK.

By his Excellency's Command,

(Signed) H. ALEXANDER, Secretary.

SESSION OF THE CAPE OF GOOD HOPE BY THE  
PRINCE SOVEREIGN OF THE NETHERLANDS  
TO THE KING OF GREAT BRITAIN.

Convention between Great Britain and the United Netherlands, signed at London, August 13, 1814.

In the name of the Most Holy and Undivided Trinity :

Preamble of  
convention.

THE United Provinces of the Netherlands, under the favor of Divine Providence, having been restored to their independence, and having been placed by the loyalty of the Dutch people and the achievements of the Allied Powers under the government of the illustrious House of Orange: and his Britannic Majesty being desirous of entering into such arrangements with the Prince Sovereign of the United Netherlands concerning the colonies of the said United Netherlands which have been conquered by His Majesty's arms during the late war, as may conduce to the prosperity of the state, and may afford a lasting testimony of His Majesty's friendship and attachment to the family of Orange and to the Dutch nation: the said High Contracting Parties, equally animated by these sentiments of cordial good will and attachment to each other, have nominated for their plenipotentiaries, namely, His Majesty the King of the United Kingdom of Great Britain and Ireland, the Right Honourable Robert Stewart, Viscount Castlereagh, one of his said Majesty's Most Honourable Privy Council, a Member of Parliament, Colonel of the Londonderry Regiment of Militia, Knight of the Most Noble Order of the Garter, and his Principal Secretary of State for Foreign Affairs, &c. ; and his Royal Highness the Prince of Orange Nassau, Prince Sovereign of the United Netherlands, his

Excellency Henry Fagel, his Ambassador Extraordinary and Plenipotentiary at the Court of his Britannic Majesty, —who, after having exchanged their full powers, found in good and due form, have agreed to the following articles :

Art. 1. His Britannic Majesty engages to restore to the Prince Sovereign of the United Netherlands, within the term which shall be hereafter fixed, the colonies, factories, and establishments which were possessed by Holland at the commencement of the late war, namely, on the 1st of January, 1803, in the seas and on the continents of America, Africa, and Asia, with the exception of the Cape of Good Hope, and the settlements of Demerara, Essequibo, and Berbice, of which possessions the High Contracting Powers reserve to themselves the right to dispose by a supplementary convention, hereafter to be negotiated according to their mutual interests, and especially with reference to the provisions contained in the sixth and ninth articles of the treaty of peace, signed between his Britannic Majesty and his most Christian Majesty on the 30th of May, 1814.

Restoration of all Dutch colonies conquered during the war, except the Cape of Good Hope, Demerara, Essequibo, and Berbice.

\* \* \* \* \*

Art. 3. The places and forts in the colonies and settlements which, by virtue of the two preceding articles, are to be ceded and exchanged by the two high contracting parties, shall be given up in the state in which they may be at the moment of the signature of the present convention.

Settlements to be given up in their state at the date of signature.

\* \* \* \* \*

#### FIRST ADDITIONAL ARTICLE.

In order the better to provide for the defence and incorporation of the Belgic Provinces with Holland, and also to provide, in conformity of the ninth article of the Treaty of Paris, a suitable compensation for the rights ceded by his Swedish Majesty under the said article, which compensation, it is understood, in the event of the above reunion, Holland should be liable to furnish, in pursuance of the above stipulations: It is hereby agreed between the High Contracting Parties, that his Britannic Majesty shall take upon himself, and engage to defray the following charges :

Provision for the incorporation of Belgium with Holland, and for compensation to Sweden.

1. The payment of one million sterling to Sweden, in satisfaction of the claims aforesaid, and in pursuance of a convention this day executed with his Swedish Majesty's

Payment by Great Britain to Sweden of £1,000,000.

plenipotentiary to that effect, a copy of which convention is annexed to these additional articles.

Payment of £2,000,000 by Great Britain to the Prince Sovereign of the Netherlands. Engagement to bear further charges to the amount of £3,000,000.

2. The advance of two millions sterling, to be applied in concert with the Prince Sovereign of the Netherlands, and in aid of an equal sum to be advanced by him towards augmenting and improving the defences of the Low Countries.

3. To bear, equally with Holland, such further charges as may be agreed upon between the said High Contracting Parties and their allies, towards the final settlement of the Low Countries in union with Holland, and under the dominion of the House of Orange, not exceeding, in the whole, the sum of three millions, to be defrayed by Great Britain.

Cession, in satisfaction of above engagements, of the Cape of Good Hope, Demerara, Essequibo, and Berbice.

In consideration, and in satisfaction of the above engagements, as taken by His Britannic Majesty, the Prince Sovereign of the Netherlands agrees to cede in full sovereignty to His Britannic Majesty, the Cape of Good Hope, and the settlements of Demerara, Essequibo, and Berbice, upon the conditions nevertheless, that the subjects of the said Sovereign Prince, being proprietors in the said colonies or settlements, shall be at liberty (under such regulations as may hereafter be agreed upon in a supplementary convention) to carry on trade between the said settlements and the territories in Europe of the said Sovereign Prince.

Free resort of Dutch ships to the Cape of Good Hope.

It is also agreed between the two High Contracting Parties, that the ships of every kind belonging to Holland shall have permission to resort freely to the Cape of Good Hope, for the purpose of refreshment and repairs, without being liable to other charges than such as British subjects are required to pay.

\* \* \* \* \*

#### THIRD ADDITIONAL ARTICLE.

Validity and ratification of additional articles.

The present additional articles shall have the same force and validity as if they were inserted word for word in the convention signed this day. They shall be ratified, and the ratifications shall be exchanged at the same time and place.

In witness whereof, we, the undersigned Plenipotentiaries, have signed, and affixed to them the seal of our arms.

Done at London, this Thirteenth day of August, One Thousand Eight Hundred and Fourteen.

(L.S.) CASTLEREAGH.  
(L.S.) H. FAGEL.

**BOUNDARIES OF LAND BETWEEN CAPE TOWN AND  
SIMON'S BAY.**

**PROCLAMATION.**

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

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

*Preamble.*

*Boundaries of land from Cape Town to Claassenbosch, established.*

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

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

And whereas it appears that within the limits of the survey under consideration, there are other persons who claim Government land, in virtue of certain resolutions of the former Governments, although they had not obtained regular titles thereto; and being desirous, whenever the interest of the Crown and local circumstances will admit of it, and no actual disposition has taken place, or been directed, to give favourable consideration to claims of the nature alluded to, I have given detailed instructions to the landdrost of the Cape

*Titles to claimants of Government land.*

district, to value such of the lands alluded to as are specified to him as being such as may, without detriment to public interest, be alienated, in order to their being ceded under regular title to the parties in question.

Delivery of  
diagrams to  
applicants.

And it is hereby recommended to all holders of land in the direction of the said survey, for the prevention of all future disputes with respect to the boundaries or extent of the land they occupy, to cause to be taken from the general survey under consideration, a diagram or chart of the lands they possess, which diagram, with a proper certificate from the Colonial Secretary, will be delivered to each applicant, free of expense, excepting the usual cost attending the land surveyor's copying the same.

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

GOD SAVE THE KING !

Given under my hand and seal, at the Cape of Good Hope, this 23d day of December, 1814.

(Signed) C. H. SOMERSET.

By His Excellency's Command,

(Signed) H. ALEXANDER, Secretary.

## STAMPS ON NOTARIAL ACTS.

### PROCLAMATION.

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

Preamble.

WHEREAS it has been represented to me by the worshipful the Court of Justice that much irregularity has prevailed from the practice of covering notarial acts with stamps, instead of writing such acts on paper stamped, as the law prescribes; and from the practice of drawing up original vendue notes on unstamped paper, covering the same with stamps only in such cases in which it became necessary to prosecute the claims arising from neglect of payments, or otherwise to the great detriment of the public revenue, and to the great injury of the individuals whose interests are by such practices affected: I do hereby, by virtue of the power in me vested, order and direct that henceforward all notarial acts shall be

All notarial  
acts to be



written and signed upon paper stamped, (as in each particular case the standing regulations of this colony direct) and in no case be covered by such stamps only: And I hereby further order and direct that all vendue notes shall be written upon the stamp which the proclamation of the 22d May, 1812, enjoins, and not covered only with such stamp, as hereinbefore explained. And in order to give due effect to the aforesaid necessary regulations, I do hereby authorize the worshipful the Court of Justice, and command them, in every case in which it shall appear to them, or to any commission from their board, that this regulation shall have been contravened, to impose and levy upon the notary, or district secretary, or vendue master, so offending, a fine not exceeding fifty-rixdollars for each separate transgression; which fine shall be paid into the hands of the secretary to the Court of Justice, or to the secretary to the Commission of Circuit, as the case may be, to be by him accounted for in the general account of receipts and disbursements of the worshipful Court aforesaid.

written on stamped paper.

Penalty on notaries fifty rixdollars for each separate transgression.

And it is hereby declared and made known, that nothing herein contained shall be construed to affect the penalties heretofore attached to the passing any notarial acts upon other than paper regularly stamped according to law.

Other penalties not affected.

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

GOD SAVE THE KING!

Given under my hand and seal, at the Cape of Good Hope, this 26th day of May, 1815.

(Signed) C. H. SOMERSET.

By His Excellency's Command,

(Signed) H. ALEXANDER, Secretary.

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GAME LAW.

PROCLAMATION.

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

WHEREAS it has appeared to me that the existing regulations Preamble. against the destruction of game, and for the preservation of

some particular species of the same, do not wholly meet the laudable object with which they have been established; and whereas the rapidly-increasing population renders it daily more necessary to guard against the total destruction of game in this colony, in the most efficacious manner: I have thought proper to order and direct, and it is hereby ordered and directed accordingly:

No game to be shot from 1st July to 30th November.

1. That from and after the 1st July until the 30th November, in each year, both days inclusive, all persons whosoever are strictly forbidden to shoot any pheasant, partridge, korhaan, wild peacock (paauw), ostrich, buck (comprising the whole antelope species), hare or zebra, under a penalty of fifty rixdollars for each head of game so killed during said period,—namely, from the 1st July to the 30th November, in every year, both days included, together with all the costs, and expenses attending the prosecution; or in failure of payment thereof, one month's imprisonment in the gaol of the district in which such offence shall have been committed, for every fifty rixdollars which the transgressor shall be found to have forfeited, in proportion to the quantity of game he may have killed.

Travellers shooting game for actual consumption beyond Hottentots' Holland kloof, and beyond great Berg River, exempted.

2. From this prohibition and penalty are, however exempted, farmers and other free persons travelling through the country, and shooting game for their actual consumption on the road, provided it be on the other side of Hottentots' Holland kloof, and at the other side of the Great Berg River, so that the prohibition contained in the preceding article is to be in full force and rigour in the whole of the Cape district, and in the district of Stellenbosch, at this side of the Hottentots' Holland mountains and the Great Berg River, under a like penalty of fifty rixdollars for each head of game which shall be found to have been shot in the Cape or Stellenbosch districts, respectively, within the limits herein specified, or beyond the same, if not actually shot on the road for the consumption of farmers or other free persons travelling through the country; or one month's imprisonment in case of failure of payment, in proportion of the pecuniary penalty incurred. In no case whatever shall game, so shot, be brought into Cape Town, or any of the residencies of the country districts, under the penalty hereafter prescribed in article fourteen.

Penalty for breach of the prohibition,—fifty rixdollars for each head of game; or, in default of payment, one month's imprisonment.

Like penalty

3. That no person whosoever shall, at any time, wilfully catch or destroy any pheasant, partridge, korhaan, wild peacock,

ostrich, buck, hare, or zebra, either by net, snare, spring, or other engine, under the same penalty as prescribed in the two foregoing articles.

for catching or destroying game by net, snare or spring.

4. It is hereby especially enacted that no person shall, at any time, knowingly or willingly catch, take away, or destroy the young or eggs of any such game as aforesaid, under a penalty of fifty rixdollars for every offence, together with all the costs and expenses attending the prosecution; or, in failure of payment thereof, one month's imprisonment in the gaol of the district in which the offence shall have been committed.

Penalty for destruction of the young or eggs of game, fifty rixdollars for every offence; or, one month's imprisonment.

5. Exclusive of the period prescribed in the first article, that is to say, from the 1st December to the 30th June, in each year, no person whosoever shall be at liberty, anywhere, to shoot or kill any pheasant, partridge, korhaan, wild peacock, ostrich, buck, hare, or zebra, either by gun or dog, unless he shall have previously obtained a licence to that effect; that is to say, all persons residing in Cape Town, Cape district, and the residency of Simon's Town, from the Colonial Office; and all other persons from the respective landdrosts, on a stamp of five rixdollars, which licence will be in force only for one season, namely, from the 1st December to the 30th June, in each year, both days inclusive: any person shooting, killing, or destroying game without such licence shall forfeit the penalty prescribed in article I.

From 1st December to 30th June,—no person entitled to shoot without a licence.

Penalty fifty rixdollars, or one month's imprisonment.

6. No holder of such licence, however, shall be at liberty to shoot or kill any elephant, sea-cow (hippopotamus), bonte-buck, without having obtained a special permission to that effect from the governor for the time being, under a penalty of five hundred rixdollars for each offence; or, in failure of payment thereof, six months' imprisonment in the gaol of the district in which the offence shall have been committed. [Extended to elands, 14th March, 1823; repealed as to elephants, 23rd August, 1822.]

Special permission required for certain large game.

Penalty five hundred rixdollars or six months' imprisonment.

7. That no person or persons whosoever shall, under warrant of any licence or other authority, pursue or kill any game in or upon any lands the property of, or lawfully occupied by, any individual in the colony, without the express permission of the proprietor or occupier thereof, under a penalty of twenty-five rixdollars for the first transgression, and of one hundred rixdollars on repetition of the offence after the first warning, over and above the payment of damages, if such be proved, recoverable by ordinary prosecution at law; provided,

Game not to be killed or pursued on private property.

Penalty, first offence, twenty-five rixdollars, second ditto, one hundred rixdollars

**If due warning have been given by the proprietor.** always, that due notice and warning shall have been given not to trespass in the pursuit of game, on the lands of the said proprietor or occupier.

**Game on cultivated land may at any time be killed by proprietor.** 8. That it shall, at any time, be lawful for any proprietor or occupier of land which shall have been brought into cultivation to kill, destroy, and drive forth, from and out of such land, being in a state of cultivation, all and every species of game which shall have entered or harboured, to the loss, annoyance, and injury of the proprietor or occupier; provided, always, that it shall not be lawful to pursue or destroy such game out of, or beyond, the limits of the land so cultivated.

**Game on leased government land not to be shot by lessees, except in cultivated land.** 9. As the respective holders of the leases of government places situated at Groenekloof are expressly forbidden, by the conditions of the leases, either to shoot, catch, kill, or otherwise destroy any game within the limits of their respective places, or allow others so to do, such prohibition is hereby converted into a permanent law; and, that all game found on those places, being more especially considered as public property, neither the respective holders of such leases nor any other person or persons whosoever, whether provided with a licence or not, shall be at liberty, at any time, there to shoot or kill any game specified in this proclamation (saving and except the liberty granted by article eight), under a penalty of fifty rixdollars for each head of game so shot or killed; and, on failure of payment thereof, one month's imprisonment in the town gaol, for every such fifty rixdollars so forfeited, and not paid.

**Penalty fifty rixdollars or one month's imprisonment.** 10. That any herdsman, shepherd, or other person having the charge of, or attending, cattle, who shall be found in the fields carrying a gun loaded with shot of a smaller size than those which are commonly known and called by the name of *loopers*, or who shall be found in the fields with any shot of a smaller size in his custody or possession, shall forfeit such gun; and his master or employer, moreover, be fined in the sum of twenty rixdollars, together with all costs and expenses attending the prosecution, in case of conviction; or in failure of payment thereof, one month's imprisonment in the gaol of the district in which the offence shall have been committed.

**Herdsman carrying guns loaded with smaller shot than 'loopers' to forfeit the guns, and the employers fined twenty rixdollars.** 11. That no slave shall, at any time, be permitted to shoot or destroy game, on pain of forfeiture of the gun, or other engine, and a further punishment of one month's imprisonment; the costs and other expenses attending the prosecution to be paid by the master, on conviction.

**Slaves prohibited from shooting game.**

12. And whereas, many persons hire or employ Hottentots, or other free persons, to shoot for them, in the capacity of game-keepers, or for the pretended purpose of supplying their tables with game, be it hereby further ordered and declared that such Hottentot, or other free person, shall not be allowed to shoot upon any other lands than what are *bonâ fide* possessed by his master or employer, unless he be provided with a written permission from the proprietor or occupier of such land, not belonging to his master or employer, as he may wish to shoot upon, under a penalty of one hundred rixdollars; such fine to be recovered of his said master or employer, together with all costs and expenses attending the prosecution, on such Hottentot or free person being convicted of the offence.

Hottentots and other servants acting as game-keepers to shoot only on their masters' lands.

Penalty one hundred rixdollars.

13. That as the employing of the Sabbath day for the amusement of shooting is a most immoral and profligate practice, it is therefore hereby most strictly forbidden to shoot or kill any kind of game, at any season of the year, on a Sunday; and every person, without exception, hereafter convicted of offending herein shall be fined in a penalty of one hundred rixdollars for the first offence, and three hundred rixdollars for each repetition after a first conviction.

Shooting on Sundays prohibited.

Penalty, first offence one hundred rixdollars, second offence three hundred rixdollars.

14. That no live game shall, at any time, nor dead game, between the 1st July and the 30th November of each year, both days included, be suffered to pass by, or be carried through, the toll or barrier gates, without a special permission from the governor for the time being, under a penalty of fifty rixdollars, to be recovered of the person in whose custody or possession such game shall be found, together with all costs and expenses attending the prosecution to conviction, or six months' imprisonment, in failure of payment thereof.

No live game to pass toll gates at any time; no dead game between 1st July and 30th November.

Penalty fifty rixdollars or six months' imprisonment.

15. All transgressions against this proclamation shall be respectively prosecuted before the sitting commissioner from the worshipful court of justice, or the landdrost and commissioned heemraden of the district in which the offence shall have been committed, by the competent officer of such district, and the sentence given in such case shall be subject to re-hearing and appeal; provided the defendant, should *he* feel himself aggrieved thereby, previously complies with the sentence in the first instance, and that such compliance, as well as the deposit of the penalty, for a frivolous re-hearing or appeal having been made, shall appear to the court above.

Prosecutions under this proclamation.

Two witnesses  
not necessary  
for a con-  
viction.

16. All prosecutions resulting from a contravention of this proclamation shall be carried on summarily; and the judge, should he, in this particular case, feel himself otherwise sufficiently instructed to pass a sentence of condemnation, shall not be bound to the necessity of requiring the oath of two consonant witnesses,—a groundless plea, though eagerly resorted to, in cases where the offence has been committed, without being witnessed by a plurality of impartial persons.

Prosecutions  
to take place  
within three  
months of the  
offence.

17. All contraventions of this proclamation shall be prosecuted by the competent officer within three months from the time the offence shall have been committed; after the expiration of which period, all right of prosecution shall cease.

Rewards for  
the destruction  
of vermin and  
noxious ani-  
mals.

18. And in order, as much as possible, to encourage the preservation of game, the following rewards shall be given to all such persons as destroy vermin, or other noxious animals, namely :

	Rds.	Sks.
For every tiger, . . . . .	25	0
„ wild dog, . . . . .	5	0
„ wild cat, . . . . .	1	0
„ mousehound, . . . . .	0	4
„ hawk, . . . . .	0	4

These sums shall be paid out of the treasuries of the respective districts in which the vermin or noxious animals shall have been killed, on a certificate from the field-cornet or ward-master of the district: “That the head of such animal has been produced to him,” which certificate must be applied for and obtained, within eight days after the animal, for which the reward is promised, has been destroyed. [Repealed,—*vide* Ordinance No. 3 and Ordinance No. 45.]

Half of fines  
to be paid to  
informer: half  
to the treasury.

19. The half of all fines recovered in consequence of contravention of this proclamation shall be paid to the informer, and the other half to the treasury of the district in which the offence shall have been committed, in order to defray the rewards for the destruction of vermin, and other noxious animals, as mentioned in the foregoing article.

Hunting with  
hounds ex-  
empted from  
the proclama-  
tion.

20. From the limitations contained in this proclamation, hunting with hounds is exempted, which, as in nowise tending to the destruction of game, is to be allowed, on the same footing as heretofore, provided it be conducted by hunting clubs established under the sanction of his Excellency the Governor for the time being.

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

GOD SAVE THE KING!

Given under my hand and seal, at the Cape of Good Hope, this 21st day of March, 1822.

(Signed) C. H. SOMERSET.

By His Excellency's Command,

(Signed) C. BIRD, Secretary.

**TESTAMENTARY DISPOSITIONS OF NATURAL-BORN SUBJECTS OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND RESIDENT WITHIN THIS SETTLEMENT.**

**PROCLAMATION.**

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

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

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

In case of marriage in this colony without previous marriage settlement, property to be administered according to colonial law

unless a testam- testamentary devise, unless such subsequent testamentary  
 entary devise be made by the devise be made in conjunction with the wife of the party,  
 be made by the testator in con- according to the colonial law on this head.  
 junction with  
 his wife.

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

The tenor of  
 this procla-  
 mation to be  
 explained by  
 matrimonial  
 courts.

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

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

GOD SAVE THE KING!

Given under my hand and seal, at the Cape of Good  
 Hope, this 12th day of July, 1822.

(Signed) C. H. SOMERSET.

By His Excellency's Command,

(Signed) C. BIRD, Secretary.

PROHIBITION OF PROMISSORY NOTES UNDER FIFTY  
 RIXDOLLARS—(£3 15s. 0d.)

PROCLAMATION.

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

Preamble.

WHEREAS various notes, bills of exchange, and drafts for  
 money, for very small sums, under the appellation of "*good-*  
*fors*," have been for some time circulated or negotiated in  
 the frontier districts of this settlement, and elsewhere, to the  
 great prejudice of trade and public credit; I have, therefore,  
 thought proper, after full consideration, to declare and order,  
 by virtue of the authority in me vested, that all promissory



or other notes, bills of exchange, drafts, or undertakings in writing, being negotiable or transferable, for the payment of any sum or sums of money less than the sum of fifty rixdollars, in the whole, which shall or may be issued at any time from and after the 15th day of September next, 1822, shall be, and the same are hereby declared to be, absolutely void and of no effect,—any usage or custom to the contrary notwithstanding.

Promissory notes, bills, drafts and other negotiable instruments for sums less than 50 rds., absolutely void.

And I hereby further order and direct that if any person or persons shall, at any time or times from and after the aforesaid 15th day of September next, 1822, by any act, devise, or means whatsoever, publish or utter any such notes, bills, drafts, or engagements as aforesaid, for a less sum than fifty rixdollars, or on which less than the sum of fifty rixdollars shall be due, and which shall be in anywise negotiable, or shall negotiate the same, every such person shall forfeit and pay for every such offence, any sum not exceeding one hundred and fifty rixdollars, nor less than fifty rixdollars, to be sued for before the courts of landdrost and heemraden of the district in which the offence is committed, and the amount recovered to be distributed in the manner usual in cases of fines.

Penalty on utterance of such notes, &c., a sum not exceeding 150 rds., and not less than 50 rds.

And whereas it has been made known to me, that the issue of the notes, bills, drafts, or undertakings aforesaid has been attempted to be excused by a supposed want of small currency in the distant districts, I have, therefore, taken measures for the supply of the frontier with an adequate proportion of small currency; and I have empowered the landdrost of the Albany district, to exchange any notes of the colonial treasury of ten rixdollars or upwards into small currency, in order that no plea whatever may exist for a continuance of the prejudicial practices which it is the object of this regulation to check and annihilate.

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

GOD SAVE THE KING!

Given under my hand and seal, at the Cape of Good Hope, this 22d day of August, 1822.

(Signed) C. H. SOMERSET.

By His Excellency's Command,

(Signed) C. BIRD, Secretary.

E

## AMENDMENT OF GAME LAW.—ELEPHANTS.

## GOVERNMENT ADVERTISEMENT.

Prohibition  
against des-  
troying ele-  
phants re-  
pealed.

NOTICE is hereby given that, in consequence of a representation made to his Excellency the Governor, of the injury sustained by inhabitants of the Under Bosjesman's River division, from the numerous Elephants in those parts, his Excellency has been pleased to rescind such part of the proclamation of the 21st March last as prohibits the destruction of those animals under a penalty of five hundred rix-dollars in each case.

Cape of Good Hope, 23rd August, 1822.

By Command of His Excellency the Governor,

(Signed) C. BIRD, Secretary.

## AMENDMENT OF GAME LAW.—ELANDS.

## PROCLAMATION.

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

Preamble.

WHEREAS it has been represented to me to be necessary to preserve the few Elands which are left in the George district, and which have met with great protection from the landed proprietors in the vicinity of the Attaquas Kloof, but have lately been wantonly dispersed and destroyed by some evil-disposed persons:—It is, therefore, hereby ordered, that the Regulation which gives protection to the Hippopotamus and Bontebuck (that is, the 5th article of the proclamation of the 21st of March, of the year 1822), shall be henceforward also made applicable to the beautiful and scarce species of Deer called Eland, found in the George district; of which all persons are called upon to take due notice, as the penalty for contravening the same will be most rigidly enforced.

Penalty for  
destroying  
eland.

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

GOD SAVE THE KING!

Given under my hand and seal, at the Cape of Good Hope, this 14th day of March, 1823.

(Signed) C. H. SOMERSET.

By His Excellency's Command,

(Signed) C. BIRD, Secretary.

## TARIFF OF STAMPS.

## PROCLAMATION.

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

WHEREAS the worshipful the Court of Justice has represented to me the heavy expenses attendant on the prosecution of debtors for small sums before the court for petty law cases, which expenses are considerably increased by the stamps on which the documents required from the commencement to the termination of a suit are by law directed to be written, so that the costs in some cases frequently exceed the amount of the debt sued for: and whereas it has further been represented to me, that the practice before the worshipful the Court of Justice of using a stamp of *two skillings* only, for covering all documents, without exception, filed in court, is disproportionate as far as regards private bonds for the payment of a certain sum of money:—I have therefore judged it expedient to revise and amend the Tariff of Stamp Duties at present in use in this settlement, and by virtue of the power and authority in me vested to direct and order, and it is hereby so ordered, that Stamps according to the annexed schedule be in future used in all circumstances to which the schedule aforesaid applies, of which regulation the worshipful the Court of Justice and all other public bodies and individuals are hereby required to take notice, as the same will be enforced according to the existing laws.

Preamble.

Stamp tariff revised.

\* \* \* \* \*

[Here followed the tariff;—*vide* proclamation 10th Dec., 1824, for that substituted for the one in the proclamation.]

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

GOD SAVE THE KING!

Given under my hand and seal, at the Cape of Good Hope,  
this 30th day of April, 1824.

(Signed) C. H. SOMERSET.

By His Excellency's Command,

(Signed) C. BIRD, Secretary.

E 2

## TARIFF OF STAMPS.

## PROCLAMATION.

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

Preamble. WHEREAS it has been represented to me, that some trifling errors had been made in the printed Tariff of Stamp Duties published in my proclamation under date 30th April last, I have judged it expedient to revise and correct the same, and it is now republished herewith;—and I do hereby order and direct that, from the date of the publication of this proclamation, the several Stamps as fixed in the annexed amended schedule be used on all deeds and acts therein-mentioned, and to which the Stamps are made respectively to apply.

## TARIFF OF STAMP DUTIES

IN THE  
COLONY OF THE CAPE OF GOOD HOPE.

## ARTICLE 1.

Transfers passed at the Secretary's Office.

	From	1	to	300	Guilders	Rds.	Sts.
Stamps on transfers.		1	to	300	Guilders	0	6
		300	..	750	"	0	24
		750	..	1500	"	1	0
		1500	..	3000	"	2	0
		3000	..	7500	"	4	0
		7500	..	12000	"	8	0
		12000	..	15000	"	10	0
		15000	..	20000	"	15	0
		20000	..	30000	"	20	0
		30000	..	50000	"	30	0
		50000	..	75000	"	40	0
		75000	..	100000	"	50	0
		upwards			"	60	0

## ARTICLE 2.

Transfers of Loan Places.

	From	1	to	3000	Guilders	0	36
Stamps on transfers of loan places.		1	to	3000	Guilders	0	36
		3000	..	7500	"	1	24
		7500	..	15000	"	3	0
		15000	..	30000	"	6	0
		30000	and upwards		"	10	0

## ARTICLE 3.

Mortgages passed at the Secretary's Office, Government Bank, and Orphan Chamber.

				Rds.	Sts.	
From	1	to	300 Guilders	0	12	Stamps on mortgages.
	300	..	750	1	0	
	750	..	1500	2	0	
	1500	..	3000	3	0	
	3000	..	7500	6	0	
	7500	..	15000	12	0	
	15000	..	30000	20	0	
	30000 and upwards		"	30	0	
Deeds of promulgation in the Government Bank				5	0	
Ditto on short loans	..	..	..	1	24	
Receipts for interest by ditto	..	..	..	0	6	
Bills on promissory notes drawn in favour of, or endorsed to, the bank, to be written on or covered with the following stamps:						
From	1	to	500 Rixdollars	0	24	
	500	..	1000	1	0	
	1000	..	2000	1	24	
	2000	..	3000	2	0	
	3000	..	4000	3	0	
	4000 and upwards		"	4	0	

## ARTICLE 4.

Bonds passed before Notaries.

From	1	to	100 Rixdollars	0	6	Stamps on notarial bonds.
	100	..	250	0	24	
	250	..	500	1	0	
	500	..	1000	1	24	
	1000	..	2500	3	0	
	2500	..	5000	6	0	
	5000	..	10000	12	0	
	10000 and upwards		"	20	0	
Securities for bonds	..	..	..	1	0	

## ARTICLE 5.

Wills, and all other Deeds which are relative to the same, or arise from it.

## WILLS AND CODICILS.

A. When the testator values his estate less than 6000 Guilders	..	..	..	1	0	Stamps on wills and codicils.
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		Rds.	Sts.
But when more than <i>f</i> 6000, but less than <i>f</i> 50000 .. .. .		15	0
And possessing more than <i>f</i> 50000 .. .. .		20	0
B.	Codicil, or alteration of a will according to the clause reservatoir .. .. .	1	0
C.	Repudiation of inheritance and deeds of consideration .. .. .	0	24
D.	Deeds of donation <i>inter vivos</i> and <i>causa mortis</i> , when the value is under 1000 Guilders ..	1	0
Stamps on deeds of donation.	From 1000 to 2500 .. .. .	2	0
	2500 .. 5000 .. .. .	5	0
	5000 .. 10000 .. .. .	12	0
	10000 .. 20000 .. .. .	25	0
	20000 .. 50000 .. .. .	50	0
	50000 and upwards .. .. .	100	0
Stamps on inventories.	E. Inventories of estates without the valuation of the same, and all other inventories, when calculated at less than 25000 Guilders, first sheet .. .. .	1	0
	Each subsequent sheet .. .. .	0	6
	When calculated at <i>f</i> 25000 or more, first sheet	2	0
	Each subsequent sheet .. .. .	0	12
	F. Inventories of estates, with the valuation,		
From 1 to 500 Rixdollars	0	12	
500 .. 1000 .. .. .	0	24	
1000 .. 2500 .. .. .	1	0	
2500 .. 5000 .. .. .	2	0	
5000 .. 10000 .. .. .	4	0	
10000 and upwards .. .. .	8	0	
Each subsequent sheet .. .. .	0	12	
Stamps on accounts of tutors and guardians.	G. All accounts of the orphan chamber, tutors and guardians, and also all other accounts by which any common administration, receipt, and expenditure shall be accounted for and settled, except such accounts as respect any insolvent estate, for which indiscriminately only a stamp of twelve stivers is required, are to be written on the following stamps:		
	When the receipt and expenditure jointly amount to more than 100 Rds. and are under 400	0	12

				Rds.	Sts.
From	400	to	1000	0	24
	1000	..	2000	1	0
	2000	..	3000	3	0
	3000	..	5000	4	0
	5000	..	10000	7	0
	10000	..	15000	15	0
	15000	..	20000	20	0
	20000	..	30000	30	0
	30000	..	40000	40	0
	40000	..	50000	50	0
	50000	..	75000	75	0
	75000	..	100000	100	0
	100000	..	150000	150	0
	150000	and upwards	..	200	0

#### H. Deeds for securing the portion of children from former Marriages,

From	1	to	500	Rixdollars	0	12	Stamps on
	500	..	1000	„	0	24	deeds of kin-
	1000	..	2500	„	1	0	derbewys.
	2500	..	5000	„	2	0	
	5000	..	10000	„	4	0	
	10000	and upwards	..	„	8	0	

#### I. Deeds of discharge for the receipt of the Portions of those who are instituted heirs.

From	1	to	500	Rixdollars	0	24	Stamps on
	500	..	1000	„	1	0	deeds of dis-
	1000	..	2500	„	2	0	charge of in-
	2500	..	5000	„	4	0	heritance.
	5000	..	10000	„	8	0	
	10000	..	20000	„	20	0	
	20000	..	30000	„	30	0	
	30000	and upwards	..	„	50	0	

#### K. Pre-contracts of Marriage, when the sum agreed upon does not amount to more than 1000

Rixdollars	..	..	..	3	0	Stamps on	
From	1000	to	5000	Rixdollars	6	0	antenuptial
	5000	..	10000	„	20	0	contracts.
	10000	and upwards	..	„	50	0	

## ARTICLE 6.

Deeds and other papers connected with the Government Secretary's Office, with the Court of Justice, or other Inferior Courts.

						Rds.	Sts.
	Memorials	..	..	..	..	0	24
	Translations	..	..	..	..	0	12
	Loan leases	..	..	..	..	5	0
Stamps on freehold grants.	Grants of land in freehold, under 10 morggen				..	25	0
	From 10 to 30			..	..	50	0
	30 — 60			..	..	100	0
Stamps on quitrent grants.	Grants of land on quitrent.						
	From 1 to 10 Morggen			..	..	10	0
	10 .. 30			..	..	15	0
	30 .. 50			..	..	20	0
	50 .. 60			..	..	25	0
	60 .. 80			..	..	30	0
	80 .. 100			..	..	40	0
	100 and upwards			..	..	50	0
Stamps on receipts of rent payable on quitrent lands.	Receipts of rent payable on land granted on perpetual quitrent.						
	From 1 to 10 Morggen					0	12
	10 .. 30			..	..	0	18
	30 .. 50			..	..	0	24
	50 .. 60			..	..	0	30
	60 .. 80			..	..	0	36
	80 .. 100			..	..	1	0
	100 .. 500			..	..	1	24
	500 .. 1000			..	..	2	24
	1000 .. 2000			..	..	4	0
	2000 and upwards			..	..	5	0
	Original sentences, first sheet			..	..	2	0
	Copies of ditto	..	..	..	..	0	24
	Citations, sommations, renovations, and insinuations					0	24
	Reports	..	..	..	..	0	24
	Hand-bills	..	..	..	..	0	24
	All demands, petitions, &c., that are presented to the Court of Justice			..	..	1	0
	All copies of extracts	..	..	..	..	0	24
	Arrest on persons or property			..	..	1	0
Venia Ætatis.	Deeds of Venia Ætatis	..	..	..	..	50	0



	Rds.	Sts.	
A memorial for Venia Agendi .. .. .	3	0	
Reply to the same .. .. .	12	0	
For every subsequent sheet of the said deeds and papers, a stamp of half the value of the first sheet to be made use of, which first sheet must be written as usual on the stamps ordered by the old tariff, each page to contain not more than eighteen lines, each line thirty letters.			Stamps of half value for each subsequent sheet.
Acceptances, promissory notes, or private bonds, filed or exhibited in the Court of Justice, for the sake of recovery, to be covered with a stamp of half the value of that directed to be used for bonds executed before a notary public, in like proportion to their amount.			Instruments filed in court to be covered with stamp of half the value of that directed for bonds.
Insinuations, interpellations, citations, sentences of the several courts for petty law cases, and som-mations and renovations on the same, in all cases not exceeding one hundred rixdollars, exclusive of interest and costs, to be written on a stamp of only half the value required in cases amounting to more than one hundred rixdollars.			

ARTICLE 7.

Agreements and all other Deeds relative thereto.

A. Contracts between the Inhabitants of the Colony, relative to hiring of houses and lands ..	1	0	Stamps on con-tracts of hire.
B. Hiring of slaves, also contracts for building, or for supplying victuals, for making imple-ments, &c. .. .. .	0	24	
C. Contract entered into with strangers, respecting the supply of merchandise or of colonial produce .. .. .	1	0	
D. Charter parties for a ship under 200 tons or 100 lasts .. .. .	10	0	Charter par-ties.
For ships above 200 tons or 100 lasts ..	20	0	
E. Bills of lading from 1 to 10 tons	5	0	Bills of lading.
10 to 20	10	0	
20 to 50	20	0	
50 and upwards	30	0	

Stamps on bottomry bonds.	F. Bottomry Bonds.		Rds.	Sts.		
	From	1	to	500 Rds.	1	0
		500	..	1000	2	0
		1000	..	2000	4	0
		2000	..	5000	8	0
		5000	..	10000	16	0
		10000	..	20000	40	0
		20000 and upwards			60	0

## ARTICLE 8.

Vendue Notes, or Vendue Accounts, including all other documents relative to public sales.

Stamps on vendue notes.	A.	From	5	to	10	0	6
			10	..	25	0	12
			25	..	50	0	24
			50	..	75	0	36
			75	..	100	1	0
			100	..	150	1	24
			150	..	200	2	0
			200	..	275	2	24
			275	..	350	3	0
			350	..	500	5	0
			500	..	700	6	0
			700	..	1000	7	0
			1000	..	1500	8	0
			1500	..	2000	9	0
			2000	..	3000	12	0
			3000	..	4000	15	0
			4000	..	5000	18	0
		5000 and upwards				20	0
	B.	Advertisements respecting public sales ..				0	24
	C.	Vendue lists of immovable and movable property .. ..				0	24
	D.	Copies of vendue lists or extracts out of the same, first sheet, .. ..				0	24
		Each subsequent sheet, .. ..				0	6
	E.	Agreements of sale of immovable property, ..				2	0

## ARTICLE 9.

Privileges and Licences.

Stamps on licences of various kinds.	A.	Licences for the vendue masters, annually, ..		150	0
	B.	,, ,, butchers, do., ..		50	0

		Rds.	Sts.
C.	Licences for the bakers, annually .. .. .	50	0
D.	„ „ wine merchants in Cape Town, do.	250	0
E.	„ „ do. in the country districts, do.	50	0
F.	„ „ inhabitants of Constantia, Wyn- bergen, and Steenberg, for grazing their cattle, do. ..	10	0
G.	„ „ carriers of firewood, ditto ..	10	0
H.	„ „ to cut timber, for each load ..	0	24
I.	„ „ for wagons .. .. .	0	6
K.	„ „ boatmen, annually .. .. .	1	0
L.	„ „ clubs and societies, ditto, ..	50	0
M.	„ „ each public billiard table, do. . .	100	0
N.	„ „ each tent at the wharf, do. ..	1	0
O.	„ „ to go to the hot baths .. .. .	0	24
P.	Permission to remain in the colony ..	5	0
Q.	„ „ leave the colony .. .. .	1	0
R.	Letters of burghership, .. .. .	250	0
S.	Special licence to be united in marriage, without publication of banns .. .. .	200	0
T.	Adoptions .. .. .	1	0
U.	Licence for keeping a retail shop in Cape Town annually .. .. .	20	0
V.	„ „ for pedlars and hawkers, ditto ..	20	0
W.	„ „ for retailing foreign wines and beer, do.	200	0
X.	„ „ for the wholesale foreign brandies and other foreign spirituous liquors, do.	200	0
Y.	„ „ for brewing Cape beer, do. ..	600	0
Z.	„ „ for retailing Cape beer, do. ..	25	0
AA.	„ „ for retailing colonial produce, do. ..	5	0
BB.	„ „ for killing game, ditto .. .. .	5	0

## ARTICLE 10.

## Powers of Attorney.

A.	A general power of attorney to persons not re- siding in the Colony .. .. .	10	0	Stamps on powers of at- torney.
B.	A special power of attorney to persons not re- siding in the Colony, when the object admits of pecuniary valuation, if less than 1,000 rds.	1	0	
	If more than 1000 rds. .. .. .	2	0	
C.	A general power of attorney to persons within the colony .. .. .	3	0	

	Rds.	Sts.
D. A special power of attorney on ditto ..	0	24
E. Further, all deeds of substitution, assumption, surrogation, &c. . . . .	1	0

## ARTICLE 11.

## Protests.

Stamps on protests.	A. Protests of bills of exchange, drafts, or promises	2	0
	B. Sea protests .. .. .	6	0
	C. Affidavits .. .. .	1	0
	D. Affidavits to be acted upon without the colony	1	0

## ARTICLE 12.

## Transfers.

Stamps on transfers of bonds, &c.	A. Transfer of mortgage bonds, &c., not amounting to more than 5000 Rds., .. .. .	1	0
	5000 Rds. and upwards, .	2	0
	B. Transfers of movables, .. .. .	1	0
	C. Transfers of slaves by gift, sale, or inheritance,	5	0
	D. Certificate of mortgage of one slave, ..	2	0
	E. For each subsequent slave included in the same certificate, .. .. .	1	0
F. Extracts from the registers of slaves, ..	1	0	

## ARTICLE 13.

## Civil Servants.

Appointment of civil servants, &c.	A. The deeds of their appointment or promotion, when their salaries amount to no more than 600 rixdollars .. .. .	1	0
	From 600 to 1200 ..	3	0
	1200 .. 2400 ..	10	0
	2400 .. 6000 ..	20	0
	6000 and upwards, ..	40	0
Admission of attorneys and notaries.	B. Admission of notaries, .. .. .	100	0
	Ditto of attorneys, .. .. .	100	0

## ARTICLE 14.

## Court of Appeals.

For the bond stamp, .. .. .	2	0
„ memorial, .. .. .	1	0
„ cases,—the first sheet, .. .. .	1	0
„ every subsequent one, .. .. .	0	24

	Rds.	Sts.
For the exhibits, . . . . .	0	24
„ the Sentences, . . . . .	10	0
„ the orders of reference, . . . . .	0	12
„ orders of court, . . . . .	0	6
„ reports,—first sheet, . . . . .	0	24
„ every subsequent one, . . . . .	0	12

The like stamps are to be used by the secretary of the court, in all copies.

#### ARTICLE 15.

##### Admiralty Court.

Affidavits, . . . . .	0	24
Claims, . . . . .	0	24
Examinations in preparatory on the first sheet, . . . . .	1	0
Every other and each witness, . . . . .	0	12
Decree of unlivery, . . . . .	0	24
„ of appraisement and sale, . . . . .	1	0
„ of removal, . . . . .	0	12
Deeds of inspection, . . . . .	0	12
„ of restitution, . . . . .	2	0
„ of delivery, . . . . .	0	24
„ of condemnation, . . . . .	2	0
„ for answers, . . . . .	0	24
Allegation—first sheet, . . . . .	0	24
Every subsequent sheet, . . . . .	0	12
Answers, . . . . .	0	12
Minutes of court, . . . . .	0	12
Papers extracted,—per extract, . . . . .	0	12
Copies,—per sheet, . . . . .	0	12
Letters of Marque, . . . . .	100	0

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

GOD SAVE THE KING!

Given under my hand and seal, at the Cape of Good Hope, this 10th day of December, 1824.

(Signed) C. H. SOMERSET.

By His Excellency's Command,

(Signed) R. PLASKET,  
Secretary to Government.

## THE BOEKHOO PLANT.

## PROCLAMATION.

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

Preamble.

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

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

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

In default, imprisonment with hard labour for two months.

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

GOD SAVE THE KING !

Given under my hand and seal, at the Cape of Good Hope, this 31st day of December, 1824.

(Signed) C. H. SOMERSET.

By His Excellency's Command,

(Signed) R. PLASKET,  
Secretary to Government.

**ORDINANCES**  
**OF THE**  
**CAPE OF GOOD HOPE.**

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**PART III.**

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**ORDINANCES, which are still in force, passed by the Council established, in 1825, "to advise and assist in the Administration of the Government:" from 1825 to the Establishment of the Legislative Council in 1834.**





# ORDINANCES OF THE CAPE OF GOOD HOPE.

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## PART III.

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No. 1.—Sd. C. H. Somerset.] [28th May, 1825.

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

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

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No. 2.—Sd. C. H. Somerset.]

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

WHEREAS His Majesty's Government has determined to establish the British currency as the circulating medium of all the colonial possessions of the Crown, and has further been pleased to order and direct that the British silver money shall be a legal tender in this colony, in discharge of all debts due to individuals and to the public, at the rate of one shilling and sixpence for each paper rixdollar, and so in proportion for any greater or less sum :

His Excellency the Governor in Council is pleased to enact and declare, that from and after the date of this Proclamation or Ordinance, British silver money shall be a legal tender in this colony, in discharge of all debts due to individuals and to the public, at the rate of one shilling and sixpence for each paper rixdollar, and so in proportion for any greater or less sum.

Preamble.

British silver money a legal tender at the rate of 1s. 6d. per paper rixdollar.

His Excellency in Council has in consequence issued the necessary instructions, that a table or scale shall be printed forthwith, specifying the relative value of the paper rixdollar, and of all the lesser proportions thereof, with British money, in order to regulate the payment of the established Government duties, fees, &c., until such time as new schedules of duties, &c., be made out.

All civil servants to render accounts in British money from 31st Dec., 1825.

The Governor in Council is further pleased to order and direct, that from and after the 31st December next all heads of departments in this colony and all other civil servants therein shall render their accounts in British money; and that all contracts entered into or purchases effected by the civil departments, for the public service, after that date shall also be made in British money.

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

GOD SAVE THE KING !

Given at the Cape of Good Hope, this 6th day of June, 1825.

By Command of His Excellency the Governor,

(Signed) R. PLASKET,  
Secretary to Government.

By Order of the Council,

(Signed) P. G. BRINK,  
Acting Clerk of the Council.

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No. 3.—Sd. C. H. Somerset.] [21st June, 1825.

Ordinance for Reducing the Reward hitherto paid for destroying Tigers, to Five rixdollars per Head.

[Repealed by Ordinance No. 45.]

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No. 4.—Sd. C. H. Somerset.] [21st June, 1825.

Ordinance directing that from and after the 15th of July, 1825, all Licences to trade with the Kaffirs at Fort Willshire,

or at any other Places which may hereafter be fixed on by Government, shall be written on a Stamp of Eighty Rixdollars, renewable annually.

[Repealed by Ordinance No. 23.]

No. 5.—Sd. C. H. Somerset.]

[27th June, 1825.

Ordinance for Destroying a sum of Twenty Thousand Rixdollars, old and defaced Paper Money, &c.

No. 6.—Sd. C. H. Somerset.]

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

His Excellency the Governor in Council is pleased to promulgate, for general information, the following Order of the King's Most Excellent Majesty in Council, issued for the purpose of giving currency to British silver and copper money throughout the British colonial possessions, and of fixing its value in payments which may now be made in rixdollars, under the laws and usages of the Cape of Good Hope; together with the instructions which the Lords Commissioners of His Majesty's Treasury have directed to be addressed to the officer in charge of the duties of the Commissariat department, explaining the arrangements under which the views of His Majesty's Government are to be carried into effect:—

Promulgation  
of Order in  
Council of 23rd  
March, 1825.

At the Court, at Carlton House, the 23rd March, 1825, present, the King's Most Excellent Majesty in Council.

WHEREAS it has been represented to His Majesty at this Board, by the Lords Commissioners of His Majesty's Treasury, that they have given directions that His Majesty's

Payment of  
H. M. troops

In the colonies  
in British silver  
and copper.

Tender or pay-  
ment of 4s. 4d.  
equivalent to  
tender or pay-  
ment of one  
Spanish dollar.

Tender or pay-  
ment of 1s. 6d.  
equivalent to  
tender or pay-  
ment of one  
paper rixdollar  
at the Cape of  
Good Hope and  
Ceylon.

Troops serving in the several British Colonies and possessions abroad should in certain cases be paid in British silver and copper money, and that with a view of securing the circulation of such money in those colonies it would be expedient that an Order in Council should be issued, declaring that in all those colonies where the Spanish dollar is now, either by law, fact, or practice, considered as a legal tender for the discharge of debts, or where the duties to the Government are rated or collected, or the individuals have a right to pay in that description of coin, that a tender and payment of British silver money to the amount of four shillings and four pence should be considered as equivalent to tender or payment of one Spanish dollar, and so in proportion for any greater or less amount of debt.

And whereas it has been further represented by the Lords Commissioners of His Majesty's Treasury, that with respect to the Cape of Good Hope, where there are not any Spanish dollars in circulation, but where the circulation consists entirely of paper rixdollars and its proportions; and with respect to Ceylon, where the circulation consists of silver and paper rixdollars as well as of a variety of other coins, which are generally received and paid with relation to their value as compared with rixdollars, it would be expedient that a tender and payment of one shilling and sixpence in British silver money should be considered as equivalent to a tender and payment of one such rixdollar so current at the Cape of Good Hope and Ceylon respectively, and so in proportion for any greater or less sum, and also that British copper money should be made a legal tender in all the British colonies for its due and proper proportions of British silver money as by law established in Great Britain, but that no person should be compelled to take more than twelve pence in copper money at any one payment; His Majesty, having taken the said representation into consideration, is pleased by and with the advice of His Privy Council, to approve of what is therein proposed, and the Right Honourable the Lords Commissioners of His Majesty's Treasury, and the Honourable Earl Bathurst, one of His Majesty's Principal Secretaries of State, are to give the necessary directions herein as to them may respectively appertain.

(Signed) C. C. GREVILLE.

Commissariat Department.—Circular, No. 89.

Treasury Chambers, 12th February, 1825.

SIR,—The Lords Commissioners of His Majesty's Treasury having had under their consideration the rate at which the dollar is issued to the troops at the station under your charge, and having also adverted to the difficulty which exists at many stations of procuring, not only the Spanish dollar, but also the proportional parts of the dollar, so as to form a convenient medium for the issue of pay to the troops; have determined to send to all the colonies British silver and copper money, which is to be issued for the pay of the staff and regimental officers, and the non-commissioned officers and soldiers, and also for the pay of all persons having permanent appointments in any of the civil departments of the army, at its nominal rate; and they have requested the Secretary of State to make such communications to the Governors of the several colonies, as may insure its general use as a circulating medium.

Instructions of  
the Lords  
Commissioners  
of the Treasury  
to the Commis-  
sariat depart-  
ment.

With a view of attaining that object, and to secure its circulation without the great fluctuation in the rate for the exchange to which a circulation of Spanish dollars is subject with reference to Bills drawn upon this Board of sterling money, I am commanded by their Lordships to direct, that at certain hours in every day, or upon one certain day of each week, as the Officer commanding the forces may deem most expedient, you will be prepared to receive British silver money, in sums of not less than one hundred and three pounds, from any persons whatever who may tender the same; and that you will grant to such persons bills upon this Board at thirty days sight for the money so tendered, at the fixed rate of a bill for one hundred pounds for every one hundred and three pounds of silver money. You will, of course, take care that you do not receive in exchange for Bills upon this Board any British silver money wantonly or fraudulently defaced, or reduced in its true weight, but such only as may be perfect; and you will receive all such money by tale; but a very satisfactory check upon the tale may be obtained by weighing the coin which may be tendered to you in exchange for Bills; as every lb. troy should produce by tale three pounds and six shillings, (*i. e.*) sixty-six shillings; and therefore one hundred and three pounds to be given in exchange for a Bill of one hundred pounds should weigh 31 lbs. 2 oz. 10dwts.  $21\frac{1}{11}$  grains troy; but which weight may be subject to a slight variation from the fair wear of the coin.

I am further to desire, that you will not, on any account or under any pretence, receive British silver money in exchange for Bills upon this Board, at any other rate than that before specified; and that, whenever you have British silver money in the chest, you will issue it for the pay of the troops in preference to every other species of coin. Copper money will be sent to you with the British silver money, and it is to be issued from time to time

Instructions of the Lords Commissioners of the Treasury to the Commissariat department.

at its nominal rate; but, my Lords desire that fractions only of less than sixpence may be issued in that coin, unless particularly requested by the persons who are to receive the same.

In the event of your not having sufficient British silver money in the military chest for the purpose of making the necessary payments to the troops, you will issue to them Spanish dollars as at present, but at the rate of four shillings and four pence per dollar; and you will issue all other dollars or coins in payment to the troops, at the same proportionate rate, with reference to their actual contents in pure silver. A scale of the rates at which some of the coins should be so issued is inclosed.

The principle upon which their Lordships are pleased to direct the dollar to be issued to the troops at fifty-two pence each, is that this is the nearest value as compared to British standard silver at five shillings and two pence per ounce, being the ancient standard of the silver coin of the realm; and therefore, in fixing the value of all other coins with reference to that standard, it is necessary that you should attend not only to the weight of the coin, but to its contents in pure silver.

A pound troy of standard silver containing 11oz. 2dwts. of pure silver, and 18dwts. of alloy, the proportion between pure and standard silver may be expressed by the fractions  $\frac{2}{3}\frac{2}{3} = \frac{4}{9}$ .

The pound troy of Spanish dollars contains 10oz. 14dwts. of pure silver, and 1oz. 6dwts. of alloy, and the proportion between the gross weight of the Spanish dollar and its contents in pure silver may be expressed by the fractions  $\frac{2}{3}\frac{1}{6} = \frac{1}{2}\frac{1}{3}$ .

I am further to direct that in negotiating Bills upon this Board for dollars or any other coin (except British silver coin,) you will pursue the present course, and obtain the same upon the most favourable rates of exchange that may be practicable; it not being their Lordships' intention that any other coins than British silver coins should be received into the military chest in exchange for Bills upon this Board at any other than the current rate of exchange.

My Lords further desire that this arrangement with respect to the rate at which British silver money or dollars is to be issued in payment to the troops, may take place from the 24th of the month next after date of the general order, which the officer commanding the forces may issue in consequence of the Instructions which will be conveyed to him for giving effect to this measure.

With respect to the mode of paying for supplies of every description which may have already been agreed or contracted for, my Lords desire that the payments must be made in every respect in the same manner and at the same rates as the payments would have been made if the proposed alteration had not been directed; and in all future cases where articles may be contracted for, my Lords desire that it may be expressly stated in the advertisement for the supply, and also in the contract to be entered into, that the payments are to be made in British silver money; but with a reservation of a power on the part of the Commissary to pay in

Bills upon this Board, at the rate of a bill for one hundred pounds for every one hundred and three pounds due upon the contract; and which power you will of course avail yourself of in all cases where there may be a scarcity of British silver money in the chest.

Instructions of  
the Lords  
Commissioners  
of the Treasury  
to the Commis-  
sariat depart-  
ment.

I am further directed to acquaint you that it may much facilitate their Lordships' object in obtaining a circulation for British silver money in all the colonies, if all your sub-accountants at detached stations where there is a branch of the military chest, were furnished by you with Bills upon this Board, drawn in their favour for sums of one hundred pounds each, and with which you might charge them as with cash; and which Bill they should be instructed to endorse over to those persons who may lodge in the military chest, under their charge, one hundred and three pounds of British silver money for each Bill. The regulations now in force for ascertaining the balance of money in the military chest will be as equally applicable to Bills as to cash: and with a view to simplify the transactions as much as possible, and to guard against any irregularities, their Lordships have directed me to transmit blank Bills, which may be used exclusively for this purpose.

I am further directed to acquaint you, that their Lordships have called the attention of the Officer commanding the forces to the rates in money, granted as pay to persons holding local or temporary appointments, and also in lieu of allowances of forage, fuel, lodging, &c., to regimental and staff officers; and which rates have been fixed with reference to the expense of the articles, in lieu of which the money allowance was granted, and to the value of currency in which the pay and allowances were issued, with a view to his causing Boards to be assembled for revising the whole of those allowances, and for fixing new rates of pay and allowances in lieu thereof, payable in British silver money; by which my Lords expect that a nominal reduction will be made in the amount of these allowances, equal, or nearly equal, to the difference between the value of the dollar as it has heretofore been issued, and four shillings and four pence.

You will also issue to the officers of all public departments to whom you may be called upon to make payments in exchange for their certificates, bills, or drafts, British silver money at its nominal rate, Spanish dollars at four shillings and four pence each, and other dollars or coins at the same proportionate rate; but the payment of the drafts of the Ordnance officers for materials or other articles of supply, under existing contracts, you will, of course, make in the same manner and in coins at the same rate as the payments would have been made in the event of the foregoing arrangement not having been adopted.

I am further directed to acquaint you that supplies of money will from time to time be sent to you, and of the shipments of which you will be duly apprised.

(Signed) GEO. HARRISON.

Weight and  
value of  
foreign silver  
coins.

Table of the Gross Weight of the contents in pure silver, and of the value, computed at the rate of five shillings and two pence per ounce troy, British standard fineness, of the under-mentioned silver coins, taken from assays made at the mints at Paris and London, together with the rate at which those coins are to be issued (when British coin is not in the military chest) for the pay of the British troops in the colonies:—

		Gross Weight of Coins.	Contents in pure Silver.	Value at 5s. 2d. per ounce Standard.			To be issued to the Troops at	
		Grains.	Grains.	s.	d.	Dec.	s.	d.
French.	FRENCH.							
	Pieces of 5 Francs .. .. .	385	344 9	4	0	16	4	0
	„ 2 do. .. .. .	155	138 8	1	7	38	1	8
	Franc .. .. .	77½	69 4	0	9	69	0	10
Sicilian.	SICILIAN.							
	Dollar or Scudo .. .. .	422	348 2	4	0	62	4	1
	Piece of 40 Grains .. .. .	141	117 5	1	4	40	1	5
	„ 20 do. .. .. .	72	59 1	0	8	25	0	9
Spanish.	SPANISH.							
Dollar .. .. .	416	370 9	4	3	79	4	4	
United States.	U. S. OF AMERICA.							
Dollar .. .. .	416	370 1	4	3	68	4	4	
East Indian.	EAST INDIES.							
	Calcutta, Rupee .. .. .	192	175 9	2	0	56	2	1
	Bombay or Surat ditto .. .. .	179	164 7	1	11	10	1	11

Commissariat Department.—No. 102.

Treasury Chambers, 5th March, 1825.

Instructions to  
the Commis-  
sary-General  
at the Cape of  
Good Hope.

Sir,—In transmitting to you the enclosed letter, in regard to the manner and rate at which British silver money, Spanish dollars, or other coins, are to be issued in payment to the troops at the several foreign stations, I am commanded by the Lords Commissioners of His Majesty's Treasury to acquaint you that they have adverted to the rate at which the Commissariat Bills have been negotiated upon this Board for a considerable time past, in exchange for the paper rixdollar of the colony; and as the greatest evils must arise, not only in the payment to the troops, but also in all the commercial relations of the colony from the



great fluctuation in the exchangeable value of this description of currency,—they are pleased to direct that you will, upon communication with the Officer commanding the forces, give a public notice that you will take paper rixdollars in exchange for Bills upon this Board in the same manner as you are directed by the enclosed instructions to take British silver money, computing each paper rixdollar as equivalent to one shilling and sixpence of British silver money, and so in proportion for the paper below the denomination of a rixdollar; and their Lordships will direct the Officer commanding the forces to issue a general order that all future issues to the army for pay or otherwise should, when made in paper rixdollars, be computed at the rate of one shilling and sixpence each.

Instructions to  
the Commis-  
sary-General  
at the Cape of  
Good Hope.

You will on no account issue your Bills upon this Board, in exchange either for British silver money or for paper rixdollars, at any other than the prescribed rates.

You will also take care not to re-issue any of the paper which you may receive in exchange for Bills upon this Board which may represent a sum of less than ten rixdollars, it being their Lordships' intention that such paper money should not, when once received into the military chest, be again re-issued; and their Lordships will very shortly transmit to you instructions in regard to the disposal of this paper; and also to the disposal of any quantity of paper which may be paid into the military chest, beyond the quantity required to be re-issued for the current expenditure.

I am, Sir, &c.,

(Signed) GEO. HARRISON.

Assist. Com.-Gen. Hewetson, Cape of Good Hope.

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

GOD SAVE THE KING!

Given at the Cape of Good Hope, this 12th day of July, 1825.

By Command of His Excellency the Governor,

(Signed) R. PLASKET,  
Secretary to Government.

By order of the Council,

(Signed) P. G. BRINK,  
Acting Clerk of the Council.

No. 7.—Sd. C. H. Somerset.] [1st Aug., 1825.

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

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No. 8.—Sd. C. H. Somerset.] [22nd Aug., 1825.

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

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No. 9.—Sd. C. H. Somerset.] [29th Aug., 1825.

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

[Disallowed. Proclamation 14th May, 1829.]

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No. 10.—Sd. C. H. Somerset.] [5th Sept., 1825.

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

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No. 11.—Sd. C. H. Somerset.] [10th Oct., 1825.

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

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

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No. 12.—Sd. C. H. Somerset.] [10th Oct., 1825.

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

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

No. 13.—Sd. C. H. Somerset.] [17th Oct., 1825.

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

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No. 14.—Sd. C. H. Somerset.] [17th Oct., 1825.

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

[Disallowed. Proclamation 14th May, 1829.]

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No. 15.—Sd. C. H. Somerset.] [7th Nov., 1825.

Ordinance for destroying the sum of Fifty Thousand Rixdollars old and defaced Paper Money.

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No. 16.—Sd. C. H. Somerset.] [17th Nov., 1825.

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

[Repealed by Ordinance No. 23.]

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No. 17.—Sd. Richard Bourke.] [3rd April, 1826.

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

[Disallowed. Proclamation 14th May, 1829.]

No. 18.—Sd. Richard Bourke.] [29th May, 1826.

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

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

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No. 19.—Sd. Richard Bourke.]

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

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

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No. 20.—Sd. Richard Bourke.] [3rd July, 1826.

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

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

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No. 21.—Sd. Richard Bourke.]

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

Preamble.

WHEREAS it is provided by the instructions of His Majesty's Secretary of State, consequent to His Majesty's orders, issued by and with the advice of His Privy Council, under date the 9th February, 1825, by which the Honourable the Council of this Colony is established, that on the passing of an Ordinance of the Governor in Council, it shall be forthwith transmitted for enrolment to the Worshipful the Court of Justice: Be it therefore enacted and declared, that the transmission of an Ordinance after the passing thereof to the Worshipful the Court of Justice as aforesaid, together with the printing thereof in the *Government Gazette*, or the

Transmission  
of Ordinance to  
the Court of  
Justice,

promulgation thereof in such other public manner as the Governor and Council shall direct or appoint, shall be in law a sufficient publication of the same, to all intents and purposes whatsoever—any law, usage, or custom to the contrary notwithstanding.

together with the printing thereof in the *Government Gazette* to constitute promulgation.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 24th August, 1826.

By Command of His Honour the Lieutenant-Governor,  
 (Signed) R. PLASKET, Secretary to Gov.  
 By Order of the Council,  
 (Signed) D. M. PERCEVAL, Clerk of the Council.

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No. 22.—Sd. Richard Bourke.] [4th Sept., 1826.

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

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

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No. 23.—Sd. Richard Bourke.] [11th Sept., 1826.

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

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

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No. 24.—Sd. Richard Bourke.] [21st Sept., 1826.

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

[Repealed by Ordinance No. 33.]

No. 25.—Sd. Richard Bourke.] [9th Oct., 1826.

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

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

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No. 26.—Sd. Richard Bourke.] [23rd Oct., 1826.

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

[Repealed by Ordinance No. 2, of 1848.]

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No. 27.—Sd. Richard Bourke.] [13th Dec., 1826.

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

[Superseded by the Charter of Justice.]

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No. 28.—Sd. Richard Bourke.] [21st April, 1826.

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

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

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

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No. 29.—Sd. Richard Bourke.] [27th Nov., 1826.

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

[Repealed by Ordinance No. 4, of 1844.]

No. 30.—Sd. Richard Bourke.] [7th Dec., 1826.

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

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

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No. 31.—Sd. Richard Bourke.] [7th Dec., 1826

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

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

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No. 32.—Sd. Richard Bourke.]

Ordinance for creating Justices of the Peace in this Colony.

WHEREAS it is expedient for the preservation of the public peace, the security of individuals, and the due execution of the laws, that magistrates be appointed in the several districts of this colony, with power to apprehend, commit to prison, or hold to bail, all vagrants, rioters, robbers, or other notorious offenders, found within their several jurisdictions, in order that such offenders may be brought to trial, and with power to do all other such matters and things as the said magistrates may by law be appointed to do: Be it therefore enacted, and it is hereby enacted, that from and after the passing of this ordinance, it shall and may be lawful for the Governor or Lieutenant-Governor for the time being, from time to time, as occasion may require, to appoint Justices of the Peace under the great seal of the Colony of the Cape of Good Hope, for Cape Town and the District thereof, and the several country districts respectively, who shall take and subscribe the oath of allegiance, and the oath of office, set forth in the schedule hereunto annexed, before the Chief Justice, or any judge of the Supreme or Circuit Courts, or before the civil commissioner or any magistrate of the

Preamble.

The Governor may appoint justices of the peace.

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

district for which such Justice is assigned to act (who are hereby empowered and required to administer the same), and the clerks of the peace respectively shall enter in the records of their respective Districts that the said oaths were duly administered and taken.

**Power and duties of justices.**

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

**Inquiry into offences.**

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

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

3. And be it further enacted, that all Justices of the Peace shall cause all informations and complaints made to them in writing upon oath, as aforesaid, and all recognizances or other securities for keeping the peace or for good behaviour taken by them, to be sent to the clerk of the peace acting for the district or place for which the said justices are assigned respectively, within twenty-one days after such information or complaint made or security taken; and for every such information or complaint, made as aforesaid and not sent as aforesaid, and for every such recognizance or security taken, and not sent as aforesaid, every Justice so



offending shall incur and be liable to the payment of a fine of twenty pounds sterling.

Penalty on failure, £20.

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

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

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

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

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

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

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

Tender of amends by justice and further proceedings in action.

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

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

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

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

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

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

10. And be it further enacted, that no action shall be brought against any constable, or other officer, or against any person or persons acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any justice of the peace, until demand hath been made or left at any usual place of his abode, by the party or parties intending to bring such action, or by his, or their, attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days

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

after such demand; and in case, after such demand and compliance therewith, by shewing the said warrant to, and permitting a copy to be taken thereof by, the party demanding the same, any action shall be brought against such constable, or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant, defendant or defendants, that, on producing and proving such warrant at the trial of such action, the court shall give their judgment for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices, and if such action be brought jointly against such

justice or justices, and also against such constable, or other officer, or person or persons acting in his or their aid, as aforesaid then on proof of such warrant, the court shall find for such constable or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the judgment shall be given against the justice or justices, that in such case, the plaintiff or plaintiffs shall recover his or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants, for whom such judgment shall be found as aforesaid.

notwithstanding defect of jurisdiction in the justice.

Costs, how to be taxed.

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

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

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

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

#### SCHEDULE.

##### *Form of the oath of allegiance.*

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

Oath of allegiance.

##### *Form of the oath of office to be taken and subscribed by justice of the peace.*

I. A. B. do swear, that as justice of the peace in the in all articles in the Governor or Lieutenant-Governor's commission to me directed, I will do equal right to the rich and to the poor, to the best of my ability and power, and according to the laws and customs of the colony, and ordinances and proclamations thereof: And I will not be of counsel of any quarrel depending before me: And the issues, fines, and americiaments that shall happen to be made, and all forfeitures that shall fall before me, I will cause to be entered without any concealment or embezzling, and will truly send them to the colonial treasury, or otherwise dispose of them according to law: I will not obstruct

Oath of office.

the cause of justice for gift or other cause, but well and truly will discharge my duty as justice of the peace, without partiality, favour, or affection. So help me God!

GOD SAVE THE KING!

Given at the Cape of Good Hope, 11th December, 1827.

By Command of His Honour the Lieutenant-Governor,  
(Signed) R. PLASKET,  
Secretary to Government.

By Order of the Council,  
(Signed) D. M. PERCEVAL,  
Clerk of the Council.

No. 33.—Sd. Richard Bourke.] [19th Dec., 1827.

Ordinance for creating Resident Magistrates and Clerks of the Peace in certain Districts and Places in this Colony.  
[Repealed by Act No. 20, of 1856.]

No. 34.—Sd. Richard Bourke.] [26th Dec., 1827.

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

No. 35.—Sd. Richard Bourke.] [28th Dec., 1827.

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

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

No. 36.—Sd. Richard Bourke.] [5th Jan., 1828.

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

[Repealed by Ordinance No. 44.]

No. 37.—Sd. Richard Bourke.]

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

WHEREAS by His Majesty's Royal Charter, or Letters Patent, Preamble.  
for the more effectual Administration of Justice in this  
Colony and in the several Territories and Settlements depen-  
dent thereon, bearing date at Westminster, the 24th day of  
August, 1827, it is, amongst other things, ordained and  
declared that the governor or lieutenant-governor, for the time  
being, of the said colony, shall, by warrant under his hand  
and seal, nominate and appoint some fit and proper person,  
to act as and to be the sheriff of the said colony and its  
dependencies for the year ensuing; which sheriff, when  
appointed, shall, as soon as conveniently may be, and before  
he shall enter upon his said office, take an oath, faithfully to  
execute the duties thereof, and the oath of allegiance, before  
the said governor, who is by the said charter authorized to  
administer the same: And whereas it is by the said charter  
ordered, directed, and appointed that the said sheriff shall,  
by himself or his sufficient deputies to be by him appointed,  
and duly authorized under his hand and seal, and for whom  
he shall be responsible during his continuance in such office,  
execute all the sentences, decrees, judgments, writs, sum-  
monses, rules, orders, warrants, commands, and processes of  
the supreme court, or of the circuit courts, of the said colony,  
as therein is mentioned, and shall make a return of the same,  
together with the manner of the execution thereof, to the  
supreme court of the Cape of Good Hope, or to the said circuit  
courts, as the case may be; and shall receive and detain in  
prison all such persons as shall be committed to the custody  
of such sheriff by the said supreme court and circuit courts,  
or by the chief justice, or any other judge of the said courts:  
And whereas it is further granted, ordained, directed, and  
appointed, by the said charter or letters patent, that it shall  
and may be lawful for the said supreme court, by any rules  
or orders of court, to be by them from time to time, and for  
that purpose, made and published, to frame, constitute, and  
establish such rules, orders, and regulations as to them shall  
seem meet, touching and concerning (amongst other things)  
the proceedings of the sheriff and other ministerial officers of  
the said court, the process of the said courts, and the mode  
of executing the same; provided (amongst other things

therein provided) that the same shall be promulgated in the most public and authentic manner in the said colony, for three months at least before the same shall operate and take effect: And whereas it is necessary and expedient, in the mean time, and until the said supreme court shall further or otherwise order, to make provisions for the performance of the duties of the said sheriff in certain cases: Be it therefore enacted and declared, by His Honour the Lieutenant-Governor in Council, that the said sheriff shall, immediately after his appointment, and after having taken the oaths as aforesaid, appoint and depute sufficient persons and deputies, to act for him in the execution of the duties of his said office, and shall, immediately after such appointment, cause to be enrolled in the office of the registrar of the supreme court the names and places of abode of such his lawful deputies, and which enrolment shall specify the district within which they are respectively to act for the said sheriff; and also shall, immediately after any removal of any such deputy, cause such removal to be notified to the registrar, and shall cause the name of the person succeeding him in the execution of his duty, to be in like manner enrolled in the said office, and shall cause the like notification to be published in the next ensuing *Government Gazette* of the said colony.

Sheriff to appoint deputies,

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

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

Sheriffs and deputies to be personally present in court.

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

Returns thereof to be made

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

3. And be it further enacted that the said sheriff, or his deputy, shall give his personal attendance in the supreme court daily, during term time, or any sitting or session of the said court, or of any circuit court; and the said sheriff shall, by himself or his deputy, immediately, and without delay, execute all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the said supreme court or circuit courts respectively, to him directed, where no time is specified therein for the execution thereof, or otherwise, according to the exigency of the same; and shall make a return thereof, together with the

manner of the execution thereof, to the office of the registrar of the said supreme court, or registrar of the circuit courts respectively, as the case may be; and the said sheriff shall receive and detain in custody all persons arrested upon any sentence, decree, judgment, writ, summons, rule, order, warrant, command, or process of the said supreme court or circuit courts respectively, and shall receive and detain in prison all such persons as shall be committed to his custody by the said supreme court or circuit courts, or by the chief justice or any of the judges of the supreme court.

to the registrar.

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

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

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

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

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

Mode of service of summons in civil actions.

Service on defendant personally or on member of his household.

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

Service by leaving writ at the dwelling house.

7. And be it further enacted that, in all cases where any process of the said supreme court shall be delivered to the

Service of writ of arrest.

Security to appear and abide the judgment.

Payment of amount claimed in the writ.

Form of security bond in case of arrest.

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

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

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

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

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



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

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

Bail bond to be assigned to the plaintiff by endorsement.

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

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

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

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

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

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

Seizure of sufficient movable property, if not pointed out.

Indemnity by plaintiff whose

property about to be seized is claimed by others.

plaintiff, or his attorney, will indemnify the said sheriff by an undertaking in writing, signed by the said plaintiff, to save him harmless from any loss or damage by reason of the seizure thereof, then the said sheriff, or his deputy, shall take and seize the same, and the same shall forthwith be inventoried and taken into the custody of the said sheriff, or his deputy.

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

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

Movables seized not to be removed until after expiry of 7 days from seizure, except by written permission of defendant.

10. And be it further enacted that where any movable property shall be taken by the said sheriff, or his deputy, in execution of any process of the said supreme court, the same shall not be removed from the premises of the said defendant until after the expiration of seven days from the seizure thereof; unless the said defendant shall, by writing, under his hand, permit the same to be removed; but the said sheriff, or his deputy, shall keep possession thereof upon the premises where the same is seized, and the expense of such keeping possession shall be borne by the said defendant, and defrayed out of the said levy; and all such property shall be sold by public auction, in the presence of the said sheriff, or his deputy, after the advertisement thereof has been twice made in the *Government Gazette* of this colony, and after the expiration of fourteen days from the time of seizure thereof, when such seizure has been made in Cape Town, or within twenty-five miles thereof; and if such seizure be made at any greater distance from Cape Town, then the after expiration of so many days as the place where the said property is seized shall be days' distance therefrom, in addition to the said period of fourteen days.

Possession to be kept at defendant's expense, and defrayed out of the levy.

Sale of goods seized by public auction upon due advertisement, after expiry of 14 days from date of seizure in Cape Town or 25 miles thereof; with addition of a day for each day's distance.

11. And be it further enacted that, together with the sum mentioned in or endorsed upon any process of the supreme court, the said sheriff shall levy and raise on the goods of the said defendant, sufficient to satisfy such percentage as is or shall be by law chargeable thereon, and the reasonable expenses, costs, and charges of making the said levy and sale; and if, after satisfying the exigency of the said process, together with the said percentage, costs, and charges, there should remain any overplus, he shall pay over the same to the defendant; and the said sheriff, or his deputy, shall make out and deliver to the said defendant an exact account, in writing, of

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

Surplus to be paid to the defendant.

the costs and charges of the said execution and sale; and the same shall be liable to taxation by the master of the supreme court, upon application for that purpose by the said defendant; and if upon taxation, any sum shall be deducted by the master, as having been improperly charged, the sheriff shall refund the same to the defendant, with such costs as the court shall think fit.

12. And be it further enacted that whenever upon any warrant or process of the supreme court, the said sheriff shall be commanded to levy and raise any sum of money, by sale of the immovable property of any person residing in Cape Town, or in the district thereof, the said sheriff shall, by himself or his deputy, within twenty-four hours after delivery of the same at his office; or if residing in the country within twenty-five miles of Cape Town, then within forty-eight hours after delivery of the same; or if residing at any greater distance from Cape Town, within so many days' distance, in addition to twenty-four hours, as such person resides from Cape Town,—repair to his dwelling house, and there demand that so much immovable property may be pointed out, as the said sheriff, or his deputy, may deem sufficient to satisfy the exigency of the said process; and the said sheriff, or his deputy, shall take an account of the description, situation, quality, and quantity of the said property; and if, upon the demand of the said sheriff, or his deputy, no such property be pointed out, or insufficient to satisfy the exigency of the said writ, then, if the said plaintiff or his attorney will point out or specify to the said sheriff, or his deputy, any such property of the said defendant, and will indemnify the said sheriff, by an undertaking in writing, signed by the said plaintiff, to save the said sheriff harmless from any loss or damage, by reason of the attachment thereof, then the said sheriff, or his deputy, shall attach and take possession of the same.

Account of charge to be delivered by the sheriff to the defendant, subject to taxation by the master of the supreme court.

Demand of immovable property in satisfaction of process of the supreme court to be made in Cape Town within 24 hours after delivery of writ, within 25 miles of Cape Town, in 48 hours, with addition of a day for each day's distance.

Account of property pointed out to be taken by sheriff.

If property be not pointed out, the sheriff may, on an indemnity by the plaintiff attach property of the defendant pointed out by the plaintiff.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 5th January, 1828.

By Command of His Honour the Lieutenant-Governor,

(Signed) JOHN BELL,  
Acting Secretary to Government.

By Order of the Council,

(Signed) D. M. PERCEVAL,  
Clerk of the Council.

No. 38.—Sd. Richard Bourke.]

[19th Jan., 1828.

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

[Repealed by Act No. 20, of 1856.]

No. 39.—Sd. Richard Bourke.]

Ordinance for enabling the Registrar of Deeds to certify and enregister all such Acts, Transfers, Mortgages, and other deeds, as were heretofore certified and enregistered before two Members of the Court of Justice and the Colonial Secretary.

Preamble.

All deeds heretofore certified and enregistered before and subscribed by two members of the court of justice, to be certified and enregistered before and subscribed by the registrar of deeds.

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

Registers of debt to be kept

2. And whereas the colonial debt registers have heretofore been kept at the office of the colonial secretary, and entries made therein, from time to time by one of the clerks of that office: Be it therefore enacted that, from and after the

passing of this ordinance, the said registers shall be kept by, and all entries shall be made therein by and under the direction of, the said registrar of deeds.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 19th January, 1828.

By Command of His Honour the Lieutenant-Governor,

(Signed) JOHN BELL,  
Acting Secretary to Government.

By Order of the Council,

(Signed) D. M. PERCEVAL,  
Clerk of the Council.

No. 40.—Sd. Richard Bourke.]

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

WHEREAS it is necessary and expedient to make certain changes and alterations in the mode of proceeding in criminal cases, and to declare the law as at present established by His Majesty's Royal Charter of Justice, bearing date the 24th day of August, at Westminster, in the eighth year of His Majesty's reign: Be it therefore enacted and declared, by His Honour the Lieutenant-Governor in Council, that from and after the passing of this Ordinance, the manner of proceeding in criminal cases in this colony shall be according to the rules and regulations hereinafter mentioned and set forth.

#### OF JURISDICTION.

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

All offences in the colony subject to the jurisdiction of the supreme court.

2. All crimes and offences against the law (for the commission of which any penalty or punishment is by law provided), committed by any person within any one of the districts into which this colony has been or shall be divided by the governor, are also subject to the jurisdiction of the

All offences in any circuit districts subject also to the

jurisdiction of the circuit court for such district.

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

Power of review in the supreme court of all proceedings of inferior courts.

Grounds of review;—

Incompetency of the court in respect of jurisdiction.

Incompetency in respect of interest of the judge or his near kinsman. Malice or corruption. Gross irregularity. Admission of illegal evidence.

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

In person in the supreme court,—

circuit court of such district, or of any such circuit court held within any other district of the colony, to which the trial of such crime or offence shall be permitted or allowed to be removed by the competent court.

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

4. The supreme court has full power, jurisdiction, and authority to review the proceedings of all inferior courts of justice within the colony; and, if necessary, to set aside or correct the same.

5. The grounds upon which it is competent to bring the proceedings of the inferior courts under the review of the supreme court, are :

First. Incompetency of the court in respect of the cause, including all excess of jurisdiction, whether committed by the judge in trying for an offence, which, in respect of its nature or magnitude, or of its having been committed out of his jurisdiction, or of its having been already tried, or forming the subject of a pending trial in any other competent court, was not subject to his jurisdiction, or in awarding a greater punishment, than by the constitution of his court he had power to award.

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

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

Fourth. Gross irregularity in the proceedings.

Fifth. The admission of illegal or incompetent evidence.<sup>1</sup>

#### OF PROSECUTORS AND THEIR TITLE.

6. The attorney-general of the Cape of Good Hope is vested with the right, and entrusted with the duty, of prosecuting in the name and on behalf of the King, all crimes and offences committed in this colony.

7. This right of prosecution is exercised by the attorney-general, in the supreme court, in person; in the circuit and

<sup>1</sup> *Vide* Ordinance No. 73, § 3.

district courts, through the medium of the clerks of the peace for the respective districts in which such courts shall be held; and in the police court in Cape Town through the medium of the superintendent of police, or his deputy, unless any other person shall have been specially appointed by the said attorney-general to appear and act for him in any particular case, before any or either of the said superior or inferior courts.<sup>1</sup>

In circuit and district courts through the medium of clerks of the peace.

8. This right and power of prosecution in the attorney-general is absolutely under his own management and control.<sup>2</sup>

Power of prosecution absolutely in the attorney-general.

9. The attorney-general has the power, at any time before conviction, of stopping all prosecutions commenced by him, or by the superintendent of police, or by the clerks of the peace, at the public instance; but in the event of the defendant having been previously arraigned upon any charge, he shall be entitled to a verdict of acquittal, in respect of such charge.

Attorney-general's power of stopping prosecutions.

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

Power of ordering liberation of persons committed for further examination.

11. Where, in virtue of the right of prosecution hereinafter given to private parties, any private party intends to prosecute any person, for whose liberation from gaol any warrant of the nature above mentioned may have been issued by the attorney-general, it shall be competent for such private parties, upon entering into a recognizance for the prosecution of the said defendant in the form hereinafter set forth, to apply to the supreme court, or circuit court,—or in case such courts shall not be then actually sitting, to the chief justice of the colony, or to any of the judges of the supreme court, for a warrant for the further detention in gaol of such person (or in case the liberation has already taken place, for his recommittal to gaol for trial); upon which application, the said courts, and the said chief justice and other judges, shall make such order as to them shall seem proper.

Proceedings by private prosecutor on such liberation by the attorney-general.

12. Neither conviction nor acquittal following on the prosecution of the attorney-general is any bar to a civil action for damages, at the instance of any person who may have suffered

Neither acquittal nor

<sup>1</sup> Vide Ordinance No. 8, of 1852.

<sup>2</sup> Vide Ordinance No. 73, § 4.

conviction a bar to a civil action for damages. Private prosecution on refusal of the attorney-general to prosecute.

any injury from the commission of any alleged crime or offence.

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

Private prosecutor to produce certificate of attorney-general that he declines to prosecute at the public instance, before obtaining process of the supreme or circuit court,—

14. In order that no prosecution, at the instance of a private party, may take place until the public prosecutor shall have exercised his discretion whether he will prosecute the offender at the public instance, it shall not be competent for any private party to obtain the process of any court for summoning any party to answer to any indictment or complaint, unless the said private party shall produce to the officer authorized by law to issue such warrant, the indictment or complaint, having endorsed thereon where the indictment is to be tried, in the supreme or circuit court, a certificate under the hand of, and subscribed by, the attorney-general, that he has seen the indictment and declines to prosecute at the public instance for the offence therein set forth; and where the indictment or complaint is to be tried in any inferior court, a certificate under the hand of, and subscribed by, the officer who by law is entitled to prosecute at the public instance in such court, that he has seen the said indictment or complaint, and declines to prosecute at the public instance for the offence therein set forth; and in every case in which the attorney-general declines to prosecute, he and the officers through whom he exercises the right of prosecution in the inferior courts, shall, at the request of the party intending to prosecute, grant the certificates above mentioned on every indictment submitted to them by such private party.<sup>1</sup>

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

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

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

Prosecution by husband.

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

<sup>1</sup> *Vide* Ordinance No 73, § 6, 7, and 8.



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

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

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

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

21. The right of prosecution for the crime of murder shall not be barred by any lapse of time; but the right of prosecution for any other crime or offence, whether at the instance of the public prosecutor, or of the private party injured, shall be barred by the lapse of twenty years from the time when the crime or offence was committed. Prosecution for murder not barred by lapse of time; for other offences barred by lapse of 20 years.

#### OF ARREST AND PRELIMINARY EXAMINATION.

22. The chief justice, or any judge of the supreme court, the judge of the police court in Cape Town, any resident magistrate or justice of the peace, who has knowledge of any crime or breach of the peace, by seeing it committed, may himself arrest the offenders, or by a verbal order he may authorize others to do so, who may follow the offenders thus pointed out to them, and execute this order on them out of the presence of such magistrate, if they fly.<sup>1</sup> Arrest by judges, resident magistrates, and justices of the peace.

23. The sheriff and his deputies, superintendent of police and his deputy, and field-cornets, and all constables, police officers, or other officers of the law proper to the execution of criminal warrants, have the power of arresting, in cases of Arrest by sheriff, superintendents of police, field-cornets, and constables.

<sup>1</sup> *Vide* Ordinance No. 73, § 11.

crimes or breaches of the peace committed in their presence, or of the commission of which they have credible information from others; and after taking the offender, such sheriff or other officer shall immediately carry the offender before the nearest magistrate, to be dealt with according to law.<sup>1</sup>

Warrants for the apprehension of offenders by judges, resident magistrates, and justices of the peace.

24. The chief justice of the colony and judges of the supreme court, the judge of police in Cape Town the resident magistrates, and all justices of the peace, may lawfully grant a warrant for the apprehension of any offender, on a written application setting forth the offence alleged to have been committed, and that from information taken upon oath there are reasonable grounds of suspicion against him, subscribed by the attorney-general, by the superintendent of police in Cape Town, or by the clerk of the peace of the district, or upon the information to the like effect of any person made on oath before the judge or magistrate granting the warrant.<sup>2</sup>

Warrants of judges of the supreme court effectual throughout the colony. Those of resident magistrates, &c., within the local limits of their jurisdiction.

25. A warrant issued by the chief justice, or any of the judges of the supreme court, has effect and may be executed anywhere in the limits of the colony and its dependencies; warrants issued by the judge of police in Cape Town, resident magistrates, and justices of the peace, have effect and can be executed only within the local limits within which the jurisdiction of the said magistrate, judge of police, or justice of the peace, is appointed to be exercised; but the judge of police in Cape Town, every resident magistrate, and every justice of the peace, on production to him of a warrant issued by any other magistrate, is bound to grant his concurrence to it by an endorsement thereof, after which the warrant may be executed within the local limits of the jurisdiction of the magistrate so endorsing it.<sup>3</sup>

Endorsement of warrants by resident magistrates.

Tenor of warrant.

26. Every warrant so issued shall be to apprehend the party described in it, and to bring him before any resident magistrate, or the judge of police in Cape Town, or justice of the peace, for examination.<sup>4</sup>

27. The superintendent of police in Cape Town, or his deputy, and every clerk of the peace, on receiving information of any crime or offence having been committed within his district (except it shall plainly appear to be proper for

<sup>1</sup> *Vide* Ordinance No. 73, § 12.

<sup>2</sup> *Vide* Ordinance No. 73, § 10.

<sup>3</sup> *Vide* Ordinance No. 73, § 9.

<sup>4</sup> *Vide* Ordinance No. 73, § 19.

the cognizance of a court of summary jurisdiction), shall commence a preparatory examination before the judge of police in Cape Town, resident magistrate, or justice of the peace within whose jurisdiction respectively such superintendent of police in Cape Town and his deputy, and clerks of the peace, are appointed to exercise their respective offices; and, for that purpose, shall immediately apply for a warrant for the apprehension of any person, who, from information taken upon oath, may be reasonably suspected of having committed the said crime or offence, and for summoning those persons whom it shall appear necessary to examine as witnesses; and in case of refusal or failure to attend after due proof of the service of such summons, a further warrant under the hand of any magistrate, to enforce the appearance of such witnesses, or in the event of its not being known or suspected by whom the crime or offence was committed, a warrant for summoning as witnesses such persons as aforesaid: and the superintendent of police in Cape Town, and every field-cornet and every constable, on receiving information of any crime or offence, except as in the case hereinbefore excepted, shall give immediate information thereof to the clerk of the peace of the district within which such superintendent of police, field-cornet, or constable exercises his office: in order that the said clerk of the peace may institute or attend the preparatory examination, or give such directions concerning the conduct thereof, as to him shall seem necessary.<sup>1</sup>

Preparatory examination.

Warrant for the apprehension of suspected persons.

Summons of witnesses.

Information by superintendent of police, field-cornets, and constables, to clerks of the peace.

28. When in the course of any trial in any inferior court, it shall appear that the crime or offence under trial is, from its nature or magnitude, only subject to the jurisdiction or more proper for the cognizance of a superior court, then the judge or magistrate before whom such inferior court is held shall stop the trial, and commence anew the examination of the person accused, and of the witnesses as in a preparatory examination, and the examinations so taken shall be reported in the manner hereinafter directed as to other examinations.<sup>2</sup>

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

29. Where there is any danger that delay may defeat the ends of justice, the judge of police in Cape Town, any resident magistrate, or any justice of the peace, may himself commence taking the preparatory examinations; but he shall, without delay, give information thereof, in Cape Town and

Proceedings where delay might endanger the ends of justice.

<sup>1</sup> Vide Ordinance No. 73, § 5.

<sup>2</sup> Vide Ordinance No. 73, §§ 7 and 8.

the district thereof, to the superintendent of police or his deputy, and in any other district to the clerk of the peace of such district.<sup>1</sup>

Examination of all persons who can give information.

30. Every officer conducting a preparatory examination shall cause to be examined by the magistrate before whom the same is taken every person who can give any information on the subject of the crime or offence under investigation.

Evidence on oath at preparatory examinations.

31. All preparatory examinations shall be taken upon oath, and every witness, before giving his evidence, shall make oath before the magistrate by whom he is to be examined that in the whole of his deposition he will tell the truth, the whole truth, and nothing but the truth; and each witness shall be examined apart from the others. The depositions shall be taken down in writing in presence of the accused party, or if taken in his absence shall be afterwards read over to him in the presence of the witnesses making the same, whom he shall be entitled to cross-examine; and such depositions shall be signed by the magistrate and by the witnesses; and in case of their incapacity or refusal then the same shall be signed by two persons in whose presence the same were taken. And if any person, having been thereto summoned, shall refuse or neglect to attend, then the magistrate shall issue a warrant to apprehend and bring him for examination; and if any witness shall obstinately refuse to give evidence he may be committed to and detained in prison until he shall comply. Every magistrate before whom any preparatory examination is taken may lawfully bind any witness, by recognizance, to appear to give evidence at the trial, upon being summoned thereto, and upon his refusing may commit and detain in prison the person so refusing until he shall comply.<sup>2</sup>

Depositions to be in writing and in the presence of the accused. Right of cross-examination. Depositions to be signed by the magistrate and witnesses.

Warrant for the apprehension of witnesses who refuse to attend. Committal of witnesses who refuse to give evidence. Recognizance to give evidence at the trial.

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

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

Prisoner to be in his sound

33. When any person suspected of a crime or offence is brought before any magistrate for examination, such magistrate, before commencing the examination of the witnesses,

<sup>1</sup> Vide Ordinance No. 73, § 5.

<sup>2</sup> Vide Ordinance No. 73, § 20.

shall satisfy himself that the prisoner is in his sound and sober senses. and sober senses.

34. After the examination of the witnesses in support of the charge, in presence of the prisoner, or after the examinations have been read over to him if taken in his absence, the magistrate shall ask the said prisoner what he will say in answer to the charge against him; and shall at the same time caution him that he is not obliged to make any statement that may criminate himself, and that what he shall say may be used in evidence against him. The prisoner's statement shall then be taken down in writing, in so far as the same is relevant to the charge, and the same, after being read over to him, shall be subscribed by him if he will subscribe the same, and also by the magistrate and by one person at the least who may be present thereat. Prisoner at the close of examination in support of the charge, to be cautioned that he is not obliged to make any statement criminating himself. Statement how to be signed.

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

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

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

38. No prisoner, under commitment for examination shall be allowed the access of his friends or legal advisers, but by Access of friends and legal advisers

by authority of the authority of a magistrate, and under such restrictions as magistrate before committal. to him may appear requisite; but after commitment for trial, After committal, friends and the prisoner's friends and legal advisers shall have free access legal advisers to him, subject to the regulations of the magistrate, to whom to have free access. the superintendence of the prison and the safe custody of the prisoners are entrusted.

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

**The officer conducting preparatory examination to make local inspection, and to cause post mortem and other examinations to be made.** 40. It is the duty of the officer who conducts the preparatory examination to make any local inspections, which the particular circumstances of the case may render necessary; and in cases of homicide and serious injury to the person of any individual to cause the dead body or the person injured to be examined by a regularly admitted medical man, if any such can be procured, and if not then by the best qualified person or persons that can be obtained, who shall draw up and subscribe a written statement of the appearances and facts observed on such examination: provided, always, that in all case the like duties, inspections, and examinations shall and may be in like manner performed and conducted by any field-cornet, each in his own particular field-cornetcy.

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

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

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

42. The chief justice of the colony, and judges of the supreme court, or the judge of police in Cape Town, the resident magistrates, and all justices of the peace, upon an information taken on oath being transmitted to them by the attorney-general, the superintendent of police in Cape Town, or by any of the clerks of the peace, or upon the information of any person made on oath before such judge or magistrate, that there is reason to suspect that stolen goods are concealed in any place within the jurisdiction of the judge or magistrate to whom the information is transmitted, or before whom the information is made, may by warrant under his hand cause every such place to be searched during the day time.

43. Where a preparatory examination has been taken by a magistrate, without the presence of the clerk of the peace of the district, or, if in Cape Town and the district thereof, without the presence of the superintendent of police or his deputy, such magistrate shall forthwith deliver or transmit the examinations to the clerk of the peace of the district within which the same were taken, or to the superintendent of police, if taken within Cape Town or the district thereof, and the superintendent of police and his deputy, and every clerk of the peace, shall forthwith cause all preparatory examinations, whether taken by them, or received by them in manner above mentioned, to be transmitted to the clerk of the peace for the Cape district, at his office in Cape Town, in order to be by him committed to the consideration of the attorney-general.

Preparatory examinations taken without the presence of the clerk of the peace to be at once transmitted to the clerk of the peace.

44. After considering the preparatory examinations submitted to him, the attorney-general may either order that the prisoner shall be forthwith liberated, or committed for trial; or that further investigation shall take place; or shall forthwith take such measures, and give such directions for the trial of the prisoner in such competent court of the district or place within which the offence was committed, as shall be most expedient for the ends of justice, and the due execution of the laws.

Powers of attorney-general.

#### ON BAIL.

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

True copy of warrant of commitment to be furnished to prisoner, under a penalty of £50.

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

Bailable offences.

47. For this purpose it shall be competent for the prisoner, at the time of the commitment, to apply verbally to the magistrate or judge granting the warrant of commitment, to be immediately liberated on bail.

Verbal application at the time of commitment to be admitted to bail.

48. At any period subsequent to the time of commitment, it shall be competent for the prisoner to apply by writing to the magistrate or judge who granted the warrant of com-

After commitment application to be made

in writing, to the magistrate who granted the warrant, or the resident magistrate of the district, or any judge of the supreme court.

In what cases only to the supreme court or a judge thereof.

Magistrate to determine whether the offence is bailable and modify the bail in 24 hours.

How magistrate is to determine whether the offence is bailable.

Power of supreme court to bail in all cases where innocence may be fairly presumed.

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

Excessive bail not to be required.

Application of prisoner aggrieved by illegal commitment to prison or refusal of bail, to the supreme or circuit court, or any

mitment, or to the resident magistrate within whose district he is imprisoned, or to the supreme court, or to any of the judges thereof, to be admitted to bail. But when the commitment is on a warrant issued by the supreme court, or any of the judges thereof, it shall only be competent to apply for bail to the said supreme court, or one of the judges thereof. Every such written application for bail shall be in form of a petition, and shall be accompanied by a copy of the warrant of commitment, or affidavit that a copy is denied.

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

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

51. The supreme court has power to bail in all cases whatever, whether capital or not, where innocence may be fairly presumed, and in every case where the charge is not alleged with sufficient certainty.

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

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

54. In every case in which a prisoner considers himself aggrieved by the proceedings of the judge of any inferior court, or any magistrate, in having illegally committed him to prison, or refused to admit him to bail, or in having required excessive bail, it shall be competent to such prisoner to apply to the supreme court, or to the circuit court of the district within which he is imprisoned; or in case neither of these courts shall be then sitting, to the chief justice, or any



of the judges of the supreme court, who shall make such order thereon as to them, in the circumstances of the case shall seem just. judges of the supreme court.

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

56. The keepers of all the gaols within the district of Cape Town shall, under a penalty of five pounds sterling, at each session of the supreme court holden for the trial of criminal cases, deliver to the court a list of all the persons confined within their respective gaols, which list shall specify the date of commitment of each prisoner, and the cause of his imprisonment, and the name of the committing magistrate. Gaol returns to be delivered by the keepers of gaol in Cape Town to the court at the criminal sessions.

57. The keepers of all the gaols within the district of each circuit court shall, under a penalty of five pounds sterling, at each session of each circuit court, deliver to the court a list of all the persons confined within their respective gaols; which list shall specify the date of commitment of each prisoner, and the cause of his imprisonment, and the name of the committing magistrate. Returns of gaols in the country districts to be delivered to the court at the circuit sessions.

58. In every session of the supreme court, holden for the trial of criminals, every prisoner who has been committed for trial within Cape Town and the Cape district shall be brought to trial before the said court, provided that twenty-one days have elapsed between his commitment for trial and such session, or else shall then be admitted to bail; unless it shall be made to appear to the satisfaction of the court, that in consequence of the absence of material evidence, or some other sufficient cause, the trial cannot then be proceeded in without defeating the ends of justice; or unless a warrant shall have been obtained from the said court for the transmission of the prisoner to the gaol of some circuit district, in order for trial before the circuit court or any inferior court within the same. And if such prisoner is not brought to trial at the second session of the supreme court holden after Prisoners committed in Cape Town and Cape District to be brought to trial at the criminal sessions of the supreme court, provided 21 days have elapsed from commitment. Such prisoners not brought to

trial at the second session of the court after commitment, entitled to discharge from imprisonment.

the date of his commitment for the trial of criminals, and has not previously been tried before any inferior court, or before the circuit court, in order to his trial before which a warrant for his transmission to the gaol of the district of such circuit court has been obtained, provided such circuit court to which he has been transmitted for trial shall in the mean time have been holden, he shall be discharged from his imprisonment for that offence for which he had been committed for trial.

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

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

Such prisoners not brought to trial at second session of the circuit court after commitment, entitled to discharge from imprisonment.

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

60. Any prisoner, by his own consent, and with the consent of the public prosecutor, may be brought to trial either before the supreme or circuit courts at any time after his commitment; notwithstanding that the periods of twenty-one days and of thirty-one days respectively shall not have expired.<sup>1</sup>

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

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

<sup>1</sup> Repealed by Ordinance No. 73, § 23.

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

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

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

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

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

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

65. The supreme court and circuit courts shall, at the close of each of their said sessions, discharge all such prisoners as by law shall then be entitled to liberation.

Liberation of prisoners by supreme and circuit courts.

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

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

#### FORM OF PROCESS IN THE SUPREME COURT AND CIRCUIT COURTS.

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

Form of procedure to be in accordance with rules of the supreme court.

GOD SAVE THE KING !

Given at the Cape of Good Hope, 25th January, 1828.

By Command of His Honour the Lieutenant-Governor,

(Signed) JOHN BELL,  
Acting Secretary to Government.

By order of the Council,

(Signed) D. M. PERCEVAL,  
Clerk of the Council.

No. 41.—Sd. Richard Bourke.] [4th Feb., 1828.

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

[Repealed by Ordinance No. 84.]

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No. 42.—Sd. Richard Bourke.] [25th Feb., 1828.

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

[Repealed by Ordinance No. 104.]

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No. 43.—Sd. Richard Bourke.

Ordinance for empowering the Collector of Taxes in Cape Town, and the Civil Commissioners of the Country Districts, to collect the several Taxes and Duties now or hereafter to be imposed, and payable within the colony.<sup>1</sup>

Preamble.

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

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

<sup>1</sup> Vide also Ordinances Nos. 55 and 57, and Ordinance No. 13, of 1844.

heretofore payable to, and levied by, the landdrosts, deputy landdrosts, and residents of the several districts, sub-districts, and residencies, and all taxes hereafter to be imposed shall, from the time aforesaid, be payable to, and levied by, the said collector and the civil commissioners respectively within their respective jurisdictions; and the said collector and civil commissioners shall have full right and power to collect all taxes and duties, and arrears thereof, and to sue for and recover the same by any action or suit to be brought by them in any competent court.

Taxes heretofore levied by landdrost payable to civil commissioners.

2. And be it further enacted that the said collector of taxes, and the said civil commissioners shall take the following oath before the chief justice, or any of the judges of the supreme court, or any resident magistrate (who are hereby empowered and required to administer the same), before they act in pursuance of the provisions of this Ordinance :

Collector of taxes and civil commissioners to take oath.

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

GOD SAVE THE KING!

Given at the Cape of Good Hope, 28th February, 1828.

By Command of His Honour the Lieutenant-Governor,

(Signed) JOHN BELL,  
Acting Secretary to Government.

By Order of the Council.

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

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

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

[Partially repealed by Ordinance No 4, of 1834.—Repealed by Act No. 20, of 1856,—‘save and except in so far

as, by the 17th section thereof, the messengers of the courts of resident magistrates are authorized to sell by auction goods taken in execution of the process of such courts.']

\* \* \* \* \*

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

17. And whereas it is expedient that goods taken in execution, and to be sold by virtue of any process of the said court, or of the court of the resident magistrate in any district of this colony, should be sold by the messenger of the said court or their deputies alone, without an auctioneer licensed for that purpose: Be it therefore enacted that, from and after the passing of this ordinance, it shall and may be lawful for the messengers of the said courts, and their deputies respectively, without any licence for that purpose, and they are hereby authorized, to sell by public auction, all such goods as shall or may be taken by virtue of any process of the said courts to them directed respectively, and to be sold in execution thereof; any law or ordinance to the contrary notwithstanding.

\* \* \* \* \*

GOD SAVE THE KING!

Given at the Cape of Good Hope, 19th March, 1828.

By Command of His Honour the Lieut.-Governor,

(Signed)

JOHN BELL,

Acting Secretary to Government.

By Order of the Council,

(Signed)

THOMAS MILLER,

Acting Clerk of the Council.

No. 45.—Sd. Richard Bourke.]

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

Preamble.

WHEREAS it is deemed unnecessary any longer to continue the rewards heretofore payable from the several district treasuries for the destruction of noxious animals: Be it therefore enacted, by His Honour the Lieutenant-Governor in Council, that from and after the passing of this Ordinance,

the payment of all rewards heretofore granted and made payable by any law or ordinance for the destruction of noxious animals, of any kind or description, shall cease and determine. All rewards for destruction of noxious animals to cease and determine.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 31st March, 1828.

By Command of His Honour the Lieutenant-Governor,

(Signed) JOHN BELL,  
Acting Secretary to Government.

By order of the Council,

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

No. 46.—Sd. Richard Bourke.] [26th May, 1828.

Ordinance for the provisional regulation of Bankrupt and Insolvent Estates.

[Repealed by Ordinance No. 64.]

No. 47.—Sd. Richard Bourke.] [7th June, 1828.

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

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

No. 48.—Sd. Richard Bourke.]

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

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

No. 49.—Sd. Richard Bourke.]

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. <sup>1</sup>

Preamble.

WHEREAS it is desirable to offer every encouragement to the profitable cultivation and closer occupancy of the lands of this extensive colony, and for this purpose to augment the amount of disposable labour by affording the greatest facility compatible with the public safety to the admission of foreigners from the tribes beyond the borders of the settlement who may be desirous of migrating to, and sojourning in, the colony, and of entering into the service of the colonists as herdsmen, field labourers, house servants, or in whatever capacity may be most suitable to their several inclinations and abilities: And whereas certain proclamations and ordinances, enacted and promulgated in times past, prohibit the admission or employment of certain of these foreigners, under severe penalties: Be it therefore enacted that from and after the passing of this ordinance, the proclamation of the 27th June, 1797,—such part of the proclamation of the 14th May, 1812, as prohibits all intercourse with the Kafir people,—the proclamation of the 8th August, 1817, and that of the 28th January, 1820, shall be, and the same are hereby, repealed and declared void and of no effect, save and except so far as the said proclamations and ordinances, or any of them, repeal any former proclamations or ordinances, or any clause, matter, or thing therein contained.

Proclamations repealed.

Governor may direct admission into the colony of natives beyond the frontier desirous of engaging in service.

2. And be it further enacted that, from and after the passing of this Ordinance, it shall and may be lawful for the Governor of this colony for the time being to authorize and direct the admission into the colony of any Kafirs, Gonaquas, Tambookies, Griquas, Bosjesmen, Bechuanas, Mantatees, Namaquas, or other natives of the interior of Africa, who may be desirous of engaging in the service of the colonists, and to make and publish such rules and regulations for, and impose such restrictions upon, the admission and engagements of such foreigners as to him may seem fit with reference to the state and condition of each particular tribe, and the districts

<sup>1</sup> This Ordinance has been modified, altered, and in great part repealed by the Acts, No. 22, 1857, No. 23, 1857, and No. 27, 1857.



wherein the individuals are to be employed : provided, always, that such regulations and restrictions shall not contain any thing repugnant to the provisions of this ordinance, and that each and every such foreigner shall, immediately on receiving permission to enter the colony, be supplied by any justice of the peace or field-cornet of the district in which such person may first enter with a written pass, which shall set forth the name, sex, age, tribe, height, colour, features, and distinguishing marks of each person, the delivery of which shall be duly recorded in a book to be kept for this purpose, and the counterpart of such pass shall be forwarded to the clerk of the peace of the district by the first opportunity ; and provided, further, and it is hereby enacted, that twice in each year, namely upon the 1st January and the 1st July, the clerks of the peace of the several districts shall furnish to the secretary to government a list of all passes granted by any of the justices of the peace or field-cornets in their respective districts during the preceding six months under the authority of the governor for the time being, as aforesaid, which list shall set forth the name, sex, age, and tribe of every foreigner to whom such passes may have been granted ; and the lists so prepared shall, immediately after the receipt of the same at the office of the secretary to government, be laid by him before his Majesty's Council, for their information.

On receipt of permission to enter the colony, a written pass to be supplied by the justice of the peace or field-cornet.

3. And be it further enacted that any person who shall fraudulently transfer, or procure or cause to be transferred, from any foreigner to another the pass herein directed to be given to every foreigner on his or her admission into the colony, as aforesaid, or shall wilfully deprive any such foreigner of his or her pass, or shall unlawfully obstruct or impede any such foreigner in his or her progress to obtain a pass, or shall forcibly detain any such foreigner in his or her service, such person shall, upon conviction thereof, be subject to a penalty not exceeding ten pounds ; or in default of payment thereof, to imprisonment for any period not exceeding six months.

Penalty on fraudulent transfer of passes,—on depriving border foreigners of passes,—on preventing them from obtaining passes and detaining them in service.

4. And be it further enacted that it shall and may be lawful for any inhabitant of this colony to receive into his service, subject to the provisions of this ordinance, any Kafir, Gonaqua, Tambookie, Griqua, Bosjesman, Bechuana, Mantatee, Namaqua, or other foreigner as aforesaid, who shall produce and have in his possession the written pass required by this ordinance ; and any inhabitant of this colony who shall admit into his or her service any such foreigner as afore-

Penalty on admitting into service

border foreign-  
ers without  
passes.

said, who shall not at the time of his or her engagement, produce a written pass as aforesaid, shall be subject to a penalty of five pounds for every such foreigner so received into his or her service; and in default of payment thereof, to imprisonment for three months: provided, always, that nothing herein contained shall extend to prohibit any inhabitant of this colony from receiving into his or her house or premises any foreigner or foreigners as aforesaid, who shall come to him or her in distress, and disabled by hunger, sickness, wounds, or other bodily injury, from proceeding directly to a justice of the peace or field-cornet to obtain a pass: and it is further enacted that in all such cases notice shall be given to a justice of the peace or field-cornet of the number and description of the distressed foreigners so received within one month after their arrival, under a penalty of forty shillings: and it is further enacted that any relief so granted shall not, in any manner, constitute a claim upon the personal services of any foreigner so relieved or maintained.<sup>1</sup>

Engagements  
of hire of bor-  
der foreigners  
not to exceed  
one month:  
renewable  
from month to  
month.

5. And be it further enacted that it shall and may be lawful for any inhabitant of this colony to hire or engage, by any parole or written agreement except as hereinafter provided, any Kafir, Gonaqua, Tambookie, Griqua, Bosjesman, Bechuana, Mantatee, Namaqua or other foreigner as aforesaid, duly provided with a pass as aforesaid, for any period not exceeding one calendar month, such engagement being renewable from month to month at the option of the contracting parties; and any such parole or written engagement, for any longer period, shall be and hereby is declared to be absolutely null and void, and of no effect: Provided always, and it is hereby enacted, that in case any inhabitant of this colony, and any foreigner as aforesaid, shall be mutually desirous of entering into a written contract for a longer period than one month, that and in such case the parties shall together appear before the clerk of the peace or any justice of the peace of the district in which such inhabitant shall reside, or before such other person residing therein as shall be specially appointed by the clerk of the peace of his district with the approbation of the Governor for the time being, to countersign contracts for service; or if in Cape Town and the district thereof, before the superintendent of police; and shall, in the presence of the superintendent of police, clerk of the peace, or justice of the peace, or in

Except  
engagements  
entered into  
before public  
officers for  
twelve months,  
duly counter-  
signed.

<sup>1</sup> Vide Act No. 27 of 1857.

presence of such other person specially appointed as aforesaid, enter into a contract for service, on such terms as the respective parties shall be willing to subscribe to : provided, always, that the period of such contract shall not exceed twelve calendar months, and that it shall contain a clause or clauses, whereby the inhabitant shall be bound (amongst other things) to provide the foreigner, as aforesaid, and such of his or her family as may be present with him or her, sufficient food and decent clothing during the continuance of such contract. And be it further enacted that no liquor or tobacco shall be admitted as payment of money due for wages, or in any manner be charged in account against any such foreigner, and that the goods or cattle belonging to such foreigner shall not, under any pretence whatsoever, be detained at the expiration of any such contract : provided, further, that nothing herein contained shall prevent the renewal of any such contract at the expiration thereof, subject to the conditions and provisos herein enacted.

Such engagements renewable in like manner as contracted.

6. And be it further enacted that every such contract shall be made and executed in three parts, and countersigned by the superintendent of police, clerk of the peace, justice of the peace, or other person specially appointed as aforesaid, as the case may be, one of which parts shall be given to each of the contracting parties ; and in all cases where such contract shall be executed before the superintendent of police or clerk of the peace as aforesaid, the third part thereof shall be filed and registered in his office ; and in all cases where the same shall be executed before the justice of the peace or other person specially appointed as aforesaid, an entry thereof shall be made in a book to be kept by him for the purpose, and the third part of such contract forwarded by him to the clerk of the peace, to be filed and registered in his office as aforesaid ; and upon the execution of such contract, the pass of the foreigner contracting shall be given up by him into the custody of the person before whom the contract shall be made, to be by him kept until the expiration of such contract, and then restored to the foreigner on demand. And be it further enacted that copies of such registry for the preceding six months shall be sent by the superintendent of police and the clerks of the peace to the secretary to government, on the 1st of January and 1st of July in every year, to be laid before his Majesty's Council, as hereinbefore provided.

Such contracts to be in three parts, one of which shall be duly filed and registered by the officer before whom the contract is made.

Persons bound  
by such con-  
tracts.

7. And be it hereby further enacted that by the execution of the contract as aforesaid, no other person or persons shall be bound, in any manner whatsoever, save and except the person or persons who shall execute and be parties to such contract, and such children being, if males, below the age of eighteen, and if females below the age of sixteen years, as the parents, or reputed parents, being themselves contracting parties, shall cause to be inserted in such contract, whose sex, names, ages, and descriptions shall be clearly set forth and specified therein: provided, always, that nothing therein contained shall give to any inhabitant of the colony any claim on the services of the children of any such foreigners as aforesaid beyond the period for which the parents shall be engaged, whether under colour of having been fed or clothed by him or her, or of having been born whilst the parent or parents of such child or children were in his or her service, or under any other pretence whatsoever; and any person who shall be duly convicted of having detained any child in his or her service contrary to the provisions of this ordinance, shall forfeit and pay at the rate of twenty shillings sterling for each calendar month that each and every such child shall have been thus unlawfully detained. And be it further enacted that every such child shall, upon conviction of the detaining party, be forthwith removed from the custody of the same, and restored to his or her parents, when the same can be found, or otherwise be provided for, as in the case of orphans or deserted children is hereinafter mentioned.

Penalty on  
detention of  
children after  
expiry of term  
of service of  
their parents.

Proceedings to  
be taken on  
abandonment  
of children by  
border  
foreigners.

8. And be it further enacted that if any Kafir, Gonaqua, Tambookie, Griqua, Bosjesman, Bechuana, Mantatee, Namaqua, or other foreigner as aforesaid, shall abandon or desert, or by death shall leave in a state of orphanacy and destitution within the colony, any child or children of too tender an age to earn a livelihood by labour, that then and in such case the person or persons to whom the charge of such child or children shall devolve, or to whom the knowledge of such cases of desertion or orphanacy shall come, shall immediately give notice thereof to the superintendent of police or nearest field-cornet of the district, in order that measures may be taken for providing for the maintenance of such child or children, by apprenticeship until the age of eighteen years, if males, and sixteen years for females, or for such other shorter period, or by such other means, as the superintendent of

Apprenticeship  
of males until  
the age of  
eighteen years,  
and of females  
until sixteen.

police or clerk of the peace of the district, by virtue of the regulations of the Governor for the time being, may be authorized to adopt: provided, always, that if at any time within two years from the date of such indenture of apprenticeship, the parent or parents of any child so left destitute, or supposed to be an orphan, shall appear before the superintendent of police or clerk of the peace by whom such indenture shall have been made, and shall prove his or her relationship to such child, that then and in such case it shall and may be lawful for the superintendent of police or clerk of the peace as aforesaid, and he is hereby required, to restore, or cause to be restored, such child to his or her parent or parents, any thing in the said indenture to the contrary notwithstanding: and if any person shall be duly convicted of having in his or her house or possession any orphan or destitute child for a longer period than one calendar month, without having given notice thereof to the superintendent of police or nearest field-cornet as aforesaid, every such person shall forfeit and pay at the rate of twenty shillings for each calendar month that each and every such child shall have been in his or her possession.

Restoration to parents of apprenticed children.

Penalty on detention of destitute children without notice given thereof.

9. And be it further enacted that if any Kafir, Gonaqua, Tambookie, Griqua, Bosjesman, Bechuana, Mantatee, Namaqua, or other foreigner as aforesaid, shall, after residence in the colony under the provisions of this ordinance, be desirous to depart from the same, and under such or any other circumstances to leave his or her child or children with any inhabitant of the colony who may be willing to maintain the same, that then and in such case it shall and may be lawful for such inhabitant and such foreigner to appear before the clerk of the peace of the district in which such inhabitant resides, or before such other person residing therein as shall be specially appointed by him, with the approbation of the Governor for the time being, or if in Cape Town before the superintendent of police, and make a deposition to this effect, whereby the inhabitant as aforesaid shall be bound to maintain such child or children until claimed by their parent or parents, or until such child shall be of an age to maintain him or herself; and all such depositions shall be duly registered by the superintendent of police or clerk of the peace, as in the case of contracts is hereinbefore directed.

Proceedings to be taken when border foreigners departing from the colony leave children with inhabitants.

10. And be it further enacted that it shall and may be lawful for the judges of circuit, and they are hereby required

Judges of Circuit to examine registry

of passes, contracts, &c.

at each district town, to call for and examine the book or books in which the entries and registry of the passes, contracts, and deposition required by this ordinance shall be kept, and to report the state and condition of the same, together with such observations thereon as to them may seem meet, to the Governor for the time being.

Border foreigners admitted into the colony to be amenable to colonial laws.

11. And be it further enacted that every Kafir, Gonaqua, Tambookie, Griqua, Bosjesman, Bechuana, Mantatee, Namaqua, or other foreigner from the interior of Africa as aforesaid, who shall be admitted into the colony for the purpose of entering into the service of the colonists, and shall receive a pass, as hereinbefore directed, or who shall have been admitted into, or settled therein, previously to the passing of this ordinance, shall, and his or her child or children shall, during the period of his, her, or their sojournment within the colony, be held amenable to the laws thereof, and liable to such pains and penalties for the breach of his or her contract of service, or any other offence, as by the laws now in force in the colony, or hereafter to be enacted, shall be awarded.

Border foreigners without passes, or though possessing passes wandering about without honest means of livelihood to be apprehended and conveyed to nearest resident magistrate, who shall return them to their employers, or place them under contract or cause them to be removed beyond the limits of the colony.

12. And be it further enacted that if any Kafir, Gonaqua, Tambookie, Griqua, Bosjesman, Bechuana, Mantatee, Namaqua, or other foreigner as aforesaid shall be found without a pass, or if under contract without a written authority from his or her employer, on being required by any justice of the peace, field-cornet, constable, or landholder to show the same; or after receiving a pass for the purpose of procuring employment in the colony, shall be discovered wandering without any certain occupation or honest means of livelihood, having received his or her pass as aforesaid, or having been absent from his or her last employer for a longer period than fourteen days,—then, in any and in each of such cases, it shall and may be lawful for the justice of the peace, field-cornet, constable, or landholder immediately to apprehend and convey such person to the resident magistrate of the district, who shall inquire summarily into the case; and if such foreigner be under contract of service, shall forthwith direct him or her to be returned to the service of his or her employer, or shall place such person, with his or her consent, in the employment of some creditable inhabitant, under contract of service, for twelve calendar months, in the manner hereinbefore cited, or shall otherwise cause him or her to be removed beyond the limits of the colony, resuming any pass

that may be found in his or her possession, and notifying, or causing to be noted, such removal in the registry of the district wherein the pass was originally granted; and if any foreigner so removed beyond the limits of the colony shall return again, and be found wandering within the same, such person shall, on conviction thereof, be sentenced to imprisonment, with hard labour, for any period not exceeding twelve calendar months.<sup>1</sup>

Border foreigners removed beyond the limits, and returning, liable to imprisonment for twelve months.

13. And whereas certain Mantatees, Bosjesmen, and other foreigners from the interior of Africa have at different times been apprenticed in this colony under the authority of Government: Be it therefore enacted that all such indentures shall continue in force until the full completion thereof, any thing in this ordinance to the contrary notwithstanding; and that from and after the expiration of such contracts, all the persons so contracted, and their children, shall be furnished with the pass required under this ordinance, and shall thenceforward become subject to the provisions hereof. And be it further enacted that whenever any such apprentice shall be removed from his or her master by order of a magistrate, or by sentence of a competent court, on account of ill treatment or other sufficient cause, such person, if a male of about eighteen, or a female of about sixteen years, shall not be transferred by indenture to the service of another employer, but shall be provided with the pass required by this ordinance, and shall thenceforward become subject to the provisions thereof.

Subsisting contracts to remain in force.

14. And whereas, by the proclamation of the 8th day of August, 1817, herein repealed, provision was made for the apprenticeship of the children of Bosjesmen, who shall have been left by their parents with such farmers, as from compassion, were willing to maintain them until reclaimed by their parents: Be it therefore enacted that from and after the passing of this ordinance any inhabitant of this colony who shall receive a child or children of a Bosjesman, under the afore-recited or any other circumstances, shall forthwith report the same to a field-cornet of the district wherein such inhabitant resides, in order that such child or children may be indentured to him or her upon the same terms and conditions, and for the same period of time, as is hereinbefore

Bosjesmen children left by their parents with farmers placed in the same position as orphans or deserted children of border foreigners.

<sup>1</sup> Vide Act No. 23, of 1857.

provided in the case of orphans or deserted children; and any person who shall neglect to give such notice within one month after receiving such child or children shall, on conviction thereof, be subject to a penalty of twenty shillings for each calendar month that each and every such child shall have been in his or her possession.<sup>1</sup>

Residence at missionary stations of border foreigners provided with passes.

15. And be it further enacted that it shall and may be lawful for any Kafir, Gonaqua, Tambookie, Griqua, Bosjesman, Bechuana, Mantatee, Namaqua, or other foreigner as aforesaid, duly provided with a pass, under the provisions of this ordinance, to repair to and reside at any of the missionary stations within the colony, by permission of the resident missionary thereof.

Penalty on enslaving border foreigners seven years' transportation.

16. And be it further enacted that if any person shall wilfully and fraudulently detain as a slave any such foreigner as aforesaid, of whatever sex or age, or dispose of the same as a slave, by sale or otherwise, or cause any such foreigner to be registered as a slave, such person shall, upon conviction thereof, be sentenced to transportation for seven years.

Offences cognizable by resident magistrate.

17. And be it further enacted that all offences against this ordinance, subject to no higher punishment than fine or imprisonment, with or without hard labour, shall be cognizable by the court of the resident magistrate of the district or place in which such offences shall be committed; and that all fines levied by reason thereof shall be given, one half to the informer and one half to the colonial treasury.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 14th July, 1828.

By command of His Honour the Lieutenant-Governor,

(Signed) JOHN BELL,  
Acting Secretary to Government.

By order of the Council,

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

<sup>1</sup> Vide Act No. 22, of 1857.



No. 50.—Sd. Richard Bourke.] [17th July, 1828.

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

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

No. 51.—Sd. Richard Bourke.]

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.

WHEREAS certain proclamations and regulations now in force Preamble. concerning butchers, and the carrying on the trade of a butcher in this colony, and concerning the selling and disposing of cattle, sheep, and goats therein, are no longer expedient, and require to be repealed; and it is expedient for the public benefit that the carrying on the said trade of a butcher, and the right of selling and disposing of cattle, sheep, goats, and swine, should be enjoyed by all persons desirous of exercising the same: Be it therefore enacted by his Honour the Lieutenant-Governor in Council, that from and after the first day of January, 1829, the proclamations and regulations Former laws repealed. of 2nd October, 1798, 23rd June, 1800, 14th November, 1809, 4th January, 1810, 30th November, 1821, 19th November, 1822, 31st December, 1822, and 28th December, 1825, shall be, and the same are hereby, repealed: Provided, always, that nothing herein contained shall be construed to affect or alter any bargain, agreement, or contract lawfully entered into before the said first day of January, 1829, according to the said proclamations or regulations, or any of them, nor to deprive of its legal force and effect, in any competent court, any note, bond, or security, given or received by virtue thereof.

2. And be it further enacted that from and after the first Butcher's trade permitted to all residents. day of January, 1829, it shall and may be lawful for any person, legally residing in this colony to exercise the trade and calling of a butcher therein without taking out any licence

for that purpose, excepting such licence as now is, or hereafter may be, by law required for keeping a retail shop: Provided, always, that any person who shall be desirous of carrying on the business of a butcher in Cape Town and the district thereof, shall give in writing, at the office of the superintendent of police, his or her name and place of abode, seven days before the commencement of such business; and any person neglecting so to do shall on conviction forfeit the sum of five pounds, to be levied by distress and sale of the offender's goods.

[The sections 3—7 relating to the establishment of a cattle market have expired, the Municipality of Cape Town having power to provide for such purposes. Ordinance No. 3, of 1839, § 49, and Ordinance No. 1, 1840, § 58.]

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GOD SAVE THE KING !

Given at the Cape of Good Hope, 30th August, 1828.

By command of His Honour the Lieutenant-Governor,

(Signed) JOHN BELL,  
Acting Secretary to Government

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

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No. 52.—Sd. G. Lowry Cole.] [22nd Nov., 1828.

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

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

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No. 53.—Sd G. Lowry Cole.] [28th Nov., 1828.

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

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

No. 54.—Sd. G. Lowry Cole.] [4th Dec., 1828.

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

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

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No. 55.—Sd. G. Lowry Cole.] [19th Jan., 1829.

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

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

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No. 56.—Sd. G. Lowry Cole.] [9th Feb., 1829.

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

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

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No. 57.—Sd. G. Lowry Cole.] [5th March, 1829.

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

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

No. 58.—Sd. G. Lowry Cole.]

[19th March, 1829.]

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

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

No. 59.—Sd. G. Lowry Cole.]

Ordinance for regulating the Payment of the Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations.<sup>1</sup>

Preamble.

WHEREAS it is expedient and necessary that regulations should be made for the payment of the expenses of witnesses attending to give evidence in criminal cases: Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this ordinance, expenses shall be allowed to witnesses summoned at the instance of the public prosecutor, and who have duly appeared, in compliance with the summons, at any criminal trial, holden before the supreme or circuit courts, or resident magistrates' courts, or at any preparatory examination taken before a resident magistrate or justice of the peace, unless such court shall, for sufficient cause, disallow the expenses of any witnesses.

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

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

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

Rates of allowance for witnesses' expenses.

3. And be it further enacted that the expenses to be allowed to witnesses, for subsistence and travelling to and from the court or other place to which they shall be sum-

<sup>1</sup> Amended by Ordinance, No. 69.—*Vide* also Ordinance No. 4, 1834, § 11.

moned, and during the necessary attendance, these shall in no case exceed four shillings and six pence per diem of six hours if the witnesses have travelled in a carriage or on horseback, and one shilling and six pence per diem of six hours if on foot; and in cases where a witness resides within five miles of the place to which he is summoned, the expenses to be allowed shall not exceed one shilling and six pence per diem; and in cases where a witness shall reside within one mile of such place where any preparatory examination is taken, no expenses shall be allowed for attending such examination.

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

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

5. And be it further enacted that in cases of preparatory examinations, the clerk of the peace shall make out and certify similar bills of expenses; and in his absence, the presiding magistrate or justice of the peace shall make out, certify, and allow the same, and make out and sign cheques on the civil commissioner for the amount allowed to each witness.

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

6. And be it further enacted that the clerk of the peace, or in his absence the presiding magistrate or justice of the peace, shall, on a bill being so prepared, certified, and allowed, and on the witness signing on the said bill a receipt for the sum due to him for his expenses, make out, sign, and deliver to each witness a cheque on the civil commissioner of the district within which the trial or examination took place for the amount due to him; and shall further transmit every bill

Payment by cheque on the civil commissioner.

so signed forthwith to the said civil commissioner, who shall make payment of the amount of every cheque so drawn on him, to the holder thereof, if presented for payment within three calendar months after its date, and not afterwards. And if any civil commissioner shall not pay the amount of such cheque when duly presented to him, the party entitled to the same may sue for the recovery thereof in any competent court.

. GOD SAVE THE KING!

Given at the Cape of Good Hope, 2nd April, 1829.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Acting Secretary to Government.

By Order of the Council,

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

No. 60.—Sd. G. Lowry Cole.]

[30th April, 1829.

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

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

No. 61.—Sd. G. Lowry Cole.]

[13th June, 1829.

Ordinance for the provisional Regulation of Bankrupt and Insolvent Estates.

[Repealed by Ordinance No. 64.]

No. 62.—Sd. G. Lowry Cole.]

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

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

Preamble.  
Twenty one years the legal age of majority.

2. Provided, always, and be it further enacted, that nothing herein contained shall extend or be construed to alter the term at which in any act, deed, will, contract or agreement passed, executed, or entered into prior to the passing of this ordinance any beneficial interest in favour of any person is provided or declared to commence or determine.

Deeds, wills, contracts, &c., of prior date not affected.

3. And be it further enacted that nothing herein contained shall extend or be construed to prevent any testator from bequeathing his property in any such manner as by the laws of this colony he might have done before the passing of this ordinance.

Law of inheritance not affected.

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

Nor attainment of majority by operation of law.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 20th June, 1829.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Council.

No. 63.—Sd. G. Lowry Cole.] [29th July, 1829.

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

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

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No. 64.—Sd. G. Lowry Cole.] [6th Aug., 1829.

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

[Repealed by Ordinance No. 6, 1843.]

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No. 65.—Sd. G. Lowry Cole.] [6th Aug., 1829.

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

[Repealed by Act No. 16, of 1857.]

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No. 66.—Sd. G. Lowry Cole.] [1st Sept., 1829.

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

[Repealed by Act No. 20, of 1856.]

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No. 67.—Sd. G. Lowry Cole.] [10th Dec., 1829.

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

[Repealed by Ordinance No. 93.]



No. 68.—Sd. G. Lowry Cole.]

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

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

Preamble.

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

I, A B, do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty King George the Fourth, and will defend him to the utmost of my power against all conspiracies and attempts whatever which shall be made against his person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs, and successors, all treasons and traitorous conspiracies which may be formed against him or them; and I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the crown, which succession, by an Act entitled "An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject," is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person, claiming or pretending a right to the crown of the realm of England: And I do further declare that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion, that princes excommunicated or deprived by the Pope, or any other authority of the See of Rome, may be deposed or murdered by their subjects, or by any person whatsoever: And I do declare that I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state, or

Oath of allegiance to King George IV.

potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority, pre-eminence, directly or indirectly, within the realm of England. I do swear that I will defend, to the utmost of my power, the settlement of property within the realm of England, as established by the laws: And I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present church establishment, as settled by law within the realm of England: And I do solemnly swear that I never will exercise any privilege to which I am or may become entitled, to disturb or weaken the protestant religion or protestant government in the United Kingdom, or any of the territories thereunto belonging; and I do solemnly, in the presence of God, profess, testify, and declare that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatsoever. So help me God!

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

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

Oath to have been taken within three months before appointment to office, or otherwise before exercise of office.

3. And it is further enacted that every person professing the Roman Catholic religion who shall, after the commencement of this ordinance, be appointed to any office or place of trust or profit in this colony, under His Majesty, his heirs, or successors, shall, within three calendar months next before such appointment, or otherwise shall before he presumes to exercise or enjoy or in any manner to act in such office or place, take and subscribe the oath hereinbefore appointed and set forth, either in the supreme court of justice, or before any judge of circuit, or in the court of the resident magistrate for the district or place where the person so taking and subscribing the oath shall reside, between the hours of nine in the morning and four in the afternoon; and the proper officer of the court in which such oath shall be taken and subscribed shall cause the same to be preserved amongst the records of the court; and such officer shall make, sign, and deliver a certificate of such oath having been duly taken and subscribed, as often as the same shall be demanded of him, upon payment of two shillings and six pence for the same; and such certificate shall be sufficient evidence of the person therein named having duly taken and subscribed such oath.

4. And it is further enacted that if any person professing the Roman Catholic religion shall enter upon the exercise or enjoyment of any office or franchise not having in the manner and at the times aforesaid taken and subscribed the oath hereinbefore appointed and set forth, then and in every such case such person shall forfeit to His Majesty the sum of two hundred pounds; and the appointment of such person to the office, place, or franchise so by him held shall become altogether void; and the office, place, or franchise shall be deemed and taken to be vacant to all intents and purposes whatsoever: Provided, always, that for and notwithstanding any thing in this ordinance contained, the oath hereinbefore appointed and set forth shall be taken by the officers in His Majesty's land and sea service professing the Roman Catholic religion at the same times and in the same manner as the oaths and declarations now required by law are directed to be taken, and not otherwise.

Penalty on entering on exercise of office without taking and subscribing oath, £200; and forfeiture of office.

5. And it is further enacted that if any Roman Catholic ecclesiastic, or any member of any of the orders, communities, or societies hereinafter mentioned, shall after the commencement of this ordinance exercise any of the rites or ceremonies of the Roman Catholic religion, or wear the habits of his order, save within the usual places of worship of the Roman Catholic religion or in private houses, such ecclesiastic or other person shall, being thereof convicted by due course of law, forfeit for every such offence the sum of fifty pounds.

Penalty on ecclesiastics exercising the rites of Roman Catholic religion or wearing habits of religious orders, except in usual places of worship and private houses, —£50.

6. And whereas Jesuits and members of other religious orders, communities, or societies of the church of Rome, bound by monastic or religious vows, are or may be resident within this colony, and it is expedient to make provision for the gradual suppression and final prohibition of the same therein: Be it therefore enacted that every Jesuit, and every member of any other religious order, community, or society of the church of Rome bound by monastic or religious vows, who at the time of the commencement of this ordinance shall be within this colony, shall within six calendar months after the commencement of this ordinance deliver to the clerk of the peace of the district or place where such person shall reside, a notice or statement in the form and containing the particulars required to be set forth in the schedule to this ordinance annexed; which notice or statement such clerk of the peace shall preserve and register amongst the records

Jesuits and members of other religious orders resident in the colony, to give notice to clerks of the peace of their residence, &c., according to form in schedule.

of such district or place, without any fee; and shall forthwith transmit a copy of such notice or statement to the secretary to government; and in case any person shall offend in the premises he shall forfeit and pay to His Majesty, for every calendar month during which he shall remain in the colony without having delivered such notice or statement as is hereinbefore required the sum of fifty pounds.

Jesuits and members of religious orders coming into colony liable to be banished therefrom for life:

Provided that natural-born subjects of the realm, or absent natives of the colony, being Jesuits or members of other orders, may return or come into the colony, giving the notice required in the sixth section.

Penalty on neglect of such notice, £50.

Protestant governor may permit, by written licence, Jesuits or members of other orders to come into the colony for a period not exceeding six months;

7. And it is further enacted that if any Jesuit, or member of any such religious order, community, or society as aforesaid, shall after the commencement of this ordinance come into this colony, he shall be deemed and taken to be guilty of an offence; and being thereof lawfully convicted shall be sentenced and ordered to be banished from the colony for the term of his natural life: Provided, always, and it is further enacted, that in case any natural-born subject of the realm of England, or native of this colony, being at the time of the commencement of this ordinance a Jesuit, or other member of any such religious order, community, or society as aforesaid, shall at the time of the commencement of this ordinance be out of the colony, it shall be lawful for such person to return or to come into this colony; and upon such his return or coming into the colony he is hereby required, within the space of six calendar months after his first returning or coming into the colony, to deliver such notice or statement to the clerk of the peace of the district or place where he shall reside for the purpose of being so registered and transmitted as hereinbefore directed; and in case any such person shall neglect or refuse so to do he shall, for such offence, forfeit and pay to His Majesty for every calendar month during which he shall remain in the colony without having delivered such notice or statement the sum of fifty pounds: Provided also, and it is further enacted, that notwithstanding any thing hereinbefore contained, it shall be lawful for the governor, or officer administering the government of this colony for the time being, being a protestant, by a licence in writing signed by him, to grant permission to any Jesuit, or member of any such religious order, community, or society as aforesaid, to come into the colony and to remain therein for such period as the said governor, or officer administering the government of this colony as aforesaid, shall think proper, not exceeding in any case the space of six calendar months; and it shall also be lawful for the said governor, or officer administering the government of

this colony as aforesaid, to revoke any licence so granted before the expiration of the time mentioned therein if he shall think fit; and if any such person to whom any such licence shall have been granted shall not depart from the colony within twenty days after the expiration of the time mentioned in such licence, or if such licence shall have been revoked then within twenty days after notice of such revocation shall have been given to him, every person so offending shall be deemed guilty of an offence; and being thereof lawfully convicted shall be sentenced and ordered to be banished from the colony for the term of his natural life.

and may revoke licence before expiration of the term.

Penalty on non-departure from the colony within twenty days after the expiration or revocation of licence,—banishment for life.

8. And it is further enacted that there shall be laid before His Majesty's Council in this colony, by the secretary to government, an account of all such licences as shall have been granted for the purpose hereinbefore mentioned within the twelve months then next preceding.

Licences to be annually laid before the council.

9. And it is further enacted that in case any Jesuit, or member of any such religious order, community, or society as aforesaid, shall after the commencement of this ordinance within any part of the colony admit any person to become a regular ecclesiastic, or brother, or member of any such religious order, community, or society, or be aiding or consenting thereto, or shall administer or cause to be administered or be aiding or assisting in the administering or taking any oath, vow, or engagement purporting or intended to bind the person taking the same to the rules, ordinances, or ceremonies of such religious order, community, or society, every person offending in the premises shall be punished by fine and imprisonment.

Admission of persons within the colony as Jesuits or members of religious societies prohibited on penalty of fine and imprisonment.

10. And it is further enacted that in case any person shall after the commencement of this ordinance within any part of the colony be admitted or become a Jesuit, or brother, or member of any other such religious order, community, or society as aforesaid, such person shall be deemed and taken to be guilty of an offence; and being thereof lawfully convicted shall be sentenced and ordered to be banished from the colony for the term of his natural life.

Persons becoming Jesuits or members of religious societies within the colony liable to be banished for life.

11. And it is further enacted that in case any person sentenced and ordered to be banished under the provisions of this ordinance shall not depart from this colony within thirty days after the pronouncing of such sentence and order, it shall be lawful for the governor, or officer administering the government of this colony for the time being, to cause such person to be conveyed to such place out of the colony as he shall direct.

Persons sentenced to be banished and not departing within thirty days to be conveyed to such place as the Governor may direct.

Persons sentenced to banishment, and found in the colony after three months subject to transportation for life.

Religious orders of females not affected.

Penalties recoverable as debts due to the sovereign.

12. And it is further enacted that if any offender who shall be sentenced and ordered to be banished in manner aforesaid shall after the end of three calendar months from the time such sentence and order hath been pronounced be at large within any part of the colony without some lawful cause, every such offender being so at large as aforesaid on being thereof lawfully convicted shall be transported to such place as shall be appointed by the governor, or officer administering the government of this colony for the time being, for the term of his natural life: Provided, always, and it is further enacted, that nothing herein contained shall extend or be construed to extend in any manner to affect any religious order, community, or establishment consisting of females bound by religious or monastic vows.

13. And it is further enacted that all penalties imposed by this ordinance shall and may be recovered as a debt due to His Majesty, by action to be brought in the name of His Majesty's attorney-general for this colony.

14. And it is further enacted that this ordinance shall commence and take effect at the expiration of ten days from and after the passing thereof.

*Schedule to which this ordinance refers.*

Date of registry.	Name of the party.	Age.	Place of birth.	Name of the order, community, or society whereof he is a member.	Name and usual residence of the immediate superior of the order, community, or society.	Usual place of residence of the party.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 15th January, 1830.

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Council.

No. 69.—Sd. G. Lowry Cole.]

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

WHEREAS it is expedient to provide for the more ready and regular payment of witnesses<sup>1</sup> attending to give evidence on criminal trials held before the supreme court, and on criminal trials or preparatory examinations held before the court of the resident magistrate for Cape Town and the district thereof, and the Cape district: Be it therefore enacted by his Excellency the Governor in Council, that from and after the passing of this ordinance all cheques to be issued under the provisions of the ordinance No. 59, for payment of witnesses attending either of the aforesaid courts, shall be addressed to the treasurer and accountant-general, and shall be presented for payment at the treasury in Cape Town within seven days after the date thereof, and not afterwards; any thing contained in the 5th and 6th sections of the said ordinance No. 59 to the contrary notwithstanding; and if the treasurer and accountant-general shall not pay the amount of such cheque when duly presented to him the party entitled to the same may sue for the recovery thereof in any competent court.

Preamble.

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

GOD SAVE THE KING!

Given at the Cape of Good Hope, 13th January, 1830.

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Council.

<sup>1</sup> *Vide* Ordinance No. 59, and Ordinance No. 4, § 11, 1834.

No. 70.—Sd. G. Lowry Cole.]

[3rd Feb., 1830.

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

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

No. 71.—Sd. G. Lowry Cole.]

[3rd Feb., 1830.

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

[Repealed by Ordinance No. 8, 1836.]

No. 72.—Sd. G. Lowry Cole.]

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

**Preamble.**

WHEREAS it is expedient to alter, amend, and declare, in certain respects, the law of evidence within this colony: Be it therefore enacted and declared by his Excellency the Governor in Council, that from and after the passing of this ordinance no person shall be excluded from being sworn as a witness, or from giving evidence, in any court within this colony, except in respect of a legal objection to his competency made and appearing to such court to be valid.

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

The court to decide on admissibility of evidence.

The jury to determine effect of evidence admitted.

Incompetency from insanity and intoxication.

2. And be it further enacted and declared that it shall be competent for the court alone in which any case may be depending to decide upon all questions concerning the competency of any witness or the admissibility of any evidence; and that in all cases which shall and may lawfully be tried by a jury it shall be competent for such jury alone to determine as to the effect of any evidence admitted by the court, and as to the degree of credit to be attached thereto.

3. And be it further enacted and declared that no person appearing, or proved, to be afflicted with idiocy, lunacy, or insanity, or labouring under any imbecility of mind arising from intoxication or otherwise whereby he is deprived of



the proper use of reason, shall in any case be competent to give evidence while under the influence of any such malady or disability.

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

Children who understand the obligation of an oath competent.

Children to be examined on oath.

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

Witnesses to be examined on oath.

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

Form of oath.

7. And be it further enacted and declared that every Quaker or Moravian who shall be required to give evidence in any case whatsoever, criminal or civil, shall instead of taking an oath in the usual form be permitted to make his or her solemn affirmation or declaration in the words following, that is to say: "I, A. B., do solemnly, sincerely, and truly declare and affirm," &c., which said affirmation or declaration shall be of the same force and effect in all courts of justice and other places, when by law a oath is required, as if such Quaker or Moravian had taken an oath in the usual form; and if any person making such affirmation or declaration shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing which, if

Affirmation by Quakers and Moravians.

the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such offender shall be subject to the same pains, penalties, and forfeitures to which persons convicted of wilful and corrupt perjury are or shall be subject.

Persons incompetent by reason of former convictions.

8. And be it further enacted and declared that no person shall in any case be competent to give evidence who shall have been convicted by the verdict of a jury after trial in any competent court in this colony, or in any other part of the British dominions, of perjury, or subornation of perjury, or of any crime or offence for which the punishment of death, or transportation, or infamy, or incompetency to give evidence, is or shall be provided by any law or ordinance of this colony: Provided, always, that no such conviction as aforesaid shall render any person incompetent to give evidence where the same shall previously have been quashed or set aside, or judgment thereon arrested by the sentence of any competent court or authority, or where such person shall previously have received a legal pardon for the offence of which he had been so convicted, or where, except in case of conviction of perjury or subornation of perjury, such person shall previously have endured the whole of the punishment, which, in respect of such conviction as aforesaid, he shall have been sentenced or adjudged to suffer, or such part thereof as shall not have been remitted by any competent authority.<sup>1</sup>

Restoration of competency.

Competency of accomplices.

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

Freedom from liability to prosecution of accomplices giving evidence.

10. And be it further enacted and declared that where any person who has been an accomplice, either as principal or accessory, in the commission of any crime or offence charged in the indictment, information, or complaint under trial, and who shall in any case be produced as a witness by and on the part of the prosecution, shall submit to be sworn as a witness, and shall fully answer to the satisfaction of the court all such lawful questions as shall be put to him while under examination, such person shall thereby be absolutely freed and discharged from all liability to prosecution for any such crime or offence, either at the instance of the public

<sup>1</sup> Vide Ordinance No. 14 of 1846, § 2.

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

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

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

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

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

would otherwise be competent and admissible in the trial of such accomplice on a charge of having been guilty of wilful and corrupt perjury on his examination as a witness in any such trial as aforesaid.

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

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

Competency notwithstanding consanguinity or affinity.

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

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

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

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

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

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

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

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

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

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

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

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

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

20. And be it further enacted and declared that no person shall be admitted as a witness, or be competent to give evidence, in any case in which the party against whom he is produced to give evidence shall object, and prove to the satisfaction of the court in which such case is tried, that any certain benefit will directly accrue to such person from the judgment of the court (where the case is tried without a jury), or the verdict of the jury (where the case is tried by a jury), being given in favor of the party for whom he is produced to give evidence; or that any certain disadvantage will directly accrue to such person from such judgment or verdict being given in favor of the person against whom he is produced to give evidence.<sup>1</sup>

Incompetency from interest.

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

Competency of informers.

<sup>1</sup> Vide Ordinance No. 14, 1846, § 3.

prosecution for any crime, offence, or act committed or done by such person.

Release of interest.

22. And be it further enacted and declared that no person shall in any case be incompetent to give evidence by reason of any interest which such person had or may have in the event of such case who, notwithstanding any interest of the like nature and degree, would by reason of any release of such interest or of any other legal ground be competent and admitted to give evidence in any similar case depending in any of His Majesty's courts of record at Westminster, any thing to the contrary herein contained notwithstanding.<sup>1</sup>

Injured person competent in public prosecutions.

23. And be it further enacted and declared that no person shall, in any case of prosecution for any crime or offence at the instance of the public prosecutor, be incompetent to give evidence by reason that such person has been injured, or attempted to be injured, by the commission of such crime or offence.

Injured person incompetent in private prosecutions except in summary cases, and by virtue of special enactments.

24. And be it further enacted and declared that no person shall be competent to give evidence in any case in which he shall prosecute for any crime or offence at his own instance, except where such crime or offence is and by law may be prosecuted summarily by complaint before any resident magistrate, judge of police, or justice of the peace within this colony; or except where, by virtue of any law or ordinance by which any penalty is provided for any crime or offence, it is or shall be expressly enacted and declared to be competent for any person who shall prosecute for such penalty to give evidence in such prosecution.

Privilege of professional advisers.

25. And be it further enacted and declared that no advocate, barrister, attorney, solicitor, or proctor duly admitted to practise in any court within this colony or elsewhere shall in any case be competent or legally compellable to give evidence against any person by whom he has been professionally employed or consulted, without the consent of such person, as to any fact, matter, or thing as to which such advocate, barrister, attorney, solicitor, or proctor by reason of such employment or consultation, and without such consent, would not be competent nor legally compellable to give evidence in any similar case depending in any of His Majesty's courts of record at Westminster: Provided, always, that no such advocate, barrister, attorney, solicitor, or proctor shall in any case by reason of any such employ-

<sup>1</sup> Vide Ordinance No. 14, 1846, § 3.

ment or consultation be incompetent or not legally compellable to give evidence as to any fact, matter, or thing relative to or connected with the commission of any crime or offence for which the person by whom such advocate, barrister, attorney, solicitor, or proctor has been so employed or consulted is in such case prosecuted, and which fact, matter, or thing has come to the knowledge of such advocate, barrister, attorney, solicitor, or proctor before he shall have been professionally employed or consulted for or with reference to the defence of such person against such prosecution.

26. And be it further enacted and declared that no person shall in any case be incompetent to give evidence by reason of his being nominally a party to the suit on record; provided such person shall not be individually liable to the costs of such suit, or shall have been released from such liability, and shall not have any interest in the event of such suit which would in law be sufficient to render him incompetent to give evidence therein if he had not appeared on the record as a party to such suit.

Competency of nominal parties to the record not liable to costs released from such liability.

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

Reference to oath of opposite party. Oath of supplement.

28. And be it further enacted and declared that any confession of the commission of any crime or offence which shall be proved by competent evidence to have been made by any person accused of such crime or offence, whether before or after his apprehension, whether on a judicial examination or after commitment, and whether reduced into writing or not, shall in every case be admissible evidence against such person: Provided, always, that such confession shall be proved to have been freely and voluntarily made by such person in his sound and sober senses, and without having been unduly influenced thereby; and provided, also, that when such

Judicial imposition of oath.

Admissibility of confessions by accused,

if freely and voluntarily made without undue influence;

and, if judicial,  
after due  
caution.

confession shall have been made on a judicial examination before any magistrate on any criminal charge such person shall previously, according to law, have been cautioned by the said magistrate that he is not obliged, in answer to the charge against him, to make any statement which may criminate himself, and that what he shall then say may be used in evidence against him: Provided, always, and be it further enacted and declared that no confession made on oath, and that no deposition made by any person on any judicial examination under the provisions of the sixty-first or sixty-fourth sections of the Ordinance No. 64, shall be admissible evidence in any prosecution of such person for any crime or offence other than perjury committed by him on such examination.

Conviction on  
confession,—if  
the crime have  
been proved  
*aliunde*.

29. And be it further enacted and declared that it shall be lawful and competent for any court or jury by which any person prosecuted for any crime or offence shall and may lawfully be tried, respectively, to convict such person of any crime or offence charged in the indictment, information, or complaint under trial in respect and by reason of any such confession of the commission of such crime or offence which shall be proved to the satisfaction of such court or jury, respectively, to have been made as aforesaid, although not confirmed by any other evidence: Provided, always, that such crime or offence shall by competent evidence other than the single and unconfirmed evidence of such confession be proved to the satisfaction of such court or jury, respectively, to have been actually committed.

Admissibility  
of facts dis-  
covered by  
means of inad-  
missible con-  
fession.

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

Confession not  
admissible  
against other  
persons.

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

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



suit, on the evidence of any single, competent, and credible witness.

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

Sufficiency of one witness in criminal cases,

Except in prosecutions for perjury.

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

Inadmissibility of irrelevant evidence.

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

Evidence of character when admissible.

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

Admission of facts or points in issue on the record.

37. And be it further enacted and declared that every party on whom in any case it shall be incumbent to prove any fact, matter, or thing, shall be bound to give the best evidence of which from its nature such fact, matter, or thing shall be capable; and that no evidence as to any such fact, matter, or thing shall be admissible in any case in which it was in the power of the party who proposes to give such

Necessity of best evidence of fact to be proved:

unless waived  
by consent or  
admission of  
opposite party.

evidence to produce, or cause to be produced, better evidence as to such fact, matter, or thing, except by consent of the adverse party to the suit, or when such adverse party shall by law be precluded from disputing any such fact, matter, or thing, by reason of any admission proved to have been made by such party.

Proof of ap-  
pointment to  
public office.

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

Proof of  
records and  
instruments in  
writing.

39. And be it further enacted and declared that nothing herein contained shall extend or be construed to affect, alter, or repeal any law or ordinance now in force within this colony, respecting the proof of any record, act, deed, instrument, or writing, or the effect thereof, or of any copy or extract thereof, as evidence.

Examination of  
witnesses *de  
bene esse*.

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

Admissibility,  
in criminal  
cases, of depo-  
sition at pre-  
paratory  
examination of  
witness since  
deceased, or  
kept away by  
the contri-  
vance of the  
prisoner.

41. And be it further enacted and declared that the deposition of any witness taken upon oath before any magistrate in the manner directed and required by the thirty-first section of the Ordinance No. 40, in the presence of any person who has been brought before such magistrate on a charge of having committed any crime or offence, shall be admissible in evidence on the trial of such person for such crime or offence; provided it shall be proved on oath, to the satisfaction of the court, that the informant is dead; or that he has been kept away from the trial by the means and contrivance of the prisoner, and that the deposition offered in evidence is the same which was sworn before the magistrate without any alteration.

Admissibility,  
in civil cases.

42. And be it further enacted and declared that the testimony of a deceased or absent witness who has been examined on oath on the trial of any former civil action between the

same parties shall be admissible in every case in which, and may be proved and given in evidence in the same manner in which the testimony of such deceased or absent witness would be admissible, and might be proved and given in evidence in any similar case depending in any of His Majesty's Courts of Record at Westminster.

of testimony of  
absent or de-  
ceased witness.

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

Admissibility  
of dying de-  
clarations.

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

Hear-say  
evidence.

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

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

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

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

47. And be it further enacted and declared that no witness shall in any case be legally compellable or permitted to give evidence as to any fact, matter, or thing, or as to any communication made to or by such witness, as to which, if the case were depending in any of His Majesty's

Privilege from  
disclosure of  
facts on the  
ground of

public policy,  
or from regard  
to the public  
interest.

Courts of Record at Westminster, such witness would not be legally compellable or permitted to give evidence, by reason that such fact, matter, or thing, or communication, on a principle of public policy, and from regard to public interest, ought not to be disclosed, and is privileged from disclosure.

Impeachment  
and support of  
witness' credi-  
bility.

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

Evidence in  
cases of treason  
and misprision  
of treason.

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

Repeal of  
former laws.

50. And be it further enacted and declared that from and after the passing of this ordinance, every law, ordinance, custom, usage, and practice heretofore in force within this colony by reason whereof any witness herein enacted and declared to be competent, and any evidence herein enacted and declared to be admissible or sufficient, was heretofore deemed to be incompetent, inadmissible, or insufficient, or by reason of which any witness herein enacted and declared to be incompetent, and any evidence herein enacted and declared to be inadmissible or insufficient, was deemed heretofore competent, admissible, or sufficient, shall be, and the same are hereby repealed, and declared to be of no force or effect: Provided, always, that nothing herein contained shall

extend, or be construed to affect, alter, or repeal any of the provisions and enactments of the Ordinances Nos. 19, 21, 32, 33, 38, 39, 44, 49, 50, 57, 60, 63, 64, 68.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 1st March, 1830.

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Council.

(Signed) K. B. HAMILTON,  
Clerk of the Council.

No. 73.—Sd. G. Lowry Cole.]

Ordinance for explaining, altering, and amending the Ordinance No. 40.

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

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

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

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

vessel may have passed.

or offence shall have been committed, in the same manner as if it had been actually and wholly committed in such district.

Review on the ground of rejection of evidence.

3. And be it further enacted and declared that it shall be competent for any person aggrieved by the proceedings of any inferior court in any case, to bring the same under the review of the supreme court on the ground that such inferior court has, upon the trial of such case, rejected legal and competent evidence.<sup>1</sup>

Clerks of the peace under control of attorney general

4. And be it enacted and declared that in all matters relating to or connected with any criminal proceedings instituted or intended to be instituted against any person, or with regard to any crime or offence, the clerks of the peace of the several districts of this colony, and the superintendent of police of Cape Town, shall be under the control of and bound to conform to the directions which shall and may from time to time be given to them respectively by the attorney-general.<sup>2</sup>

Repeal of sections of former ordinances authorizing preparatory examinations to be taken by superintendent of police.

5. And be it enacted and declared that from and after the passing of this ordinance the several enactments and provisions of the Ordinances Nos. 40 and 48,<sup>3</sup> whereby the superintendent of police of Cape Town, or his deputy, is authorized or required to take any preparatory examination, or to prosecute at the public instance for any crime or offence, and whereby any magistrate is required to transmit any preparatory examination to the superintendent of police, or his deputy, shall be and the same are hereby repealed; and that hereafter, the clerk of the peace for the Cape district, or some one of the clerks in the office of the said clerk of the peace appointed for that purpose by the attorney-general, shall be hereby authorized and required to take all such preparatory examinations, and to conduct all such prosecutions at the public instance, as the said superintendent of police and his deputy were heretofore authorized or required to take or to conduct.<sup>4</sup>

All such examinations to be taken by clerk of the peace.

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

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

<sup>1</sup> Vide Ordinance No. 40, § 5.

<sup>2</sup> Vide Ordinance No. 40, § 8.

<sup>3</sup> Vide Ordinance No. 48, §§ 5 & 15.

<sup>4</sup> Vide Ordinance No. 40, §§ 27 & 29.

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

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

8. And be it further enacted and declared that in every case of any such summary prosecution as aforesaid, it shall be lawful and competent for the attorney-general, or other officer who by law is entitled to prosecute at the public instance, in such court at any stage of the prosecution to appear in court and take up the prosecution of such complaint at the public instance, and thereafter to conduct the proceedings in such case as if the prosecution had been originally at the public instance; or to apply by motion to the judge or magistrate to stop all further proceedings in such case, in order that a prosecution for the same crime or offence may be instituted at the public instance in some other form or court; or until such certificate as aforesaid shall be granted to the private party prosecuting in such case, and by him be produced to such judge or magistrate; and such judge or magistrate shall, in every such case, be bound to make an order in the terms of such motion.

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

9. And be it further enacted and declared that it shall and may be lawful for the chief justice, or any judge of the supreme court, the judge of police of Cape Town, or any resident magistrate or justice of the peace, to grant warrant for the apprehension of any person on a written application setting forth the offence alleged to have been committed, and that from information taken upon oath there are reasonable grounds of suspicion against the person for whose arrest the warrant is sought, subscribed by the attorney-general, by the superintendent of police of Cape Town, or by the clerk of the peace of the district; or upon the information, to the

Warrants of apprehension by judges, resident magistrates and justices of the peace.

like effect, of any person made on oath before the judge or magistrate granting the warrant: Provided, always, that it shall not be lawful for any resident magistrate or justice of the peace to grant any such warrant except when the offence charged has been committed within the jurisdiction of such resident magistrate or justice of the peace, or except when the person against whom the warrant is so issued shall at the time when such warrant is so issued be known or suspected on reasonable grounds to be within the jurisdiction of the resident magistrate or justice of the peace issuing such warrant.<sup>1</sup>

Execution of warrants.

10. And be it further enacted and declared that every officer of the law within this colony proper for the execution of criminal warrants shall be hereby authorized and required to obey and execute every such warrant issued or endorsed by the resident magistrate, or any justice of the peace of the district in which such officer of the law has been appointed to act; and every criminal warrant issued by the chief justice, or any of the judges of the supreme court, or any resident magistrate or justice of the peace, shall have effect and may lawfully be executed anywhere within the limits of the colony or its dependencies, by any officer of the law, or by any private person to whom it shall be directed, anything contained in the Ordinances Nos. 32, 33, 40, 44, to the contrary notwithstanding.<sup>2</sup>

Arrest and verbal order to arrest, for offences committed in the presence of judges, magistrates, and justices of the peace.

11. And be it further enacted and declared that it shall and may be lawful for the chief justice, or any judge of the supreme court, the judge of police of Cape Town, or any resident magistrate or justice of the peace, who has knowledge of any crime or breach of the peace by seeing it committed himself, to arrest the offender, or by a verbal order to authorize others so to do, who shall be authorized and required to follow such offender and to execute the said order on him, out of the presence of such judge or magistrate, if he fly.<sup>3</sup>

Arrest by sheriff, police officers, and field-cornets for offences committed in their presence.

12. And be it further enacted and declared that the sheriff and his deputies, the superintendent of police and his deputies, and all field-cornets and constables, police officers, and other officers of the law proper for the execution of criminal warrants, shall be hereby authorized and required to arrest every person who shall commit any crime or breach

<sup>1</sup> *Vide* Ordinance No. 40, § 24.

<sup>2</sup> *Vide* Ordinance No. 40, § 25.

<sup>3</sup> *Vide* Ordinance No. 40, § 22.



of the peace in their presence; as also every person whom they shall have reasonable grounds to suspect of having committed any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or in which a dangerous wound is given, arson, house-breaking with intent to commit any crime, or theft of any cattle, sheep, or goat, or any other crime of equal degree of guilt with any of the crimes aforesaid; as also every person whom they shall see engaged in committing any affray, or whom they shall find attempting to commit a crime, or clearly manifesting an intention so to do.<sup>1</sup>

and on reasonable grounds of suspicion as to certain offences.

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

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

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

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

Assistance by other private persons.

15. And be it further enacted and declared that it shall and may be lawful for any private person to arrest any other person, upon reasonable suspicion that he has committed any of the crimes specified in the fourteenth section of this

Arrest by private person, in certain crimes, on reasonable

<sup>1</sup> *Vide* Ordinance No. 40, § 23.

suspicion, but at his own peril.

ordinance, or any other crime of an equal degree of guilt ; but every arrest, or attempt to arrest, made by any private person upon suspicion, shall be made at his own peril if the party so arrested or attempted to be arrested be innocent.

Arrest by private person in case of an affray.

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

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

17. And be it further enacted and declared that every person who, knowing the purpose for which any officer of the law or private person is acting, shall kill any such officer or person while attempting to make or assisting in making any arrest, or while interfering in order to suppress any affray which in virtue of the provisions of this ordinance such officer or person is authorized and required to make, or to assist to make, or to suppress, shall be deemed in law to be guilty of the crime of murder ; and that every person who shall kill any private person while attempting to make any arrest under the circumstances set forth in the fourteenth section of this ordinance, knowing the purpose for which such private person so killed was acting, shall be deemed in law to be guilty of the crime of murder if he have committed, or of the crime of culpable homicide if he be innocent of, the crime on suspicion of which the person so killed attempted to arrest him ; and that every person who shall kill any private person while attempting to make any arrest under the circumstances set forth in the fourteenth section of this ordinance, being ignorant of the purpose for which the person so killed was acting, shall be deemed in law to be guilty of the crime of culpable homicide, if he have committed the crime on suspicion of which the person so killed attempted to arrest him ; and that every person who shall kill any such officer or private person while attempting to make or assisting in making any arrest which in virtue of the provisions of this ordinance such officer or person is authorized and required to make, or to assist to make, being ignorant of the purpose for which such officer or private person so killed was acting, shall be deemed in law to be guilty of the crime of culpable homicide ; and that every person who shall kill any such officer or private person, while attempting to make an arrest in virtue of any warrant hereinbefore mentioned, which by reason of the informality

thereof shall not be in law sufficient to authorize the arrest of the person who shall kill such officer or private person, shall be deemed in law to be guilty of the crime of culpable homicide, whether he shall know or be ignorant of the purpose for which such officer or private person was acting.

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

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

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

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

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

Recognizance of witness to appear on criminal trial.

or fail so to do, it shall and may be lawful for the said magistrate to commit and detain in prison the witness so refusing or failing, until such recognizance shall have been entered into as aforesaid.<sup>1</sup>

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

21. And be it further enacted and declared that in every case in which any person charged with any crime or offence shall be apprehended and brought before any magistrate of any district, other than that in which such crime or offence is charged to have been committed, and where such magistrate shall see cause to commit such person either for trial or for further examination, it shall be lawful for such magistrate to grant warrant to commit such person either to the gaol of the district in which the crime or offence is charged to have been committed, or to the gaol of the district within which such magistrate has jurisdiction to act.

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

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

Repeal of Or-  
dinance No. 40,  
section 60.

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

GOD SAVE THE KING !

Given at the Cape of Good Hope, 15th April 1830.

By Command of His Excellency the Governor,

(Signed) JOHN. BELL  
Secretary to Government.

By Order of the Council,

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

<sup>1</sup> Vide Ordinance No. 40, § 31.

No. 74.—Sd. G. Lowry Cole.] [24th May, 1830.

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

[Repealed by Ordinance No. 3, of 1845.]

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No. 75.—Sd. G. Lowry Cole.] [9th Aug., 1830.

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

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

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No. 76.—Sd. G. Lowry Cole.] [9th Aug., 1830.

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

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

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No. 77.—Sd. G. Lowry Cole.

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

WHEREAS the office of landdrost was abolished on the 31st day of December, 1827; and whereas certain officers have been appointed to perform, respectively, the duties and functions which were formerly discharged by the landdrosts; and whereas civil commissioners have been appointed and instructed to perform divers of the said duties, but no Ordinance has hitherto been made defining the duties so to be performed by the said civil commissioners: Be it therefore enacted by his Excellency the Governor in Council, that from and after the passing of this ordinance, the civil commissioners of the districts respectively shall perform all such duties as were formerly performed by the said landdrosts, and which have not by any Ordinance been appointed to be performed by the resident magistrates or other officers, respectively; and all matters and things which have been

Civil commissioners to perform duties of landdrosts.

done and performed by the said civil commissioners in pursuance of the instructions aforesaid shall be as valid and of the same force and effect as if the same had been done and performed by virtue of this ordinance.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 13th October, 1830.

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Council,

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

No. 78.—Sd. G. Lowry Cole.] [15th Nov., 1830.

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

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

No. 79.—Sd. G. Lowry Cole.] [15th Nov., 1830.

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

[Repealed by Ordinance No. 9, of 1846.]

No. 80.—Sd. G. Lowry Cole.] [23rd Dec., 1830.

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

[Repealed by Ordinance No. 94.]

No. 81.—Sd. G. Lowry Cole.]

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

WHEREAS the trade carried on beyond the land boundaries Preamble.

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

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

2. And be it further enacted that every such licence shall be issued on paper stamped of the value of three pounds, and shall be in force for one whole year commencing from the day of the date thereof. Stamp, £3.

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





property, together with a statement, as near as may be, of the number and description of persons he intends to take with him, and which statement shall be subject to alteration by the said civil commissioner if he shall think fit; and the said statement, when approved of by the said civil commissioner, shall be signed by the person to whom the said licence is granted, and shall be kept by the said civil commissioner; and the said civil commissioner shall give the said licensed trader a certificate or certified copy of the said statement, which shall remain in the possession of the person who is left in charge of the said trader's wagons or other conveyances; and if any licensed trader shall not make such statement, or if he, or other person acting on his behalf, shall refuse to show the certified copy thereof to any justice of the peace, commissioned officer, or non-commissioned officer, field-commandant, field-cornet, or constable, on demand, who are hereby authorized and required to inspect the same, he shall and may be detained and brought before the resident magistrate of the district where the offence is committed, and shall on conviction be liable to a fine not exceeding twenty pounds and to forfeiture of his licence.

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

Penalty on omission to make statement, or on non-production of certified copy, £20, and forfeiture of licence.

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

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

Penalty, £50 and forfeiture of licence.

8. And be it further enacted that the servants and wagons or other conveyances belonging to any licensed trader, shall on their return within the colony stop at the first convenient place adjacent to the said boundaries thereof, and the said trader, or some person acting on his behalf, shall immediately report his return to the nearest field-commandant or field-cornet or to the officer or non-commissioned officer of the nearest military post, who shall forthwith proceed thither, and shall require such trader or other person as aforesaid to

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

Inquiry into disposal of fire-arms and ammunition.

produce the certificate and fire-arms of such trader; and if the number of fire-arms produced shall not amount to the number mentioned in the certificate, the person demanding production of the same shall endorse such deficiency upon the certificate and shall report the same to the civil commissioner of the district, who shall, if he think fit, institute such inquiry thereupon as he may deem requisite.

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

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

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

10. And be it further enacted that the said field-commandant, field-cornet, or military officer shall also, at the time and place aforesaid, require every such trader or other person as aforesaid to produce all persons belonging to any of the native tribes beyond the land boundaries thereof who have been brought within the said boundaries of the colony by the said trader or such other person; and to account for the absence of any who have been brought in and are not then present, and for the absence of any of the servants mentioned in his certificate, and shall make such inquiry relative to the matter aforesaid as he shall think proper; and the said field-commandant, field-cornet, or military officer shall endorse on the certificate the names and descriptions of those persons who have been produced, and the names and descriptions of those who are absent, if any, together with the alleged cause of their absence; and if any such trader or other person as aforesaid shall not produce all such persons as aforesaid, or shall not truly account for the absence of such as are not produced, he shall incur and be liable to the payment of a fine not exceeding fifty pounds.

Penalty on non-production or untrue account £50.

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

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

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

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

Agreement beyond the boundaries of the colony void.

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

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

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

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

15. And be it further enacted that it shall and may be lawful for all officers and non-commissioned officers of His Majesty's land service, and all civil commissioners, resident magistrates, clerks of the peace, field-commandants, field-cornets, and constables, and they are hereby required, to stop all wagons or other conveyances proceeding towards the said land boundaries of the colony which they suspect are intended to be employed in trading beyond the same, and to demand of the person in charge thereof to see his licence; and if the same be not produced and no good reason given for the non-production of the same they shall proceed to search all such wagons or other conveyances; and if they find merchandise which they have reason to suspect is intended to be carried beyond the said boundaries of the colony, they shall detain the wagons or other conveyances together with their contents, and bring the same with the party in charge thereof before the nearest resident magistrate, to be dealt with according to law.

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

Detention of wagon and suspected merchandise.

16. And be it further enacted that it shall not be lawful for any of his Majesty's subjects to give, sell, or barter within the boundaries of this colony to any person usually residing in Africa beyond the same, any fire-arms, gunpowder, or other munition of war unless by written permission to that effect signed by the secretary to government, under a penalty not exceeding one hundred pounds for each offence.

Penalty on sale, &c., in the colony, to persons usually residing beyond the boundary, of arms &c., £100.

Jurisdiction of resident magistrate, and of circuit court.

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

Licence to traffic at border fairs.

Repeal of provisions of ordinance No. 23.

17: And be it further enacted that all offences against any of the provisions of this ordinance shall be cognizable before the resident magistrate of the district where the offences are committed respectively; and any proceedings against any surety of any trader, licensed by this ordinance shall be cognizable and triable at any circuit court held in the district where the licence to such trader was granted; and all fines and penalties imposed by this ordinance shall go one half to the colonial treasury and the other half to the informer.

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

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

GOD SAVE THE KING!

Given at the Cape of Good Hope, 23d December, 1830.

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Council,

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

No. 82.—Sd. G. Lowry Cole.]

Ordinance for altering and amending the Laws and Regulations relating to Medical Practitioners and Apothecaries in this Colony.<sup>1</sup>

Preamble.

WHEREAS it is expedient to alter and amend the laws and regulations relative to medical practitioners and apothecaries in this colony: Be it therefore enacted by His Excellency the

\* These fairs no longer exist.

<sup>1</sup> Repealed by Ordinance No. 12, 1836; but this latter Ordinance not having been confirmed by the Home Government within three years of its enactment has become of no effect; and consequently Ordinance No. 82, has been revived, and is the present medical law.

Governor in Council, that from and after the 1st day of January, 1831, the Proclamation of the 26th September, 1823, shall be repealed, and the same is hereby repealed accordingly.

Repeal of former proclamations.

2. And be it further enacted that it shall and may be lawful for the governor, or other person administering the government of the colony for the time being, to appoint a committee consisting of a president and such number of members, being of the medical profession, as he shall think proper, together with a secretary, under the style and description of "The Colonial Medical Committee," who shall superintend the civil medical concerns of this colony; and it shall be lawful for the governor, or other person administering the government as aforesaid, to remove the said members or any of them, and upon the removal, death, or resignation of the said members or any of them to appoint such other person or persons as he shall think fit.

Appointment of colonial medical committee.

3. And be it further enacted that no person shall practise as physician, surgeon, accoucheur, surgeon-apothecary, apothecary, chemist, or druggist, in this colony without taking out a licence to that effect from the governor, or other person administering the government as aforesaid; and previously to obtaining such licence any person wishing to practise as aforesaid shall submit his diploma or other certificate of his being duly qualified to practise such branch or branches of the medical profession as he shall profess to exercise, for the examination and approval of the said committee: Provided, always, that it shall be lawful for any medical officer of His Majesty's land or sea service to exercise his profession without taking out such licence as aforesaid.

Licence to medical practitioners, on exhibition of diploma to committee.

4. And be it further enacted that any person who has served as apprentice for a period not less than four years to any regularly licensed apothecary in this colony may obtain a licence to practise as an apothecary on passing an examination before the said committee and to the satisfaction of the members thereof.

Exception as to medical officers in Her Majesty's Service.

Licence to apothecaries after apprenticeship in the colony, and examination.

5. And be it further enacted that any person who shall practise any of the aforesaid branches of the medical profession, without such licence as aforesaid, shall on conviction be liable to a penalty of fifty pounds for each offence.

Penalty on practice without licence, £50.

6. And be it further enacted that any merchant, trader, or dealer who shall import into this colony any drugs or medicines, whether the same be patent or not, and shall vend the same without their having been first submitted to the examination of the said committee and a certificate obtained from

Penalty on sale of drugs by merchants, &c., unless submitted to examination of committee, £50.

them of their being of good quality, shall incur and be liable to a penalty of fifty pounds for each offence.

Precautions as to sale and custody of poisons.

7. And be it further enacted that all apothecaries and venders of medicines shall label all vessels or packages containing mineral acids, preparations of arsenic, opium, and other powerful medicines, commonly denominated poisons, with the word "POISON," and keep the same in secure places under lock and key, and shall take care that they be not sold in dangerous doses or quantities without a written permission from a magistrate, or prescription from a regular physician or surgeon; and if it shall appear that any apothecary or vender of medicines shall suffer such poisonous or dangerous medicines to be kept without due care, or shall sell or keep for sale in his possession any medicines or drugs of bad quality, he shall be liable on conviction before any competent court to a penalty not less than five pounds and not more than fifty pounds, one half of which shall go to the informer; and he shall further become liable to forfeiture of his licence.

Penalty on want of due caution as to poisons, and on sale of drugs of bad quality, not less than £5, nor more than £50: and liability to forfeiture of licence.

Preparations of medicines by Pharmacopœia Londinensis, unless otherwise directed.

8. And be it further enacted that all apothecaries, chemists, and druggists shall prepare their medicines according to the Pharmacopœia Londinensis, unless otherwise directed by the prescribing medical practitioner.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 23d December, 1830.

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Council,

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

No. 83.—Sd. G. Lowry Cole.]

[5th May, 1831.

Ordinance for altering and amending the Law relative to the qualification of Persons liable to serve on Grand and Petit Juries, and to the mode of making out and returning Lists of the same.

[Repealed by Ordinance No. 84.]

No. 84.—Sd. G. Lowry Cole.]

Ordinance for altering and amending the Law relative to the Qualification of Persons liable to serve on Grand and Petit Juries, and to the mode of making out and returning Lists of the same. <sup>(1)</sup>

WHEREAS an Ordinance (No. 83,) was passed by His <sup>Preamble.</sup> Excellency the Governor in Council, bearing date the fifth day of this present month of May, for altering and amending the law relative to the qualifications of persons liable to serve on grand and petit juries, and to the mode of making out and returning lists of the same; and whereas the said Ordinance as published in the Government Gazette of the thirteenth day of May, 1831, is inaccurate and erroneous in certain respects, and it is expedient that the same should be repealed; and whereas, under and by virtue of the provisions of the Ordinance No. 41, many persons are liable to be summoned to serve on juries who reside at great distances from the towns wherein the courts which they are respectively summoned to attend are held; and whereas the summoning and attendance of such persons to serve on juries as aforesaid cause not only much hardship and inconvenience to them but also great expense to the public; and whereas it is expedient in this and certain other respects to alter, amend, and declare the law relative to the qualifications and liability of persons to serve on grand and petit juries: Be it therefore enacted by His <sup>Repeal of former ordinances.</sup> Excellency the Governor in Council, that the Ordinances No. 41 and No. 83 shall be and the same are hereby repealed; and that from and after the passing of this ordinance, every free man residing within this colony, except as is hereinafter excepted, between the ages of twenty-one years and sixty <sup>Age of jurors, from 21 to 60 years.</sup> years who shall possess the qualifications hereinafter provided, shall be qualified and liable to serve as a juror in the supreme court and circuit courts of this colony.

2. Provided, always, and be it enacted that all judges of <sup>Exemptions from service on juries.</sup> the supreme court, all clergymen in holy orders, all persons licensed to teach or preach in any congregation assembled for religious worship, all advocates actually practising, all attorneys and proctors duly admitted by the supreme court or court of vice-admiralty and actually practising, all officers of any courts of superior or inferior jurisdiction exercising the duties of their respective offices, all gaolers and keepers of

(1) *Vide* Ordinance No. 1, 1843; Ordinance No. 2, 1845; and Ordinance No. 3, 1851.

houses of correction, all persons duly admitted to practise as physicians, surgeons, surgeon-apothecaries, apothecaries, or accoucheurs and actually practising, all officers in His Majesty's army and navy on full pay or in active employment, all persons employed in the civil service of His Majesty's government in this colony, and all field-commandants, field-cornets, sheriffs' officers, constables, and church-clerks, except as hereinafter excepted, shall be and are hereby absolutely freed and exempted from being returned as jurors and from serving upon any jury whatsoever, and shall not be inserted in the lists to be prepared by virtue of this ordinance as hereinafter mentioned: Provided, further, that no man who has been or shall be attainted of any treason or felony or convicted of any crime that is infamous, unless he shall have obtained a free pardon, nor any man who is under outlawry or excommunication shall serve on juries on any account or on any occasion whatsoever.

Disqualifications.

Qualification of grand jurors—£3,000 in land and houses.

3. And be it enacted that every man qualified and liable in manner hereinbefore provided to serve as a juror who shall reside in Cape Town or the district thereof or the Cape district, and who shall be the proprietor of land and houses of the value of three thousand pounds sterling situated within this colony, shall be qualified and liable to serve on any grand jury which shall be lawfully empannelled in the supreme court.

Qualification of petit jurors—possession of land of annual value of £1 17s. 6d.:—liability to payment of taxes in Cape district, to amount of 30 shillings, in other districts, 20 shillings.

4. And be it enacted that every man qualified and liable in manner hereinbefore provided to serve as a juror and not being qualified and liable to serve on grand juries, who shall possess any land situated within this colony held on perpetual quitrent or on loan, or for which he is liable to pay an annual rent of not less than one pound seventeen shillings and sixpence sterling, or freehold land of the same annual value, or who shall be liable to pay a sum not less than thirty shillings sterling if residing in the Cape district, or residing in any other district shall be liable to pay a sum not less than twenty shillings sterling for or on account of taxes now or hereafter to be imposed by any law or ordinance, or who shall be the son of any person possessing such property as aforesaid, or of any person liable to pay such taxes as aforesaid, shall be qualified and liable to serve on any petit jury which shall in the supreme court or any circuit court be impannelled within the district in which he shall reside.<sup>1</sup>

Being the son of person possessed of such qualification.

<sup>1</sup> Repealed by Ordinance No. 85, but *vide* Ordinance No. 1, 1843.



5. And be it enacted that on or before the first day of July next, and on or before the first day of February in every subsequent year, the collector of taxes in Cape Town and the civil commissioner in each district of the colony shall prepare and make out a true list of every man residing within such part of his district as is hereinafter specified who shall be qualified and liable to serve on juries as aforesaid, with the christian and surnames written at length, the true place of abode, the title, quality, calling or business, and the nature of the qualification of every such man in the proper columns of the form of the jury list set forth in the schedule hereunto annexed.

Jury lists to be made out by the 1st February in every year.

6. And be it enacted that the collector of taxes in Cape Town and the district thereof and civil commissioner of the Cape district, or such other officer as shall by law be required to make up and return annually to the sheriff of this colony, lists of the names of such persons within the places as aforesaid as are or shall be by law qualified and liable to serve on petit juries, shall mark the words *grand juror* against the names of such persons in the said lists as are by this ordinance or shall be hereafter declared to be qualified and liable to serve as grand jurors.

Addition of the words 'Grand juror' to the names of persons duly qualified in the jury list for the Cape district.

7. And be it enacted that the said collector of taxes and each civil commissioner shall on or before the first day of July next, or as soon after as conveniently may be, and on the first day of February in each subsequent year, cause a true copy of such list to be affixed on the principal door of every church, chapel, or other place of public worship, and of every court-house within such portion of his district as is hereinafter mentioned, having subjoined thereto a notice stating that all objections to the list will be heard by the resident magistrate of the district in the present year within twenty-one days after such list shall have been so affixed; and in every subsequent year upon the twenty-first day of the said month of February at the place where such magistrate usually holds his court. And the collector of taxes or civil commissioner shall sign his name at the foot of such copy, and shall likewise keep the original list or a true copy thereof to be perused by any of the inhabitants of his district at all reasonable times without any fee or reward, to the end that notice may be given of men qualified who are omitted, or of men inserted who ought to be omitted out of such list; and the said collector of taxes or civil commissioner shall further transmit to each field-cornet within such

Copies of lists affixed on church and court house doors, &c.

Publication of lists in field-cornetries.

portion of his district as aforesaid a similar list of every man residing within the field-cornetcy of such field-cornet, and liable to serve as a juror; and the said field-cornet shall cause the same to be duly affixed and published therein also.

Court for the examination and purification of lists on 21st February of each year.

8. And be it enacted that upon the twenty-first day after the publication of the list in the present year, and upon the twenty-first day of February in every subsequent year, the resident magistrate in each district shall hold a court for the purposes of this ordinance, and the collector of taxes and the civil commissioners of each district respectively shall transmit to the resident magistrates at the said courts the said lists; and the said resident magistrates respectively shall at the said courts, upon proof to their satisfaction by the oath or affidavit of the party complaining or of any other person, reform all errors which may have been committed by omission or otherwise in preparing the said lists, by improperly marking any unqualified person, inserting the name of any person not qualified or liable, or by improperly omitting the name of any person qualified and liable to serve on juries as aforesaid; and shall also strike out of the said lists the names of all persons therein inserted who shall be proved by oath or affidavit as aforesaid, or who on personal examination by the said magistrate shall be found to be disabled from serving on juries by mental imbecility, or any permanent bodily infirmity or defect.

Formation of "jurors' books."

9. And be it enacted that after the said lists have been reformed as aforesaid the resident magistrates shall respectively return them to the said civil commissioners and collector of taxes, who shall forthwith transmit the same to the sheriff of the colony at Cape Town, and the said sheriff shall cause the same respectively to be fairly and truly copied in a book to be called "The jurors' book of the district of \_\_\_\_\_" (inserting the district): and the said lists shall be used until the return of new lists shall be made to the said sheriff in manner hereinbefore provided: Provided, always, that it shall and may be lawful for the sheriff, and he is hereby required, to comprise the lists of Cape Town and the district thereof and of the Cape district in one and the same list, to be entered in one and the same book, to be called "The jurors' book of the Cape district."

Exemption of persons residing more than 25 miles from Cape Town: or

10. And be it enacted that no person residing in the Cape district whose place of abode shall be situated at a greater distance from Cape Town than twenty-five miles, or if in any

other district shall be situated at a greater distance from the town or place at which the circuit court of such district shall be held than the distance of six hours' travelling on horseback, or any other number of hours' distance which shall hereafter be fixed and specified by His Excellency the Governor in any proclamation by him to be issued for such purpose, shall be liable to be returned by the collector of taxes or civil commissioner as a juror or summoned to serve on a jury: Provided, always, that if any person qualified to serve on juries residing beyond such distance as aforesaid shall signify to the collector of taxes or civil commissioner respectively his desire to have his name continued on the jury list, it shall be lawful for the collector of taxes or civil commissioner so to continue his name, and the sheriff shall summon such person in his turn.

more than 6 hours' travelling from the town where a circuit court is held.

11. And be it enacted that when it shall be made to appear to the resident magistrate at any court so to be holden as aforesaid that any corn, wine, or cattle farm is cultivated or managed or the cultivation or management thereof superintended jointly by any person and his son or sons, being all qualified and liable to serve on juries and residing on such farm, then and in every such case all the said persons shall not be liable to be summoned to serve on juries at the same session of the supreme court or of any circuit court; but one of the said persons at all times shall in his turn be left unsummoned, and shall not be liable if, notwithstanding hereof, he shall be so summoned, to any penalty for failing to attend before any such court pursuant to such summons.

Rotation, in service on juries, of father and son or sons, jointly managing a corn, wine, or cattle farm.

12. And be it enacted that when it shall happen at any session of the supreme court or of any circuit court for the trial of criminal cases, that nine men qualified and liable to serve on juries in such court shall not have been summoned or shall not appear or shall not remain as fair and indifferent after all just cause of challenge, then and in every such case the sheriff or his deputy shall when commanded so to do by any order made or writ issued by such court for that purpose summon and return so many men of those present in or within the precincts of the said court, or summon and return so many men residing or being at the time in the vicinity of the said court, or of the town or place in which it is held, being qualified and liable to serve on juries, as shall be necessary to make up the lawful number of jurors; and every such person so summoned and returned shall, notwithstanding of

In case of a deficiency of jurors, return of persons present or in the vicinity of the court, to make up the number.

his being employed in the civil service of His Majesty's Government, or of his holding the office of field-cornet or church clerk (if he shall consent to serve), be qualified to serve on any jury which shall be impanelled during the said session of such court.

Fine, not exceeding £10, on jurors not attending pursuant to summons.

13. And be it enacted that if any man having been duly summoned by the said sheriff or his deputies under and by virtue of any rule, order, or writ made or issued by the supreme court or any circuit court, to attend before any such court to serve as a juror shall not attend pursuant to such summons, or being thrice called shall not answer to his name, or after his appearance shall wilfully withdraw himself from the said court, unless he shall have been adjudged by the said court to be disabled or disqualified, then and in every such case it shall and may be lawful for the said court to set such fine upon every man so making default (unless some reasonable excuse shall be proved by oath or affidavit), as the court shall think meet, not exceeding the sum of ten pounds sterling.

Simon's Town within Cape district; and Port Elizabeth within Uitenhage.

14. And be it enacted that for the purpose and under the provisions of this ordinance the former residency and district of Simon Town shall be deemed and taken to be within the Cape district; and the township of Port Elizabeth shall be deemed and taken to be within the district of Uitenhage.

Provision for Sundays and holidays.

15. And be it enacted that if any of the days mentioned in this ordinance shall happen to be a Sunday or holiday, then any thing herein required to be done on any such day shall be done on the first lawful day following.

Return of true bill by grand jury in the Supreme Court.

16. And be it enacted that no person shall be put on trial on any indictment at any criminal session of the supreme court, unless the bill of such indictment shall first have been presented to a grand jury, and shall have been returned by them "a true bill."

Number of grand jurors.

17. And be it enacted that every such grand jury shall consist of not more than seventeen men, and not less than nine men, qualified and liable to serve on grand juries, in manner hereinbefore provided.

Use of old lists until completion of lists under this ordinance.

18. And be it enacted that until the list of jurors hereinbefore provided to be made up and transmitted to the sheriff of this colony shall be so made up and transmitted, the said sheriff shall and may, and he is hereby required, whenever it shall be necessary for him to summon any jury to take the names of the jurors to be summoned from the lists of jurors

which have been transmitted to him under the provisions of the said Ordinance, No. 41, any thing to the contrary herein contained notwithstanding.

## FORM OF JURY LIST.—SCHEDULE.

Form of jury list.

Christian and Surname at full length.	Place of Abode.	Title, Quality, Calling or Business.	Nature of Qualification.

GOD SAVE THE KING !

Given at the Cape of Good Hope, 14th May, 1831.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Council,

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

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No. 85.—Sd. G. Lowry Cole.] [8th June, 1831.

Ordinance for altering and amending the Ordinance No. 84.

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

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No. 86.—Sd. G. Lowry Cole.]

Ordinance for establishing and regulating a new Savings Bank in the Colony of the Cape of Good Hope.<sup>1</sup>

WHEREAS, at a public meeting of certain persons, inhabitants of this colony, duly holden at the Commercial Hall in Cape Preamble.

<sup>1</sup> Amended by Ordinance No. 10, 1848.

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

Establishment  
of The Cape of  
Good Hope  
Savings Bank  
Society.

Constitution of  
the Society.

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

Elected vice-  
presidents and  
trustees to be  
first vice-pre-  
sidents and  
trustees.

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

persons who, at the meeting aforesaid, were elected to be the managers of the said society, and whose names are inserted in the schedule hereunto annexed, marked B, and all such householders residing in Cape Town or within eight miles thereof as shall at any time hereafter be elected to be managers of the said society, at any general meeting of the said society holden in manner hereinafter provided, or by the committee of management hereinafter provided, at any general meeting thereof, and who shall consent to accept such office, shall be the managers of the said society.

Election of managers.

4. And be it enacted that the persons hereinbefore provided and declared to be the vice-presidents and directors, and all others who shall hereafter be duly elected to be the president, vice-presidents, and directors of the said society, shall continue in office as such until the election of other persons to the said office in manner hereinafter provided; and that the persons hereinbefore provided and declared to be, and all others who shall hereafter be duly elected to be, the managers of the said society shall continue in office as such so long as they shall be householders and shall reside in Cape Town, or within eight miles thereof: Provided, always, that nothing herein contained shall extend or be construed to prevent any president, vice-president, director, or manager from resigning his said office on giving seven days' notice of his intention so to do to the committee of management, by writing delivered at the place where the business of the society is for the time transacted, to any officer or manager of the said society in attendance thereat; and provided, also, that nothing herein contained shall extend or be construed to prevent any president, vice-president, director, or manager from being removed from his office by any general meeting of the society in manner hereinafter provided.

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

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

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

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

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

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

Depositors to receive the whole benefit of money deposited. money in the said bank shall respectively have and receive the whole benefit of the money therein deposited, and of the produce thereof, save and except only so much as may from time to time be required to defray such salaries, allowances, and other necessary expenses as shall in manner hereinafter provided be allowed and expended for the charges of managing the said bank, and for the remuneration of such persons as may be necessarily employed in transacting the business thereof, not being presidents, vice-presidents, directors, or managers of the said society: Provided, always, that nothing herein contained shall extend or be construed to prevent any manager of the said society, not being a member of the committee of management, from transacting business with the said bank.

Competency of managers to transact business with the bank.

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

Investment of moneys deposited.

Return of deposits.



8. And be it enacted that it shall and may be lawful to and for the said society to conduct and manage the affairs and proceedings thereof by and through a committee of management, which shall consist of the president, the vice-presidents, and the directors of the said society for the time being, and of ten of the managers thereof to be elected out of the whole body of managers in manner hereinafter provided, and that any seven or more of the members of the said committee (of whom three at the least shall be vice-presidents or directors) shall form a quorum, and shall be competent to do and perform all matters and things which may under and by virtue of this ordinance be done and performed by the said committee, and that the vote or resolution of the major part of such quorum shall in all cases be deemed to be and shall have effect as the vote or resolution of the committee, and that, in the absence of the president, the eldest vice-president present, and in the absence of the vice-presidents the eldest director present, shall preside at the meetings of the said committee; and that in any case in which the votes or opinions of the members of the said committee shall be equally divided the person who shall at the time preside at the meeting thereof shall have a casting vote; and that whenever it shall be necessary for the said committee to execute any deed or instrument in writing such deed or instrument shall be signed in name of the committee by a quorum thereof, or by some two members thereof, appointed for that purpose by such committee, and every such deed or instrument signed in manner herein provided shall have the same force and effect in law as if it had been signed by all the members of the committee of management.

Composition of  
committee of  
management.

Execution of  
instruments by  
quorum of  
committee.

9. And be it enacted that all moneys, goods, and effects whatsoever, and all securities for money, or other obligatory instruments, and all evidences, muniments, and all rights and claims whatsoever belonging to or had by the said society shall be vested in the said committee of management for the time being for the use and benefit of the said society, and of the depositors in the said bank, and their representatives respectively, according to their several claims and interests; and also shall, for all purposes of action or suit as well criminal as civil in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the committee of management of the said society for the time being,

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

Authority of  
committee to  
sue and be  
sued.

without further description; and such committee shall and they are hereby authorized to bring or defend or cause to be brought or defended, any action or suit touching or concerning any of the property, rights, or claims aforesaid belonging to the said society, in the name of the "Committee of Management of the Cape of Good Hope Savings Bank Society," without specifying the names of the members thereof, and without other description; and no suit or action shall be discontinued or abate by reason of the death or removal from the committee of all or any of the members thereof, but the same shall and may be proceeded in by the succeeding committee of management, any law, usage, or custom to the contrary notwithstanding; and such succeeding committee shall pay or receive like costs as if the action or suit had been commenced by them for the benefit of or to be reimbursed from the funds of the said society.

Ordinary meet-  
ings of com-  
mittee.

10. And be it enacted that meetings of the said committee shall and may be holden at their usual place of business so often as shall be found to be necessary, or as shall be appointed by any rule or regulation duly made as hereinafter provided, for the purpose of transacting the ordinary business of the society, according to the subsisting rules and regulations thereof: Provided, always, that the said committee at such ordinary meetings shall not have power or authority to repeal or alter, or to do or cause to be done, any matter or thing which shall be in contravention of any of the existing rules or regulations, or to make any new rules or regulations for the management thereof, or to expend or authorize the expenditure of any of the funds of the society to any extent, or for any purpose to or for which such expenditure shall not have been previously authorized by a general meeting of the society, or of the committee of management. And be it

Monthly gene-  
ral meetings.

further enacted that a general meeting of the committee of management shall be holden at the place aforesaid on the first Thursday of every month at the hour of eleven o'clock in the forenoon, and that it shall be lawful for the president, or any two of the vice-presidents or directors, at any time, to call a general meeting of the committee of management by written notices thereof, specifying the purpose for which such meeting is called, delivered to or at the dwelling-houses or places of business of such members thereof as shall be in Cape Town or within eight miles thereof, not less than twelve hours before such meeting shall be holden.

11. And be it enacted that it shall and may be lawful for the committee of management, at any general meeting, to make and establish all necessary and lawful rules and regulations for the management of the said bank and the affairs of the said society as to them shall seem fit, and as shall not be inconsistent with the provisions of this ordinance, and to enforce the observance of the same by any member or officer of the said society by the imposition of reasonable fines, to be paid to and for the benefit of the said society, not exceeding for any one default the sum of one pound sterling; and the said rules and regulations or any of them to repeal, alter, and amend from time to time, as occasion may require:

Provided, always, that all such rules and regulations and every repeal or alteration or amendment thereof shall be entered in a book to be kept by some member or officer of the said society to be appointed for that purpose, and which shall be open at all reasonable times without fee or reward for the inspection of any member or officer of the said society or person making deposits in the said bank; and such rules and regulations, and also any repeal, alteration, or amendment of the same or of any part thereof, shall be fairly transcribed, and such transcript shall be deposited with the clerk of the court of the resident magistrate of Cape Town, who shall forthwith enrol and deposit the same among the records of the said court, and give to the said committee a certificate thereof, without fee or reward; and provided, also, that no such rule or regulation or repeal or alteration or amendment shall have any force or effect until the same shall be entered, transcribed, enrolled, and deposited as aforesaid.

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

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

Framing of rules and regulations.

Entry of rules in a book open for inspection.

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

Force of rules and regulations.

Appointment of officers.

Payment of expenses.

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

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

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

Election of managers by committee at a general meeting thereof.

15. And be it enacted that it shall and may be lawful to and for the committee of management for the time being, at any general meeting thereof, to elect as managers all such good and lawful men, being householders residing in Cape Town or within eight miles thereof, as they shall think fit, and who shall signify in writing their acceptance of the said office; and upon the death, resignation, or removal from office or departure from this colony of any president, vice-president, or director, or of any of the other members of the committee of management, to elect some fit, proper, and qualified person in his stead: Provided, always, that in the event of three or more vacancies in the committee of management occurring by reason of any of the causes aforesaid at one and the same time, it shall not be lawful for the committee to elect any person to fill up the said vacancies, but

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

such committee shall and may call a general meeting of the said society in manner hereinafter provided, at which meeting fit, proper, and qualified persons shall be elected to fill up the said vacancies; and provided, also, that in the event of so many vacancies in the committee of management occurring by any of the causes aforesaid that there shall not remain a quorum of the said committee willing to act as such, it shall be lawful for any member of the said committee, or for any five managers of the society, to call a general meeting thereof in like manner as it is hereinafter provided that such general meetings may be called by the said committee, at which meeting, fit, proper, and qualified persons shall be elected to fill up the said vacancies; and provided, also, that the ten managers to be elected members of the first committee of management of the said society shall be elected at a general meeting of the society, to be holden for that purpose within fifteen days after the publication of this ordinance in the Government Gazette of this colony.

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

Election of first committee.

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

Mode of calling general meetings of the society.

17. And be it enacted that a general meeting of the said society shall be publicly holden in the month of January in each year, at some convenient time and place in Cape Town to be appointed for that purpose by the committee of management, fourteen days' previous notice whereof shall be given by the said committee by advertisement in the Government Gazette of this colony, and at such general meeting the said committee shall lay before the said society a report of the transactions of the society and of the state of the accounts thereof, and shall furnish to the said meeting all such other information as shall be required and which the major part of the members then present shall consider to be proper to be given; and that at such annual general meeting the managers of the said society and the members of

Annual general meeting in January of each year.

Report of transactions and state of accounts of the society.

Election of committee, &c.

Proceedings in case of non-election.

Power of the members at general meetings.

the committee of management then present, shall elect a president, five vice-presidents, and ten directors for the ensuing year, and shall also elect ten managers to be members of the committee of management for the ensuing year; Provided, however, that if such election as to all or any of the said officers shall not take place, then the persons last in office as president, vice-presidents, directors, or members of the committee of management and to whom a successor in office shall not be chosen shall respectively continue in their said offices for the ensuing year.

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

thereof, or in writing, and delivered at the usual place of business of the committee of management to some officer or manager in attendance thereat; and where such motion shall be to remove any person from office, then such previous written notice thereof shall also be either delivered to such person or left at his dwelling-house; and provided, also, that every new rule or regulation and every repeal, alteration, or amendment of any subsisting rule or regulation established or made by any such general meeting shall be entered, transcribed, enrolled, and deposited in like manner as it was hereinbefore provided that any rules, regulations or repeals, alterations, or amendments thereof made by the committee of management should be entered, transcribed, enrolled, and deposited, and no rule or regulation, or repeal, alteration, or amendment thereof made at any general meeting of the said society shall have any force or effect until the same shall be entered, transcribed, enrolled, and deposited as aforesaid.

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

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

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

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

other business of the said society as shall be committed to them by the said committee.

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

21. And be it enacted that it shall and may be lawful for any depositor in the said bank at the time of making any deposit to declare to the managers who shall receive such deposit, or at any time afterwards to declare to the managers who shall for the time be in attendance at the usual place of business of the said society for the purpose of transacting the business thereof, in what manner and to and amongst what persons the said depositor will have the amount of his or her deposits and the produce thereof distributed by the committee of management in the event of his or her decease without making any other legal disposition of the same; and the said committee shall cause every such declaration to be entered in a book to be kept by them for that purpose, and to be signed by the said depositor or by some one for and on behalf and by authority of the said depositor, and in his or her presence and in the presence of and attested by two or more of the managers of the said bank; and the said declaration so made, entered, and attested shall be valid and effectual in law as the will of the said depositor respecting such property, and the said committee are hereby authorized and required, and upon due proof of the decease of such depositor as aforesaid and provided no other legal disposition of such property by the said depositor shall be produced, and after the payment of the just debts of the said depositor, to administer and distribute the same according to such declaration any law or usage of the colony to the contrary notwithstanding. And be it further enacted that such administration and distribution of the said committee shall be entirely free and discharged from all stamps and government fees and duties whatsoever. And be it further enacted that the managers of the said society who shall at any time receive a deposit from any person then for the first time making a deposit in the said bank shall inform such person that he or she may make and shall inquire whether such depositor is willing to make such declaration as aforesaid.

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

22. And be it enacted that in case any depositor in the said bank shall die leaving a sum of money in the said bank which with the interest due thereon shall not exceed in the whole the sum of £50, it shall and may be lawful to and for the said committee of management, and they are hereby authorized and required, provided that the said deceased depo-



ditor shall have made no such declaration as aforesaid, to cause public notice to be given forthwith in the Government Gazette of this colony of the death of such depositor, of the amount due to him at the time of his death, and of the period fixed for payment thereof, which period shall be fixed according to the circumstances of the case at the discretion of the said committee. And if no will of such depositor shall be proved before the period so fixed, it shall and may be lawful for the said committee at any time thereafter, and after paying the just debts of such depositor, to pay and divide such money as aforesaid, by, and with the consent of the attorney-general of this colony, to and among such person or persons as shall appear to him and them to have the best claim thereto; and every such payment shall be a valid and effectual discharge against any demand or claim made upon the funds of the said society or upon the said committee or upon any member of the said society by any other person or persons as being the lawful representative or representatives of such depositor; and such person or persons so claiming as aforesaid shall have their remedy by recourse against the person or persons who shall have received such payments, and not otherwise; and such administration or distribution by the said committee shall be entirely free and discharged from all stamps and government fees and duties whatsoever: Provided, always, that in case no claims be made on any such money as aforesaid, or if made shall not be admitted by the said committee, or by the determination and adjudication of one of the judges of the supreme court or of the resident magistrate for Cape Town made in manner hereinafter provided, then and in every such case such money shall remain under the administration of the said committee, and the interest thereof shall be applied for the general purposes of the said society, until further provision be made for the application and disposal of such money by any law for that purpose to be hereafter made and provided.

23. And be it enacted that in case any difference shall arise between and amongst the managers of the said society, or between the said managers or any person concerned in the management of the said society and any depositor in the said bank, or any executor, administrator, next of kin, or any party claiming as such, or otherwise, to be entitled to the effects of any deceased depositor in the said bank, then and in every such case the matter so in dispute shall be referred

Reference of differences between managers, or between committee of management and other persons to the arbitration of a judge of the supreme court,

or resident  
magistrate of  
the Cape dis-  
trict.

to the summary decision of such one of the judges of the supreme court, or the resident magistrate of the Cape district as shall be mutually agreed upon by the parties in dispute; and in case the parties shall not mutually agree thereon then to such judge or magistrate aforesaid as shall be determined on by the committee of management (such judge or magistrate being willing to accept the said reference); and the said judge or magistrate is hereby authorized to inquire and determine the said matter in dispute, and also to adjudge by whom the costs and expenses of the said reference shall be paid, and his determination and adjudication on the premises shall be final and conclusive, and binding on the said parties to all intents and purposes whatsoever.

Establishment  
of branch  
banks.

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

Repeal of pro-  
clamation of  
11th October,  
1822.

25. And be it enacted that from and after the publication of this ordinance in the Government Gazette of this colony, the proclamation of the 11th October, 1822, shall be and the same is hereby repealed, and the branch opened in the discount bank, under and by virtue of the provisions of the said proclamation shall thenceforth cease and be discontinued, and that all accounts relating to deposits of money made by any person in the said branch shall within one month from and after the publication of this ordinance in the Government Gazette of this colony be adjusted and settled, and that all balances which shall be found or appear to belong to any person or persons in respect to any such deposits or any interest accruing thereon, together with all books, accounts, documents, and vouchers relating or appertaining thereto shall at the expiration of the said period of one month be transferred to the discount bank, and the president and directors of the said bank shall cause accounts to be

opened in the books of the said bank in the names of the persons to whom such balances shall be found or appear to belong respectively, and shall in such accounts give credit for such balances to such persons respectively: Provided, always, that after such balances shall have been transferred as aforesaid, no interest shall be allowed thereon by or may lawfully be claimed or demanded from the said discount bank.

SCHEDULE A, SEC. 3,

President:

Vice-presidents: The Hon. Sir John Truter, the Hon. Lieut. Colonel John Bell, the Hon. J. W. Stoll, Esq., Anthony Olyphant, Esq., J. Smuts, Esq. First vice-presidents and trustees.

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

SCHEDULE B. SEC. 3.

Managers: C. Ludwig, Advocate Cloete, Advocate Brand, Advocate de Wet, Advocate Hofmeyr, G. H. Maasdrorp, J. F. Dreyer, F. Collison, C. M'Kenzie, G. J. Vos, G. Thompson, A. Thomson, H. Murphy, W. Hayward, A. de Smidt, J. H. Tredgold, H. Buckton, R. Hoets, H. E. Rutherford, D. F. Lehman, jun., W. Hawkins, W. Hunt, T. Ansdell, J. Deane, G. Reitz, H. Hancke, T. Elliott, F. Russouw, sen., T. Sutherland, H. Ross, A. J. van Breda, W. Liesching, R. J. van der Riet, J. C. Gie, M.s., E. Norton, J. Bance, A. Chiappini, A. Jardine, L. Twentyman, P. Serrurier, J. Simpson, J. D. Gregory, G. Greig, F. S. Watermeyer, G. W. Prince, R. J. Jones, A. Robertson, P. H. Polemann, J. Syme, F. Stegmann, T. Tennant, R. A. Zeederberg, B. Phillips, J. Clark, R. W. Eaton, W. Gadney, W. Bridekirk, W. Heide- First managers.  
man, E. Christian, W. Dickson, J. Lawton, W. Billingsley, M. de Kock, L. Herman, F. Hertzog, P. Roux, W. Heyward, R. Waters, J. Saunders, P. M. Brink, J. G. Muller, H. Hewitt, J. Marshall.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 8th June, 1831.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Council,

(Signed) THOMAS MILLER,  
Acting Clerk of the Council.

No. 87.—Sd. G. Lowry Cole.]

[22d June, 1831.

Ordinance for altering and amending the Ordinance No. 74.

[Repealed with Ordinance No. 74, by Ordinance No. 3. of 1845.]

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No. 88.—Sd. G. Lowry Cole.]

[30th June, 1831.

Ordinance for Abolishing the Office of the Commissioner for the adjustment of the Affairs under the administration of the late Sequestrator and Joint Sequestrator, and providing for the administration, distribution, and joint settlement of all property, estates, matters, and things under the administration of the said Commissioner.

[Expired.]

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No. 89.—Sd. G. Lowry Cole.]

Ordinance for annexing the District of Port Elizabeth to the District of Uitenhage, and for defining and appointing the local limits within which the Courts of the Resident Magistrates and Matrimonial Courts within this Colony shall respectively have and exercise Jurisdiction.

[Repealed by Act 20, of 1856, save and except in so far as by the 4th and 5th sections provision is made touching and concerning the matrimonial courts of this colony.]

\* \* \* \* \*

Constitution of  
matrimonial  
courts.

4. And be it further enacted that from and after the passing of this ordinance, the resident magistrates aforesaid together with their respective clerks shall respectively form the matrimonial courts for their respective districts; and that the justice of the peace at Caledon, Cradock, the Paarl, Port Elizabeth, and Tulbagh, together with the field-cornets of the said places, or of the field-cornetcy within which any of

the said places are situated respectively (and the senior field-cornet, and in his absence the junior field-cornet, where any of the said places are or shall be divided into two field-cornets), shall respectively form the matrimonial courts for the said places and the districts now or which shall hereafter by law be attached thereto; and that every matter and thing which was necessary to be done and performed for the due registration and legalization of marriage in the matrimonial courts heretofore existing shall be required to be done and performed in the matrimonial courts hereby created and established, and shall be of the like force and effect as the same obtained when done in the matrimonial courts heretofore existing; and all certificates of registrations of marriage shall be granted by the clerks of the said resident magistrates and by the said justices of the peace respectively.

5. And be it further enacted that it shall and may be lawful for the said governor from time to time, by any proclamation to be by him issued for that purpose, to abolish any of the matrimonial courts hereby created and established, and to create and establish other matrimonial courts in any of the districts of this colony, to be holden by any justice of the peace and field-cornet, or other officer or officers therein appointed for that purpose; and also to define and appoint the local limits within which any of the matrimonial courts hereby or which may hereafter be created and established shall have and exercise jurisdiction.

Creation and abolition of matrimonial courts by proclamation.

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GOD SAVE THE KING!

Given at the Cape of Good Hope, 6th February, 1832.

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Council.

His Majesty's Royal Charter for the better and more effectual Administration of Justice within the Colony of the Cape of Good Hope.<sup>1</sup>

William the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith.

*To all to whom these Presents shall come,*

GREETING :

Preamble.

WHEREAS it is expedient to make provision for the better and more effectual administration of justice in our colony of the Cape of Good Hope, and in the several territories and settlements dependent thereupon, and for that purpose to constitute within our said colony and its dependencies our Supreme Court of Justice, to be holden in the manner and form hereinafter mentioned : Now know ye that we of our special grant, certain knowledge, and mere motion, have thought fit to grant, direct, order, and appoint, and by these presents do accordingly for us, our heirs and successors, grant, direct, order, and appoint that there shall be within our said colony of the Cape of Good Hope, a court which shall be called "the Supreme Court of the Colony of the Cape of Good Hope."

Creation of the supreme court :

A court of record.

Its constitution.

Appointment of judges by letters patent under the seal of the colony.

2. And we do hereby create, erect, and constitute the said Supreme Court to be a court of record.

3. And we do further will, ordain, and appoint that the said Supreme Court of the colony of the Cape of Good Hope shall consist of and be holden by and before one chief justice and two puisne judges, and that the said chief justice shall be called and known by the name and style of the Chief Justice of the Colony of the Cape of Good Hope, and which said chief justice and puisne judges shall be respectively barristers in England or Ireland, or advocates admitted to practise in our courts of session in Scotland or in the said

supreme court. And which said chief justice and puisne judges shall from time to time be nominated and appointed to such their offices by us, our heirs and successors, by letters patent under the public seal of the said colony, to be issued in pursuance of any warrants or warrant to be from

<sup>1</sup> By a proclamation of Governor Sir Benjamin D'Urban, K.C.B., under the 55th Section, dated 13th February 1834, this charter took effect in the colony from the 1st March, 1834.

time to time for that purpose granted by us, our heirs or successors, under our or their sign manual.<sup>1</sup>

4. And we do hereby declare, ordain, and grant that upon the death, resignation, sickness, or incapacity of the said chief justice or any of the said puisne judges, or in the case of the absence of any of them from the said colony, or in case of any such suspension from office as hereinafter mentioned of any such chief justice or puisne judge, it shall and may be lawful to and for the governor of our said colony for the time being by letters patent to be by him for that purpose made and issued under the public seal of the said colony to nominate and appoint some fit and proper person or persons to act as and in the place and stead of any such chief justice or puisne judge so dying or resigning or laboring under such sickness or incapacity as aforesaid or being so absent as aforesaid from the colony or being so suspended, until the vacancy or vacancies so created by any such death or resignation or sickness or incapacity or absence or suspension shall be supplied by a new appointment to be made in manner aforesaid by us, our heirs and successors, or until the chief justice or puisne judge so becoming sick or incapable or being absent or suspended as aforesaid shall resume such his office and enter into the discharge of the duties thereof.

Power of the governor, in case of death, resignation, sickness, or incapacity of a judge, to appoint a fit person to act in the place of such judge.

5. And we do further will, ordain, and grant that the said chief justice and puisne judges shall hold such their offices during their good behaviour: Provided, nevertheless, that it shall and may be lawful for the governor of our said colony for the time being by any order or orders to be by him for that purpose made and issued under the public seal of the said colony with the advice of the executive council of government of the said colony, or the major part of them, upon proof of the misconduct of any such chief justice or puisne judge as aforesaid to suspend him from such his office and from the discharge of the duties thereof: Provided that in every such case the said governor shall immediately report for our information, through one of our principal secretaries of state, the grounds and causes of such suspension.

Tenure of office during good behaviour.

Power of suspension by governor with advice of the executive council, in case of misconduct.

6. And we do hereby reserve to us, our heirs and successors, full power and authority to confirm or disallow such suspension from office as aforesaid of any such chief justice

Confirmation or disallowance of such suspension.

<sup>1</sup> Vide Act No. 10, of 1855.

or puisne judge. And we do hereby further reserve to us, our heirs and successors, full power and authority, upon sufficient proof to our or their satisfaction of any such misconduct, to remove and displace any such chief justice or puisne judge from such office.

Rank and precedence of chief justice.

7. And we do hereby give and grant to our said chief justice for the time being rank and precedence above and before all our subjects whomsoever within the said colony of the Cape of Good Hope and the territories and places dependent thereupon excepting the governor or lieutenant-governor for the time being thereof and the commander-in-chief of our forces for the time being within the same, and excepting all such persons as by law or usage in England take place before our chief justice of our Court of King's Bench.

Of puisne judges.

8. And we do hereby give and grant to the said puisne judges for the time being rank and precedence within our said colony of the Cape of Good Hope and the territories and places dependent thereupon next after our said chief justice of our said colony for the time being.

Seniority of puisne judges.

9. And we do hereby declare that the said puisne judges shall take rank and precedence between themselves according to the priority of their appointments respectively.

Seal of supreme court.

10. And we do further grant, ordain, and appoint that the said supreme court of the colony of the Cape of Good Hope shall have and use as occasion may require a seal, bearing a device and impression of our royal arms within an exergue or label surrounding the same, within this inscription, "The Seal of the Supreme Court of the Cape of Good Hope."

Custody of the seal.

11. And we do hereby ordain, grant, and appoint that the said seal shall be delivered to and shall be kept in the custody of the said chief justice, with full liberty to deliver the same to any puisne judge of the said court for any temporary purpose; and in case of vacancy of or suspension from the office of chief justice, the same shall be delivered over to and kept in custody of such person as shall be appointed by the said governor of our said colony to act as and in the place and stead of the said chief justice.

12. And we do further grant, ordain, and declare that the said chief justice, and the said puisne judges, so long as they shall hold their offices respectively, shall be entitled to have and receive such salaries as shall be granted to them by



us, our heirs and successors, which salaries shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fees of office, perquisite, emolument, or advantages other than and except the said salaries shall be accepted, received, or taken by any such chief justice or puisne judge, on any account or any pretence whatsoever.

13. And we do further ordain, appoint, and declare that no such chief justice or puisne judge as aforesaid shall accept, take, or perform any other office, place of profit or emolument within our said colony, and that the acceptance of any such other office or place as aforesaid shall actually vacate and avoid such his office of chief justice or puisne judge, as the case may be, and the salary thereof shall cease accordingly from the time of the acceptance of any such other office or place.

Forfeiture of  
judicial office  
by acceptance  
of other office.

14. And we do hereby ordain, appoint, and declare that there shall be attached and belong to the said court the following officers, that is to say,—one officer to be styled the registrar or prothonotary and keeper of records of the said court, and one other officer to be styled the master thereof, together with such and so many other officers as to the chief justice of the said court for the time being shall from time to time appear to be necessary for the administration of justice, and the due execution of the powers and authorities which are granted and committed to the said court by these our letters patent: Provided, nevertheless, that no new offices shall be created in the said court unless the governor of the said colony, or lieutenant-governor for the time being, shall first signify his approbation thereof to the said chief justice for the time being, in writing under the hand of such governor or lieutenant-governor.

Officers of the  
court.

15. And we do further ordain and direct that all persons who shall and may be appointed to the offices of registrar or prothonotary and keeper of records or master of the said court, and that all persons who shall be appointed in the said court to any offices of which the duties shall correspond to those performed by the master or prothonotary of any or either of our Courts of Record at Westminster, shall be so appointed by us, our heirs and successors, by warrant, under our or their royal sign manual, and that all persons who shall and may be appointed to any other office within the said supreme court shall be so appointed by the governor for the time being of the said colony.

Mode of ap-  
pointment of  
officers.

Duration of office.

16. And we do further direct and appoint that the several officers of the said court, other than and except the said chief justice and puisne judges thereof, shall hold their respective offices therein during the pleasure of us, our heirs and successors.

Admission of barristers, &c.

17. And we do hereby authorize and empower the said supreme court of the colony of the Cape of Good Hope to approve, admit, and enrol such persons as shall have been admitted as barristers in England or Ireland, or advocates in the court of session of Scotland, or to the degree of doctor of laws at our universities of Oxford, Cambridge, or Dublin, to act as barristers or advocates in our said supreme court.

Advocates of the late court.

18. And we do further authorize and empower the said supreme court to admit any persons to practise as barristers and advocates therein, who, previously to the promulgation of these presents within the said colony, have been actually admitted to practise as advocates in the supreme court of justice heretofore existing within the same.

Admission of attorneys, solicitors, and proctors.

19. And we do further authorize and empower the said supreme court to approve, admit, and enrol any persons, being attorneys or solicitors of any of our courts of record at Westminster or Dublin, or being proctors admitted to practise in any ecclesiastical court in England or Ireland, or being writers to the signet in Scotland, or being now entitled to practise as proctors or notaries in the said supreme court of justice heretofore existing within the said colony, to act as attorneys, solicitors, or proctors in the said supreme court of the colony of the Cape of Good Hope.

Future admission of attorneys, solicitors, and proctors.

20. And we do further authorize our said supreme court to approve, admit, and enrol as such attorneys, solicitors, or proctors as aforesaid, such and so many persons as may be instructed within our said colony in the knowledge and practice of the law by any barrister, advocate, attorney, solicitor, or proctor, duly admitted to practise in the said court, and which persons shall be so approved, admitted, and enrolled according to and in pursuance of any general rule or rules of court to be for that purpose made in manner hereinafter directed.

Capacity and removal of enrolled persons.

21. And we do ordain and declare that persons approved, admitted, and enrolled as aforesaid shall be, and they are hereby, authorized to appear, and plead and act for the suitors of the said supreme court; subject always to be removed by the said supreme court from their station therein, upon reasonable cause.

22. And we do further ordain that no person or persons whatsoever not so approved, admitted, and enrolled as aforesaid shall be allowed to appear, plead, or act in the said supreme court for or on behalf of any suitors in the said court.

Incapacity of unenrolled persons.

23. Provided, always, and we do further ordain and declare, that the functions and office of barristers and advocates shall not be discharged in the said court by the attorneys, solicitors, and proctors thereof, and that the functions and office of such attorneys, solicitors, and proctors shall not be discharged by such barristers at law or advocates.

Functions of barristers and of solicitors.

24. Provided, nevertheless, and we do further declare our will to be, that in case there shall not be a sufficient number of barristers and advocates within the said colony, competent and willing to act for the suitors of the said court, the said court shall, and is hereby authorized, to admit any of the attorneys, solicitors, or proctors thereof to appear and act as barristers and advocates, during the time of such insufficiency only; and in case there shall not be a sufficient number of attorneys, solicitors, and proctors within the said colony, competent and willing to appear and act in that capacity for the suitors of the said court, the said supreme court shall, and is hereby authorized, to admit any of such barristers or advocates, to practise and act in the capacity of attorneys, solicitors, and proctors, during the time of such insufficiency only.

Authority of the court, in case of insufficiency in number of barristers or attorneys, to allow attorneys to act as barristers, and vice versa.

25. And we ordain and declare, that the governor for the time being of the said colony of the Cape of Good Hope shall, on the first Monday in the month of January in each year, by warrant under his hand and seal, nominate and appoint some fit and proper person, to act as and be the sheriff for our said colony of the Cape of Good Hope and its dependencies, for the year ensuing, which sheriff, when appointed, shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath, faithfully to execute the duties thereof, and the oath of allegiance, before the said governor, who is hereby authorized to administer the same.

Annual appointment of sheriff.

26. And we do direct, that the said sheriff shall continue in such his office during the space of one whole year, to be computed from the said first Monday in the month of January, and until another shall be appointed and sworn into the said office; and in case such sheriff shall die in, or resign, his said office, or depart from our said colony of the Cape of

Duration of sheriff's office.

Good Hope, during the period of his office, then, another person shall, as soon as conveniently may be, after the death, resignation, or departure of such sheriff, be in like manner appointed and sworn in as aforesaid, and shall continue in his office for the remainder of the year, and until another sheriff shall be duly appointed and sworn into the said office.

Execution of all sentences, decrees, orders, commands, processes, &c., of the court, by sheriff or his deputies.

27. And we do further order, direct, and appoint that the said sheriff for the time being shall, by himself or his sufficient deputies, to be by him appointed and duly authorized under his hand and seal, and for whom he shall be responsible during his continuance in such office, execute, and the said sheriff, by himself and his said deputies, are hereby authorized to execute, all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the said supreme court of the Cape of Good Hope, or of the circuit courts of the said colony hereafter mentioned, and shall make a return of the same, together with the manner of the execution thereof, to the supreme court of the Cape of Good Hope, or to the said circuit courts, as the case may be; and shall receive and detain in prison all such persons as shall be committed to the custody of such sheriff by the supreme court of the Cape of Good Hope, or by the said circuit courts, or by the chief justice, or by any other judge of the said courts.

Authority to the governor to re-appoint the same sheriff.

28. And we do further authorize our governor for the time being of the said colony of the Cape of Good Hope, in each succeeding year, to reappoint the same person to fill the office of sheriff, if it shall appear to our said governor expedient so to do: Provided, nevertheless, and we do hereby require our said governor, in the selection of any person to fill the said office of sheriff of the Cape of Good Hope, to conform himself to such directions as may from time to time be given in that behalf by us, our heirs and successors, through one of our or their principal secretaries of state.

Execution of process by a person specially appointed, when the sheriff cannot by law execute.

29. And we do further direct, ordain, and appoint that whenever the said supreme court of the Cape of Good Hope, or the circuit courts hereinafter mentioned, shall direct or award any process against the said sheriff, or award any process in any cause, matter, or thing, wherein the said sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot or ought not by law execute the same, in every such case the said supreme court of the colony of the Cape of Good Hope,

or the said circuit courts, as the case may be, shall name and appoint some other fit person to execute and return the same; and the said process shall be directed to the person so to be named for that purpose, and the cause of such special proceedings shall be registered and entered on the records of the said courts respectively.

30. And we do hereby further ordain, direct, and appoint that the said supreme court of the colony of the Cape of Good Hope shall have cognizance of all pleas and jurisdiction in all causes, whether civil, criminal, or mixed, arising within the said colony, with jurisdiction over our subjects and all other persons whomsoever residing and being within the said colony, in as full and ample a manner, and to all intents and purposes, as the supreme court of justice now existing within the said colony now hath or can lawfully exercise the same.

Jurisdiction of the supreme court.

31. And we do further give and grant to the said supreme court of the colony of the Cape of Good Hope full power, authority, and jurisdiction to apply, judge, and determine upon and according to the laws now in force within our said colony, and all such other laws as shall at any time hereafter be made and established for the peace, order, and government thereof by us, our heirs and successors, with the advice and consent of parliament, or in our or their privy council, or by the governor of the said colony by the advice of the legislative council of government thereof.

Laws according to which the court is to judge and determine.

32. And we do further give and grant to the said supreme court full power, jurisdiction, and authority to review the proceedings of all inferior courts of justice within our said colony, and, if necessary, to set aside or correct the same; and in the exercise of such jurisdiction, powers, and authorities as aforesaid, our will and pleasure is that the pleadings and proceedings of the said supreme court and the said circuit courts shall be carried on, and the sentences, decrees, judgments, and orders thereof pronounced and declared, in open court, and not otherwise, and that the several pleadings and proceedings of the said court shall be in the English language; and that in all criminal cases the witnesses against and for any accused person or persons shall deliver their evidence *vivá voce*, and in open court.

Power of review of proceedings of all inferior courts.

Proceedings in open court, and in the English language.

33. And we do further will, direct, and appoint that for the conduct and decision of all civil suits, actions, and causes depending before the said supreme court and of all

Quorum of the court in civil suits.

questions, matters, and things, arising in the course of any such civil suits, actions, or causes, any two of the judges of the said supreme court shall form a quorum, and shall be competent to execute all and every the powers, jurisdictions, and authorities hereby granted to and vested in the said supreme court; and that in the event of any difference of opinion between such two judges, the decision of the said court shall, in any such case, be suspended until all the three judges shall be present, and the decision of such two judges, when unanimous, or of the majority of such three judges in case of any difference of opinion, shall in all cases be deemed and taken to be the decision of the whole court.

Trial by jury  
in criminal  
cases.

34. And we do further ordain, direct, and appoint that in any criminal case depending before the said supreme court the trial of the person or persons accused shall be before any one or more of the judges of the said court and a jury of nine men, who shall concur in every verdict to be given on the trial of any such accused party or parties; and every such verdict shall be delivered in open court by the mouth of the foreman of every such jury, and shall be thereupon recorded and read over to such jury before they are discharged from attendance on the said court: Provided, nevertheless, and we do further declare and direct, that no person within the said colony, who may be otherwise competent to serve on any jury as aforesaid, shall be or be taken to be incompetent to serve on such jury by reason of his ignorance or supposed ignorance of the English language.

Delivery of  
verdict in open  
court.

Jurors ignor-  
ant of the Eng-  
lish language.

Abolition of  
orphan cham-  
ber.

35. And we do further ordain and direct that all the duties heretofore performed by the orphan chamber within our said colony shall henceforth be performed by the master for the time being of the said supreme court, and that the said orphan chamber shall be, and the same is hereby, abolished.

Supreme court  
in Cape Town.

36. And we do further direct and appoint that the said supreme court shall at all times be holden at Cape Town in our said colony.

Division of the  
colony into  
circuit dis-  
tricts.

37. And we do further ordain and direct that it shall and may be lawful for the governor of the said colony, by any proclamation or proclamations to be by him for that purpose issued, to apportion and divide the said colony into two or more districts, and to fix and ascertain the boundaries and limits of every such district, and such boundaries and limits from time to time to alter as occasion may require: Provided, always, that such apportionment of the said colony

into such districts as aforesaid be made in such manner as to such governor may appear to be best adapted for enabling the inhabitants of the said colony to resort with ease and convenience to the circuit courts to be therein established as after mentioned.

38. And we do further grant, ordain, and appoint that courts, to be called circuit courts, shall be holden twice at the least in each year in each of the districts into which the said colony may be so divided as aforesaid; and each of the said circuit courts shall be holden by the chief justice, or by one of the said puisne judges of the said supreme court of the colony of the Cape of Good Hope, at such times and at such one or more place or places within each of the said districts as the governor of the colony of the Cape of Good Hope shall from time to time direct and appoint.

Circuit courts held twice at least in each year before judges of the supreme court.

39. And we do direct and appoint that each of the said circuit courts shall be respectively courts of record, and shall, within the district in which it may be holden, have and exercise all such and the same jurisdiction, powers, and authority as is hereby vested in the said supreme court of the colony of the Cape of Good Hope throughout the whole of the said colony; and that all crimes and offences cognizable in the said circuit courts shall be inquired of, heard, and determined by the said circuit judge, and a jury of nine men; and that the verdict of such jury shall be pronounced and recorded in the manner before directed respecting the verdicts of juries to be given in the said supreme court; and that the provision hereinbefore contained respecting the ignorance, or supposed ignorance, of the English language of any person otherwise competent to serve on any jury in the said supreme court shall also extend and apply to persons serving, or who may be required to serve, as jurors in the said circuit courts, or any of them.

Jurisdiction of circuit courts, and mode of proceeding therein in criminal cases.

40. Provided, nevertheless, and we do further ordain and direct, that if, upon the trial of any crime or offence before any of the said circuit courts, nine good and lawful men, being duly summoned, shall not appear to form a jury, then, in all such cases, such trial shall be had before the circuit judge and any number of the jury who shall appear, not being less than six, who shall be sworn, and have the same power as if the full number of nine had appeared.

Number of jurors, and provision in case of a deficiency of jurors.

41. Provided, also, and we do further direct and appoint that all civil suits or actions depending in any of the

Decision of civil suits.

Evidence re-  
corded in cases  
beyond £100.

Authentic  
copies of docu-  
ments &c., in  
case of appeal.

Evidence re-  
corded by leave  
of the court in  
cases under  
£100.

Allowance of  
appeal by the  
judge in such  
cases.

said circuit courts shall be tried and decided by the judge of such court alone, and without a jury; and that in all cases where the sum or matter at issue in any such suit or action shall exceed or be of the value of more than one hundred pounds sterling, British money, the judge of the said court respectively shall cause the evidence on every such hearing or trial as aforesaid to be taken down in writing by the clerk or other proper officer, in open court, in the presence of the witnesses respectively giving the same; and the evidence so taken shall be entered upon the proceedings of the said courts, and be of record; and in every case in which any appeal shall be made and allowed under the provisions of this our charter from any judgment of the said circuit courts, copies of all documents and papers which shall have been produced and given in evidence shall be certified and transmitted by the said clerk or other proper officer, as authentic; and also copies of any documents and papers which shall have been produced and tendered in evidence and rejected shall, if required by the party producing the same, be in like manner authenticated, and marked by such officer as aforesaid as rejected; in order that all such copies may be annexed to the record as part thereof, in case of appeal.

42. And we do further direct and declare that it shall be lawful for the judges of the said circuit courts respectively, on the application of either of the parties, plaintiff or defendant, at or before the trial of any civil suit or action commenced in the said circuit courts respectively, to permit the evidence on such trial to be recorded and certified as aforesaid, although the sum or matter at issue may be less than one hundred pounds sterling: Provided that it shall be made to appear to such judge that such judgment, decree, order, or sentence which may be given, made, or pronounced in such suit or action may be of such importance as to render it proper that an appeal should be permitted; and if, after giving or pronouncing such judgment, decree, or order, the said judge shall be of opinion that such judgment, decree, order, or sentence is of such importance as to make it proper that an appeal should be permitted, it shall be lawful for the said judge to allow either of the said parties, plaintiff or defendant, to appeal to the said supreme court, in like manner and under and subject to the like rules and regulations as in and by this our charter are directed in other cases of appeal from the said circuit courts.



43. And we do further direct and appoint that it shall be lawful for the plaintiff or plaintiffs, defendant or defendants, against whom any sentence, judgment, or decree, or order of the said circuit courts respectively shall be given, for or in respect of any sum or matter at issue above or exceeding the value of one hundred pounds sterling, to appeal therefrom to the said supreme court; and the party or parties appealing from such sentence, judgment, decree, or order shall, within fourteen days from the passing thereof, give notice to the adverse party or parties of such appeal, and within fourteen days from and after such sentence, judgment, decree, or order enter into sufficient security, to be approved by the judges of the said circuit courts respectively, to satisfy and perform the said judgment, decree, or order, in case the same shall be affirmed or the appeal dismissed; together with such further costs as shall be awarded thereon; and in all cases of appeal where notice shall be given and security perfected as aforesaid, execution shall be stayed, and not otherwise. And the said supreme court shall and may inquire into, hear, and decide all questions, whether of law or fact, arising upon any such appeal; but shall not admit or receive any evidence which was not tendered to the circuit court from which such appeal may be brought on the hearing or trial of any such suit or action therein.

Right of appeal in cases beyond £100.

Proceedings of supreme court in appeals from circuit.

44. And we do further direct and appoint that as often as any action or suit shall be brought in the supreme court, or in either of the said circuit courts respectively, and it shall be made to appear to the court before which such action or suit may be pending that such action may be more conveniently heard or determined either in the said supreme court or in some other of the said circuit courts, it shall be lawful for such court to permit and allow such action or suit to be removed to such other court: and such allowance shall be certified by the judge, together with the process and proceedings in such action or suit, to the court into which such action or suit shall be intended to be removed, and thereupon it shall be lawful for such last-mentioned court, and such court is hereby required, to proceed in such action or suit in like manner as if the same had been originally commenced and prosecuted in such last-mentioned court.

Removal of suits from supreme court to circuit court, and vice versa.

45. And we do further ordain and direct that no judgment or sentence, either of the said supreme court or of any such circuit court as aforesaid, in any criminal case, whereby

Transmission to the governor by the presiding judge

of report of proceedings on trials resulting in condemnation to death, transportation, or banishment.

any person shall be condemned to death, or transportation, or banishment from the said colony, shall be carried into execution until a report of all the proceedings upon any such trial hath been laid before or transmitted to the governor of the said colony by the chief justice or puisne judge presiding in any such trial, nor until such governor shall have authorized and approved the execution of such sentence.

Framing and publication of rules, orders, and regulations of supreme and circuit courts.

46. And we do further grant, ordain, direct, and appoint that it shall and may be lawful for the said supreme court, by any rules or orders of court to be by them from time to time for that purpose made and published, to frame, constitute, and establish such rules, orders, and regulations as to them shall seem meet, touching and concerning the time and place of holding the said supreme court, and touching the forms and manner of proceeding to be observed in the said supreme court and circuit courts respectively; and the practice and pleadings upon all actions, suits, and other matters, both civil and criminal, indictments, and informations to be therein brought; the appointing of commissioners to take bail and examine witnesses; the examination of witnesses, *de bene esse*, and allowing the same as evidence; the proceedings of the sheriff and other ministerial officers of the said courts respectively; the process of the said courts, and the mode of executing the same; the summoning, impannelling, and challenging of jurors; the admission of barristers, advocates, attorneys, solicitors, and proctors; the fees, poundage, or perquisites to be lawfully demanded by, and payable to, any officers, attorneys, solicitors, and proctors in the said courts respectively; and touching and concerning all such other matters and things necessary for the proper conduct and dispatch of business in the said supreme and circuit courts respectively; and all such rules, orders, and regulations from time to time to revoke, alter, amend, or renew, as occasion may require: Provided, always, that no such rules, orders, and regulations shall be repugnant to this our charter, and that the same shall be so framed as to promote, as far as may be, economy and expedition in the dispatch of the business of the said supreme court and circuit courts respectively, and that all such rules and forms of practice, process, and proceeding shall, so far as the circumstances of the said colony may permit, be framed with reference to the corresponding rules and forms in use in our courts of record at Westminster, and that the same be drawn up in plain,

succinct, and compendious terms, avoiding all unnecessary repetitions and obscurity, and promulgated in the most public and authentic manner in the said colony, for three months at least, before the same shall operate and take effect: Provided, always, that all such rules, orders, and regulations shall forthwith be transmitted to us, our heirs and successors, under the seal of the said court, for our or their approbation or disallowance.\*

Transmission of rules for the royal approbation or disallowance.

47. And whereas it may be expedient and necessary to make provision respecting the qualifications of jurors to serve in the said courts, and the mode of enforcing the attendance of such jurors, and it may also be expedient and necessary to make provision for the extension of trial by jury in the said supreme court, or circuit courts, in civil cases: Now we do further ordain, direct, and appoint that it shall and may be lawful for the governor for the time being of our said colony, with the advice of the legislative council of Government thereof, to make and establish all such wholesome laws, statutes, and ordinances as to them may seem meet respecting the matters aforesaid; which laws, statutes, and ordinances shall forthwith be transmitted to us for our approbation or disallowance, in the manner prescribed by law respecting all other the laws, statutes, and ordinances made, or to be made, by the said governor with the advice of the said council.

Provision for the passing of laws respecting the qualification of jurors.

48. And whereas it may be expedient to establish within our said colony courts of request, and other courts having jurisdiction in civil cases of small amount or value, and in cases of crimes or offences not punishable by death or transportation: Now we do hereby authorize and empower the governor, for the time being, of our said colony with the advice of the legislative council of government thereof, by any laws and ordinances to be from time to time made for that purpose, to erect, constitute, and establish all such courts of request and other courts having jurisdiction in civil and criminal cases within our said colony: Provided that the jurisdiction of such civil courts shall not be extended to any case wherein the sum or matter in dispute shall exceed the amount or value of forty pounds sterling money, or wherein the title to any lands or tenements, or any fee, duty, or office may be in question, or whereby rights in future may be bound: And provided, also, that the jurisdiction of such

Provision for the constitution of inferior courts having civil and criminal jurisdiction.

\* Vide Act No. 26, of 1856.

courts in criminal cases shall not be extended to any case wherein any person may be accused of any crime punishable by death or transportation, or banishment from the said colony.

Framing of rules for such courts.

49. And we do hereby authorize and empower the said governor, by and with the advice of the said chief justice and puisne judges of the said supreme court, for the time being, to make, ordain, and establish all necessary rules, orders, or regulations respecting the manner and form of proceeding in any such last-mentioned courts, and respecting the local limits within which the jurisdiction thereof is to be exercised, and respecting the manner and form of carrying the judgments and orders of such courts into execution, and all such other rules, orders, and regulations as may be necessary for giving full and perfect effect to the jurisdiction of the said courts.

Right of appeal to the Privy Council, in all cases beyond £500.

50. And we do hereby grant, ordain, and direct that it shall and may be lawful for any person or persons, being a party or parties to any civil suit or action depending in the said supreme court of the colony of the Cape of Good Hope, to appeal to us, our heirs and successors, in our or their privy council, against any final judgment, decree, or sentence of the said court, or against any rule or order made in any such civil suit or action, having the effect of a final or definitive sentence; and which appeals shall be made subject to the rules, regulations, and limitations following, that is to say: in case any such judgment, decree, order, or sentence shall be given or pronounced, for or in respect of any sum or matter at issue above the amount or value of five hundred pounds sterling, or in case such judgment, decree, order, or sentence shall involve, directly or indirectly, any claim, demand, or question to or respecting property, or any civil right amounting to or of the value of five hundred pounds sterling, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence of the supreme court, may, within fourteen days next after the same shall have been pronounced, made, or given, apply to the said supreme court, by petition, for leave to appeal therefrom to us, our heirs and successors, in our or their privy council; and in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any sum of money or perform any duty, the said supreme court shall, and is hereby empowered, either to direct that the judgment, decree, order, or sentence appealed from shall be carried

into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said court may in each case appear to be most consistent with real and substantial justice. And in case the said supreme court shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons in whose favour the same shall be given shall, before the execution thereof, enter into good and sufficient security, to be approved by the said supreme court, for the due performance of such judgment or order, as we, our heirs and successors, shall think fit to make thereupon; or in case the said supreme court shall direct the execution of any judgment, decree, order, or sentence to be suspended pending the said appeal, the person or persons against whom the same shall have been given shall in like manner, and before any order for the suspension of any such execution is made, enter into good and sufficient security, to be approved by the said supreme court, for the due performance of such judgment or order as we, our heirs and successors, shall think fit to make thereupon; and in all cases we will and require that security shall also be given by the party or parties appellant, to the satisfaction of the supreme court, for the prosecution of the appeal, and for the payment of all such costs as may be awarded by us, our heirs and successors, to the party or parties respondent; and if such last-mentioned security shall be entered into within three months from the date of such petitions for leave to appeal, then, and not otherwise, the said supreme court shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal to us, our heirs and successors, in our or their privy council, in such manner and under such rules as are observed in appeals made to us from our plantations or colonies.

Power of supreme court to order or suspend execution of sentence pending the appeal: and security in either case.

Security for the prosecution of the appeal.

51. And we do hereby reserve to ourselves, our heirs and successors, in our or their privy council, full power and authority, upon the humble petition, at any time, of any person or persons aggrieved by any judgment or determination of the said supreme court, to admit his, her, or their appeal therefrom upon such other terms, and upon and subject to such other limitations, restrictions, and regulations, as we or they shall think fit, and to reverse, correct, or vary such judgment or determination as to us or them shall seem meet. And it is our further will and pleasure that in all cases of appeal allowed by the said supreme court, or by us, our heirs

Power of the court of appeal to reverse, correct, or vary judgment.

Transmission of proceedings.

and successors, the said court shall certify and transmit to us, our heirs and successors, in our or their privy council, a true and exact copy of all evidence, proceedings, judgments, decrees, and orders had or made in such causes appealed, so far as the same have relation to the matter of appeal; such copies to be certified under the seal of the said court.

Execution of judgments or orders in appeal.

52. And we do further direct and ordain that the said supreme court shall, in all cases of appeal to us, our heirs and successors, conform to and execute such judgments and orders, as we shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal order or rule by the said supreme court of the colony of the Cape of Good Hope could or might have been executed.

Aid and assistance of authorities, civil and military.

53. And we hereby strictly charge and command all governors, commanders, magistrates, ministers, civil and military, and all our liege subjects within and belonging to the said colony, that in the execution of the several powers, jurisdictions, and authorities hereby granted, made, given, or created, they be aiding and assisting, and obedient in all things, as they will answer the contrary at their peril.

Reservation of power of repeal or alteration of charter by letters patent.

54. Provided, always, that nothing in these presents contained, or any act which shall be done under the authority thereof, shall extend, or be construed to extend, to prevent us, our heirs and successors, from repealing these presents, or any part thereof, or from making from time to time, as occasion may require, such further or other provision by letters patent, for the administration of justice, civil and criminal, within the said colony, and the places now or at any time hereafter to be annexed thereto, as to us, our heirs and successors, shall seem fit, in as full and ample a manner as if these presents had not been made; these presents, or any thing contained to the contrary therein, in anywise notwithstanding.

And whereas our royal brother and predecessor, his late Majesty King George the Fourth, by letters patent, under the great seal of the United Kingdom aforesaid, bearing date at Westminster, the twenty-fourth day of August, in the eighth year of his reign, did grant, direct, order, and appoint that there should be within the colony of the Cape of Good Hope a court, which should be called the Supreme Court of the Colony of the Cape of Good Hope, and it was thereby amongst other things provided that nothing therein contained should extend, or be construed to extend, to prevent us, our heirs and successors, from repealing the said letters patent,

or any part thereof, or from making such further or other provision by letters patent for the administration of justice, civil and criminal, within the said colony, and the places then or at any time thereafter to be annexed thereto, as to us, our heirs and successors, should seem fit, in as full and ample a manner as if the said letters patent had not been made; the said letters patent, or any thing contained to the contrary therein, in anywise notwithstanding :

Now, we do hereby, in virtue and in pursuance of the powers so reserved to us as aforesaid, in and by the said letters patent, repeal and revoke the beforementioned letters patent, and each and every part thereof: Provided, nevertheless, that all decrees, judgments and sentences, rules and orders heretofore made by the courts established by, or by the judges appointed under, the said letters patent, or by any or either of such courts or judges, and that all general rules, orders, and regulations of court made under and in pursuance thereof, and that all proclamations issued by any governor of the said colony in virtue thereof, and that all laws and ordinances promulgated by the governor of the said colony, with the advice of the council of government thereof for carrying the said letters patent, or any part thereof, into effect, shall to all intents and purposes be as binding, conclusive, good, valid, and effectual as if these presents had not been made.

55. And we do further ordain and direct that the governor of our said colony of the Cape of Good Hope, upon the arrival therein of these presents, shall, by proclamation, notify to the inhabitants of the said colony the time when the courts hereby established will be open; and as soon as the judges of the said supreme court shall have assumed and entered upon the exercise of their jurisdiction therein, then and from thenceforth the supreme court of the colony of the Cape of Good Hope, and the circuit courts now established within the same, and the jurisdiction of the said courts respectively, shall be absolutely abolished, cease, and determine; and every suit, action, complaint, matter, or thing, civil or criminal, which shall be depending in such last-mentioned courts respectively shall and may be proceeded upon in the supreme court instituted under and by virtue of these presents, or in either of the said circuit courts which shall and may have jurisdiction within the district or place in the colony of the Cape of Good Hope where such action or

Repeal of former charter.

Proclamation by governor of the time of the opening of the courts hereby established.

Abolition of courts established under the former charter.

Custody of records of the said courts.

suit or other matter, civil or criminal, respectively, was depending; and all proceedings, which shall thereafter be had in such action or suit or other matter, civil or criminal, respectively, shall be conducted in like manner as if such action or suit or other matter, civil or criminal, had been originally commenced in one or other of the said courts instituted under these presents. And all the records, muni-ments, and proceedings whatsoever of and belonging to the said supreme court and circuit courts established by the said recited letters patent shall, from and immediately after the opening of the said courts respectively instituted by these presents, be delivered over and deposited for safe custody in such of the said courts respectively instituted under these presents as shall be found most convenient; and all parties concerned shall and may have recourse to the said records and proceedings, as to any other records or proceedings of the said courts respectively.

Power, of governor, in his absence, vested in the officer for the time being administering the government.

56. And we do hereby further declare and direct that during the absence from our said colony of the Cape of Good Hope of the governor thereof, or if there shall be no person commissioned by us, our heirs and successors, to be the governor of our said colony, then, and in every such case, all and every the powers hereby granted to and vested in the governor for the time being of the said colony shall and may be executed by and vested in the lieutenant-governor thereof, or the officer for the time being administering the government thereof.

In witness whereof, we have caused these our letters to be made patent. Witness ourself at Westminster, the fourth day of May, in the second year of our reign.

By Writ of Privy Seal,

BATHURST.

No. 90.—Sd. G. Lowry Cole.]

[6th June, 1832.

Ordinance for the prevention and suppression of meetings whereby the peace and good order of the colony may be in danger.

[Enacted for one year only. Expired.]



No. 91.—Sd. G. Lowry Cole.]

[9th June, 1832.

Ordinance for imposing a new rate of Toll Duties at the Houwhoek Pass.

[Repealed by Ordinance No. 3, 1845.]

No. 92.—Sd. G. Lowry Cole.]

Ordinance for enabling certain Persons to sell by auction, without a Licence.

**WHEREAS** it is expedient that the officers of the high sheriff of this colony, the messenger of the master of the supreme court, and the several market-masters throughout the colony, should be permitted to sell property by auction without taking out any licence in the execution of their several offices and duties respectively: Be it therefore enacted by His Excellency the Governor and Council that, from and after the passing of this ordinance, all officers to that effect authorized and appointed by the sheriff, may sell by auction any property taken by the said sheriff, or his lawful deputy, in execution of any legal process; and the messenger, or other person appointed by the master of the supreme court, may sell by auction any property under the order and direction of the said master in the execution of his office; and all market-masters now appointed, or hereafter to be appointed, may sell by auction, any goods, wares, and merchandise, in the due execution of the office of market-master, without taking out any licence whatever; and all such persons so authorized to sell by auction as aforesaid, save and except the market-masters aforesaid, shall comply with such regulations as are provided in the tenth section of the ordinance No. 31, and in default thereof shall be liable to the payment of the fine therein mentioned.

Preamble.

Auction sales by sheriff's officers, master's messengers and market-masters without a licence.

2. And be it further enacted that no officer, or other person hereinbefore authorized to sell by auction without a licence, shall be liable to any action or prosecution for having sold any property in the due execution of his office without

Non-liability of such persons to prosecutions for former sales.

a licence, before the passing of this ordinance, any law or usage to the contrary notwithstanding.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 21st June, 1832.

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Council.

No. 93.—Sd. G. Lowry Cole.] [26th June, 1832.

Ordinance for granting Licences to sell, and for the better regulation of the sale of Wines, Spirituous Liquors, Malt Liquors, Ginger Beer, and Spruce Beer.

[Repealed by Ordinance No. 29, 1846; *vide* Ordinance No. 9, 1851.]

No. 94.—Sd. G. Lowry Cole.] [27th June, 1832.

Ordinance for fixing the Quantities of Wines and other Liquors allowed to be sold under Licence, and the Stamp Duties to be paid for Licences;—and for regulating certain matters in regard to the making and selling of such Liquors.

[Repealed by Ordinance No. 29, 1846; *vide* Ordinance No. 9, 1851.]

No. 95.—Sd. G. Lowry Cole.]

Ordinance for removing the restrictions in bringing Cape Wines to Market.

Preamble.

WHEREAS application has been made by certain wine-growers, wine-merchants, and other persons professing to be interested in the wine trade of this colony, for the removal of the existing restriction in regard to the time in which Cape wines may be brought to market at Cape Town and Simon's Town;

and whereas, after due and public inquiry made into the probable consequences of such removal on the wine trade of this colony in regard to the quality of wines to be hereafter exported, no good and sufficient reason has been assigned for the continuance of the said restriction; and whereas, therefore, it is expedient that the same be removed: Be it therefore and it is hereby enacted by His Excellency the Governor in Council that from and after the 1st day of September, next the proclamation of the 6th day of January, 1815, whereby wines were prohibited from being brought into Cape Town and Simon's Town except at certain seasons shall be, and the same is, from the time aforesaid hereby repealed accordingly; and it shall from henceforth be lawful to bring wines into the said places at every season of the year.

Repeal of  
former procla-  
mations.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 7th August, 1832.

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Council.

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No. 96.—Sd. G. Lowry Cole.] [20th Dec., 1832.

Ordinance for altering and amending the Ordinance No. 94.

[Repealed in the repeal of Ordinance No. 94 by Ordinance No. 29, 1846; *vide* Ordinance No. 9, 1851.]

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No. 97.—Sd. G. Lowry Cole.]

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.<sup>1</sup>

WHEREAS certain persons who have from time to time by purchase and other contracts and transactions respectively

<sup>1</sup> Continued by Ordinances No. 102, No. 6, 1834, No. 1, 1836, No. 3, 1842, No. 9, 1853, and Act No. 4, 1860.

Preamble.

acquired just, lawful, and undisputed rights to certain lands and houses situated within this colony, by virtue of which rights they now claim and are justly and lawfully entitled to have the said lands and houses respectively enregistered as their property in the land register of this colony, are prevented from procuring such enregistration to be made in the way and manner and according to the forms for that purpose by law provided, not only by reason of the death, mental incapacity, insolvency, or absence from the colony as well of the persons whose names are now enregistered in the land register as the proprietors of the said lands and houses as of other persons through or from whom by means of the contracts and transactions aforesaid such persons claiming as aforesaid have mediately or immediately derived their aforesaid just, lawful, and undisputed rights to the said lands and houses, but also by reason that in many instances it has now become impossible to produce such legal evidence of the existence of certain of the contracts and transactions aforesaid as is necessary to enable the supreme court and circuit courts of this colony to take cognizance of, declare, and enforce the same: And whereas, by reason of the premises much tedious, expensive, and ineffectual litigation is occasioned,—the security provided by the establishment of the land register for purchasers from and creditors of proprietors of immovable property is greatly impaired, and the free disposal of such lands and houses as aforesaid is greatly impeded to the loss and damage of the proprietors of the same and their creditors and to the injury of the public revenue: And whereas it has therefore now become expedient and necessary that provision should be made for enabling persons having such just, lawful, and undisputed rights as aforesaid to the said lands and houses, to procure the same respectively to be enregistered as their property in the land register: Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this ordinance it shall and may be lawful for the governor of this colony to nominate and appoint certain fit and proper persons to form a committee for the purpose of hearing, investigating, and reporting upon all claims which shall be made by persons having or claiming to have any such just, lawful, and undisputed rights as aforesaid to any such lands and houses as aforesaid to have the same respectively enregistered as their property in the land register: Provided, always, that no member of the

Nomination of committee for investigating claims to lands and houses.

said committee shall, as such, receive any fee, emolument, or reward.

2. And be it further enacted that the said committee shall consist of five persons, who shall be from time to time nominated and appointed by proclamation to be for that purpose from time to time issued by the said governor; and such persons shall continue to be members of the said committee until their respective nominations and appointments shall be revoked by any proclamation issued as aforesaid; and every person who shall be nominated and appointed a member of the said committee shall, before proceeding to act as such take and subscribe the oath set forth in the schedule hereunto annexed, marked A, before the chief justice or any judge of the supreme court; and the secretary to government shall cause the said oaths so subscribed to be recorded in the colonial office.

Number and mode of appointment of committee.

Oath of members.

3. And be it further enacted that some fit and proper person shall from time to time be appointed by the said governor to perform the duties of secretary to the said committee, and that such secretary shall and may receive for his own use, such fees as the said committee, in virtue of the powers hereby for that purpose committed to them, shall direct to be paid to him in each particular case; and that no other fees, salary, or remuneration shall be paid to, received, or taken by such secretary for performing the duties of his said office; and the said secretary shall before exercising any of the duties of his office take and subscribe the oath set forth in the schedule hereunto annexed, marked B; and the secretary to government shall cause the said oath so subscribed to be recorded in the colonial office.

Appointment of secretary.

Oath of secretary.

4. And be it further enacted that any three or more of the said committee shall form a quorum, and shall be competent to exercise all and every the powers and authorities hereinafter committed and granted to the said committee; and that every decision and act of the major part of the said quorum shall, except in so far as is hereinafter excepted and provided, be deemed and taken to be the decision and act of the whole committee; and that whenever at any meeting of the said committee at which only four members shall be present they shall be equally divided in opinion on any matter or thing, the decision thereof shall be postponed until a subsequent meeting of the committee at which the whole of the members thereof shall be present: Provided, always, that it shall not in any case be lawful for the said committee to make any report

Quorum of committee.

recommending that any order shall be made by the governor for the enregisterment of any lands or houses in manner hereinafter provided unless three of the said members shall have concurred in making and shall sign such report.

Meetings of committee.

5. And be it further enacted that the meetings of the said committee shall be holden at such place as the said governor shall from time to time appoint, and at such times as the members thereof shall find it convenient and necessary for the dispatch of business to appoint, and that the proceedings of the said committee shall be carried on and the decisions and orders thereof pronounced and declared with open doors.

Proceedings with open doors.

Summonses of persons to give evidence before committee or special commissioner.

6. And be it further enacted that it shall and may be lawful for the said committee to issue summonses commanding all such persons as shall therein be named to appear before the said committee, or before any resident magistrate, or justice of the peace, or other person by the said committee specially appointed their commissioner for that purpose, to give evidence as to all matters or things known to any such person, and to produce in evidence all deeds, instruments, or writings in the possession or control of any such person, which such person might by law be required and compelled to give evidence of or to produce in evidence in any cause respecting the like matters depending in the supreme court of this colony, in so far as the evidence of such persons and the production of such deeds, instruments, and writings shall be necessary for the due investigation of any such claim as aforesaid depending before the said committee; and that all such evidence shall be taken down in writing in presence of the witnesses respectively giving the same, and shall at the time be signed by them, or in case of their refusing or being unable to sign by the secretary to the said committee or by their special commissioner, as the case may be; and that all such evidence shall be given on oath, which oath it shall and may be lawful for the said committee and for every such special commissioner, respectively, to administer to every person appearing before them to give evidence.

Evidence to be taken down in writing and signed by witnesses, and to be given on oath.

Resident magistrates and other functionaries to act as commissioners.

7. And be it further enacted that all resident magistrates, justices of the peace, and other persons holding civil offices under the government of this colony who may at any time by the said committee be appointed special commissioners for the purpose of taking such evidence as aforesaid, shall act as such in so far as by the said committee shall be required of them.

8. And be it further enacted that all such summonses as aforesaid for procuring the attendance of witnesses shall and may be served in like manner as by the rules of the supreme court is provided for the service of summonses of witnesses in the said court: Provided, always, that all such summonses as aforesaid shall and may be served either by the sheriff or his lawful deputies, or by the messengers of the courts of the resident magistrates, or by any person to whom any such summons shall be specially addressed, and who shall consent to serve the same; and the said sheriff and his deputies, and the said messengers, are hereby required and directed duly to serve all such summonses as aforesaid which shall be delivered to them for that purpose, provided the fees hereinafter appointed to be taken shall, when the said summons shall be so delivered, be paid or tendered to them; and the said sheriff and his deputies, and the said messengers, shall for the service of every such summons as aforesaid respectively be entitled to demand and receive the like fees as they would be respectively entitled to demand and receive for serving summonses of witnesses issued by the supreme court or courts of the resident magistrates; and all other persons employed to serve any such summonses shall for such service be entitled to demand and receive such fees as the said messengers would have been entitled to demand and receive for such service if made by them.

Service of  
summonses.

Sheriffs' and  
messengers'  
fees.

Fees of other  
persons.

9. And be it further enacted that whenever any person who being duly summoned to give evidence before the said committee or any such special commissioner as aforesaid, his reasonable expenses having been paid or tendered to him, and not having any lawful impediment, shall fail to appear at the time and place specified in his summons, or after appearing shall refuse to be sworn, or to answer any question or to produce any deed, instrument, or writing which he may lawfully be required to answer or produce, or without leave obtained from the said committee or special commissioner shall wilfully withdraw himself from further examination, then and in every such case the said committee or special commissioner shall cause such default, or refusal, or wilful withdrawing to be certified in writing, and thereupon it shall and may be lawful for the person at whose instance or in whose behalf such summons as aforesaid was issued to take out the process of the supreme court or circuit court or court of the resident magistrate for the district in which

Penalties on  
failure in ap-  
pearing to give  
evidence, or on  
refusal to be  
sworn, or to  
answer ques-  
tions, &c.

the person so summoned as aforesaid shall reside, for summoning such last-mentioned person to appear before the court issuing such process at the time therein specified, summarily to show cause why he should not be attached, fined, or imprisoned for such his default, refusal, or wilful withdrawing as aforesaid; and if such person having such last-mentioned summons duly served on him, shall, at the time therein specified fail to show cause for his said default, refusal, or withdrawing to the satisfaction of such court, it shall and may be lawful for such court on proof by the return of the officer serving the same or by affidavit of the due service of the said summons to give evidence, and of the said summons to show cause, and on production of an office copy of the said certificate under the hand of the secretary of the said committee to grant warrant to apprehend the person so failing to show cause, and to commit him to prison, there to remain without bail until he shall submit to be sworn and to answer all such questions and to produce all such deeds, instruments, or writings as aforesaid in so far as shall lawfully be required of him; and, further, to set such fine upon such person as the court shall think meet, not exceeding the sum of £100 in the supreme and circuit courts and £40 in the court of the resident magistrates; and unless the same shall be forthwith paid to grant warrant for levying the amount thereof upon the movable property of such person; and every such fine or the amount thereof which shall be levied, shall forthwith be paid to the registrar or clerk of the court by which the same was imposed; and such registrar or clerk shall forthwith, out of the amount of such fine, pay to the person at whose instance the sentence imposing the fine was obtained, the expenses incurred by him in summoning the person fined and in obtaining such sentence as taxed by such registrar or clerk, and shall account for and pay over the residue of such fine in like manner as he is by law required and directed to account for and pay over other fines received by him as the registrar or clerk of any such court respectively.

Cases in which applications for enregisterment may be made to committee.

10. And be it further enacted that in every case in which by reason of any of the causes in the preamble of this ordinance enumerated such enregisterment as aforesaid of any of the said lands or houses cannot be procured or caused to be made in the way and manner and according to the forms for that purpose by law provided, it shall and may be lawful



for any person who shall be possessed of any just, lawful, and undisputed right to any of the said lands or houses in virtue whereof he shall be justly and lawfully entitled to have the same enregistered as his property in the land register, to apply (by himself or by his legal representative acting for him) to the said committee in order to procure the enregisterment of such lands and houses as his property ; and for any person who, having acquired any such right as aforesaid to any of the said lands or houses in virtue whereof he became justly and lawfully entitled to have the same enregistered as his property shall by reason of any contract of sale or other contract or transaction be under any legal obligation to cause or procure the said lands or houses to be enregistered as the property of the person who shall at the time be legally possessed of the just, lawful, and undisputed right thereto, or of any person through or from whom such last-mentioned person shall have derived his said right, to apply (by himself or by his legal representative acting for him) to the said committee in order to procure the enregisterment of such lands or houses, either as his own property or as the property of any person to whom he is under any such legal obligation as aforesaid or as the property of any person who shall at the time be legally possessed of the just, lawful, and undisputed right thereto.

11. And be it further enacted that every such application as aforesaid shall be made by memorial in one or other of the forms set forth in the schedules hereunto annexed, marked C., D., E., according as the case may be, and having annexed thereto an affidavit in the form set forth in the schedule hereunto annexed, marked F., and sworn before any resident magistrate, justice of the peace, or any commissioner appointed by the supreme court or by the said committee for the purpose of taking affidavits. And that to every such memorial there shall also be annexed a list of the names and places of residence of all the witnesses by whose evidence and of all written documents by which the memorialist proposes to establish the claim made in such memorial, and also the originals or notarial or office copies of all such documents as aforesaid in the possession of the memorialist, or to which he has access, together with a brief statement in the form contained in the schedule hereunto annexed, marked G., of the facts for the purpose of proving which the evidence of each of the witnesses in the said list shall be

Applications  
by memorial

Annexures of  
names of wit-  
nesses, docu-  
ments, &c., to  
memorial.

required. And that all such memorials, documents, copies, lists, and statements shall be lodged with and filed by the secretary of the said committee, and shall by him be laid before the committee at their next meeting.

Rejection of claims appearing unfounded.

12. And be it further enacted that when after consideration of any such memorial as aforesaid and of the affidavits, documents, and statements annexed thereto the claim therein made shall appear to the said committee to be unfounded and incapable of being established by the evidence proposed to be adduced in support thereof, such claim shall forthwith, without further proceeding thereon be rejected by the said committee, and the documents annexed to the memorial returned to the memorialist.

Proceedings of committee where claims appear capable of being established by the evidence proposed to be adduced.

13. And be it further enacted that when after consideration of any such memorial as aforesaid and of the affidavits, documents, and statements annexed thereto the claim therein made shall appear to the said committee to be well founded and capable of being established by the evidence proposed to be adduced in support thereof, they shall forthwith and thereafter, from time to time and so often as the same shall appear to them to be necessary, cause notice that such claim has been made to be inserted in such form as to the said committee shall seem fit, in the Government Gazette of this colony, and also to be published in such other way or to be served on such persons as they shall deem necessary and shall appoint. And the said committee shall in every such case also forthwith, and thereafter from time to time and so often as the same shall appear to them to be necessary, direct the secretary to the said committee to issue summonses for procuring the attendance of the witnesses inserted in the list annexed to the memorial, and of any other person whose evidence shall be deemed by them necessary for the due investigation and right decision of any such claim, to be examined before the said committee or before any resident magistrate, justice of the peace, or special commissioner, as in the circumstances of the case shall be most convenient and expedient and as shall in such summons be specified; and that all such notices and summonses shall be published and served at the expense in the first instance of the memorialist or of the party by whom such summonses are taken out.

Summons of witnesses, and of persons interested.

Objections by

14. And be it further enacted that after any such memorial as aforesaid shall have been lodged with the secre-

tary of the said committee it shall and may be lawful for any person having any legal interest that the claim contained in such memorial should be wholly or in part rejected or should only be sustained or admitted conditionally or under qualification, to lodge his objections to such claim in writing with the secretary of the said committee, who shall lay the same before the committee at their next meeting; and thereupon it shall and may be lawful for the said committee to hear the parties personally or by their counsel or attorneys and to receive evidence in support of and in answer to such objections.

15. And be it further enacted that when during the investigation of any claim contained in any memorial laid before the said committee in manner hereinbefore provided the right in virtue of which the memorialist claims to have any of the said lands and houses enregistered as his property in manner aforesaid shall be disputed or objected to by the person (or legal representative of the person) who is at the time actually enregistered as the proprietor of the said lands or houses in the said register, or by any person pretending to have a right to the same preferable to or exclusive of any right in virtue of which the memorialist claims to have any such lands or houses enregistered as the property either of himself or of any person by him alleged to be entitled to the same by virtue of any right derived by such person either mediately or immediately from the memorialist, as also when during any such investigation, any question as to the true meaning and legal construction or conditions of any of the contracts or transactions, in virtue of which the memorialist or the person for whom he claims enregisterment has acquired the right on which such claim is founded shall be raised by any person who has a legal interest to enforce the due fulfilment of such contract or transactions, then and in every such case the said committee shall and they are hereby required and directed forthwith to suspend all further proceedings with respect to the said claim (except taking and recording any evidence which may be tendered in support thereof); and it shall not be competent for the said committee to make any report to the governor on or with respect to such claim in the manner hereinafter provided (except by and with the consent of the parties concerned) until the conflicting rights of the contending parties and all such questions as aforesaid as to the true meaning and legal con-

persons having legal interest.

Suspension of proceedings by committee on objections by person actually enregistered as proprietor, or the representative of such person:

and on questions as to legal construction of contracts, &c., on which the claim is founded.

struction or conditions of the said contracts or transactions shall have been tried and finally determined by the judgment of some competent court: Provided, always, that nothing herein contained shall extend or be construed to entitle any person having or pretending to have any right to any of the said lands or houses acquired or derived mediately or immediately from any such memorialist to object in respect of any such right or pretended right, to the claim made for the enregisterment of the said lands and houses as the property of the memorialist; and no such objection made by any such person shall have the effect of suspending the proceedings respecting the claim of the memorialist, or shall prevent the said committee from reporting in manner hereinafter provided in favour of the claim of the memorialist; reserving always to every such person having or pretending to have any such right afterwards to establish the same and to procure the said lands and houses to be enregistered as his property by any proceeding to be by him for that purpose instituted before any competent court or before the said committee under the provisions of this ordinance.

Report and order of committee.

16. And be it further enacted that when the investigation into the merits of any such claim for enregisterment as aforesaid shall have been made and completed by the said committee in manner hereinbefore provided, they shall forthwith in manner hereinafter provided make such report thereon and frame such order with respect to the same as under all the circumstances of each particular case shall appear to them to be most consistent with real and substantial justice.

Form and requisites of report and order to be laid before the Governor for signature.

17. And be it further enacted that in every case in which the said committee shall be of opinion and decide that any person is justly and lawfully entitled to have any such lands or houses as aforesaid enregistered as his property in the land register, they shall forthwith report such opinion and decision to the governor and shall annex to such their report an order to be signed by the governor, if he shall see cause so to do, in the form set forth in the schedule hereunto annexed, marked H., and countersigned by all the members by whom such report shall be signed, directing and requiring the registrar of deeds to make enregisterment of such lands and houses in the land register, and shall cause the secretary to the said committee to deliver the said report and order together with the record of the evidence and proceedings in

respect of which such report was made thereunto annexed to the secretary to government, to be by him laid before the governor; and thereupon it shall and may be lawful for the governor to make such order in the terms and to the effect recommended by the said committee and to affix his signature to the order annexed by the committee to their said report; and such order, report, and record aforesaid shall forthwith be delivered by the secretary to government to the registrar of deeds, who shall forthwith on receipt thereof and on production of a certificate by the proper officer of the due payment of the transfer duties for which the person in whose favour the enregisterment is to be made is by law liable to pay make such enregisterment of the said lands or houses as is by the said order directed in the land register in the form set forth in the schedule hereunto annexed, marked H.; and every such order and the report and record thereunto annexed shall be lodged, kept, and preserved in his office by the said registrar.

Enregisterment by the registrar of deeds in the terms of such order.

18. And be it further enacted that in every case in which the said committee shall frame any such order as aforesaid for the enregisterment of any the lands or houses aforesaid, they shall in such order direct that such enregisterment shall set forth and shall be made under and subject to every servitude, condition, and qualification which it shall appear to them by law ought to have been inserted and set forth in the deed of transfer and enregisterment and under and subject to which the person in whose favour enregisterment is made would by law have been bound or entitled to have received transfer of the said lands or houses if such transfer and enregisterment had been regularly made in the way and manner and according to the forms for that purpose provided by the laws in force within this colony at the date of the promulgation of this ordinance.

Insertion in the enregisterment of servitudes and conditions affecting the property.

19. And be it further enacted that when the said committee shall be of opinion, decide, and report in manner hereinbefore provided that any such order as aforesaid shall be made for enregisterment of any lands or houses which shall have been burdened or affected by any mortgage or hypothec duly constituted according to law and not legally discharged at the time when such report as aforesaid shall be made to the governor, then and in every such case the said committee shall in such decision and in such report find and declare the accumulated amount of the principal debt and the interest

Provisions in the case of hypothecations subsisting on the property at the date of enregisterment.

due thereon for which the creditor holding such mortgage or hypothec has at the time in virtue thereof a legal right of preference on such lands or houses, and shall in the order to be framed by them as aforesaid direct the registrar of deeds, at the time when the said lands or houses shall be enregistered by him in obedience to such order, to make an entry on the register of such mortgage or hypothec, in the form contained in the schedule hereunto annexed, marked K., declaring that from and after the date of such entry the said lands or houses shall in virtue of such mortgage or hypothec continue and be mortgaged and hypothecated for the amount of the said accumulated sum, and for no more: Provided, always, that the person in whose favour such enregisterment shall be made shall not in virtue of any such mortgage or hypothec as aforesaid become or be personally liable for any part of the said accumulated sum, and that neither such person nor the lands or houses so mortgaged or hypothecated shall in any way or to any extent be bound or liable for any interest which may accrue on the said accumulated sum, or any part thereof after the date of this enregisterment. And that the person indebted in the said accumulated sum and his surety or sureties shall, notwithstanding any such enregisterment or entry as aforesaid, continue to be personally bound and liable to the said creditor for the principal debt and for all interest which may have accrued and become due thereon previously or which may accrue and become due thereon subsequently to the date of such enregisterment and entry in like manner and to all intents and purposes as if the said enregisterment and entry had not been made.

Retention by enregistered proprietor of amount due by him to his vendor, to the extent of the hypothec, until its discharge.

20. And be it further enacted that when under and by virtue of the provisions of the 19th section of this ordinance any lands or houses shall by any such entry as aforesaid be declared to be mortgaged or hypothecated for any such accumulated sum as aforesaid, then and in every such case the person who is enregistered as the proprietor of the same shall be entitled until such mortgage or hypothec shall be legally discharged to retain out of the price due by him to the person from whom he purchased such lands or houses, the amount of the sum for which the same are to be mortgaged or hypothecated; but such person and all others who shall succeed to him in or who shall derive right from him to the said lands or houses so soon as the same shall be enregistered as their property shall become and be bound and liable to

pay half-yearly to the person to whom such price shall at the time be due legal interest on the sum so retained so long as the same shall be so retained, and shall also become and be bound and liable to pay such retained sum to the person to whom the same shall at the time be due by virtue of any cession and transference of such mortgage or hypothec made under and by virtue of the provisions of the twenty-second section of this ordinance; and the registrar of deeds shall note the amount of the sum so retained and the name and description of the person from whom it was so retained on the register of such mortgage or hypothec.

21. And be it further enacted that when any person who shall for the time be enregistered in the land register as the proprietor of any lands or houses burdened or affected by any mortgage or hypothec constituted thereon by any such entry as aforesaid made under and by virtue of the provisions of the nineteenth section of this ordinance shall obtain from the creditor holding such mortgage or hypothec a discharge thereof or shall pay to the registrar of deeds the amount of the sum secured thereby, then and in every such case the said registrar shall on proof being made to him of such discharge or on receiving payment of the amount of the said sum forthwith cancel such mortgage or hypothec, and shall grant to such proprietor a certificate that the same has been done; and when under and by virtue of the provisions of the twentieth section of this ordinance any part of the price of such lands or houses was in respect of any such mortgage or hypothec retained by the person liable to pay such price, the certificate granted by the said registrar in manner hereinbefore provided shall operate and have effect in law as a full and complete discharge to such person, his heirs and representatives, from all liability to any person for the amount of the sum so retained and of all interest on the same for any period subsequent to the date of such certificate.

Discharge of such hypothec by enregistered proprietor.

22. And be it further enacted that when any person who shall for the time be personally liable either as principal debtor or as surety for the sum in security of which any mortgage or hypothec was under and by virtue of the provisions of the nineteenth section of this ordinance, by any such entry as aforesaid declared to be constituted over any land or houses shall obtain from the creditor holding such mortgage or hypothec a discharge thereof, or shall pay to the registrar of deeds the amount of the sum secured thereby,

Discharge of hypothec by principal debtor or surety.

then and in every such case the said registrar shall on proof being made to him of such discharge or on receiving payment of the amount of the said sum forthwith cancel such mortgage or hypothec, and shall grant a certificate that the same has been done to the person by whom such discharge is produced or such payment made: Provided, always, that when under and by virtue of the provisions of the twentieth section of this ordinance any part of the price of such lands or houses was in respect of any such mortgage or hypothec, retained by the person liable to pay such price, then and in every such case the said registrar (unless it shall be proved to him that the sum so retained has previously been paid to the person to whom the same was legally due at the time of such payment) shall, instead of cancelling such mortgage or hypothec, record on the register thereof that the same is ceded and transferred to the person by whom such discharge as aforesaid is produced or such payment made; and from and after the date when such cession and transfer shall be so recorded the person to whom such mortgage or hypothec shall be so ceded and transferred shall by virtue thereof be entitled to and possess the like security and right of preference over the said lands or houses for the amount of the said sum so retained and of the legal interest which shall thereafter accrue thereon, as the creditor in whose favour such mortgage or hypothec was originally constituted was by virtue thereof entitled to and possessed for the amount of the sum specified therein.

Payment into bank by registrar of deeds of sums received by him under 19th, 21st, and 22nd sections.

23. And be it further enacted that when under and by virtue of the provisions of the nineteenth, twenty-first, and twenty-second sections of this ordinance any sum shall in respect of any such mortgage or hypothec as aforesaid be paid to the registrar of deeds, then and in every such case the said registrar shall forthwith pay such sum into the Discount Bank and cause the same to be placed in the books of the said bank to the credit of the person who shall at the time appear from the register of such mortgage or hypothec to be in possession of the same; and the said sum shall remain in the said bank without interest until payment thereof shall lawfully be demanded by such person, his heirs or representatives. And the said registrar shall demand and obtain from the said bank a receipt for the said sum, and shall annex such receipt to the register of the mortgage or hypothec on account of which said sum was paid to him.



24. And be it further enacted that every enregisterment of any lands or houses made as aforesaid in favour of any person in pursuance of any such order made by the governor as aforesaid shall have the effect of vesting such person with a title and right to such lands or houses, which shall be liable to be annulled, set aside, impaired, limited, qualified, and affected on every ground and by reason of every cause, matter, or thing, and shall not be annulled, set aside, impaired, limited, qualified, or affected on any ground or by reason of any cause, matter, or thing, on or by reason of which, respectively, the title and right of such person to such lands or houses would or would not by law have been liable to be annulled, set aside, impaired, limited, qualified, or affected, if such lands or houses had been regularly transferred and enregistered in the way and manner and according to the forms for that purpose provided by the laws in force within this colony at the date of the promulgation of this ordinance, to and in favour of such person, and to and in favour, successively, of every person through or from whom his right to the said lands or houses was derived or acquired.

Legal effect of  
enregisterment

25. And be it further enacted that when any such order as aforesaid shall be made under and by virtue of the provisions of this ordinance for the enregisterment of any lands or houses as the property of any person, such person shall be liable and required to pay such tax or duties in respect of such enregisterment as he would have been liable and required to pay if such lands or houses had been transferred to him directly by the person last enregistered as the proprietor of the same, and had been enregistered as his property in the way and manner and according to the forms for that purpose by law provided previously to the passing of this ordinance; and unless such person, by some contract, obligation, transaction, or deed, shall have specially bound himself to pay the same, he shall not be liable or required to pay, nor shall the enregisterment directed to be made in his favour by any such order be suspended or stayed by reason of the non-payment of any tax, duty, quitrent, or fine which the person last enregistered as the proprietor of such lands or houses, or any other person (through or from whom the person in whose favour such order shall have been made has mediately or immediately derived his right to the same), has become liable for or incurred: Provided, always, that any person who shall have become liable to pay, or shall have

Taxes and  
duties payable  
by enregistered  
proprietor.

Enregister-  
ment not a  
discharge

Q

of duties, taxes, or quitrents due by other persons. incurred any such tax, duty, or quitrent, shall continue and be personally liable to pay the same, notwithstanding that the lands or houses in respect of which such tax, duty, or quitrent became due or was incurred shall by virtue of any such order as aforesaid have been enregistered as the property of any other person.

Limitation of period for reception of memorials.

26. And be it further enacted that no such memorial as aforesaid shall be received or acted on by the said committee which shall not be lodged with the secretary thereof on or before the 31st December, 1833, and the said committee shall subsist until the same shall by any proclamation for that purpose issued by the governor be declared to have ceased and determined.

#### SCHEDULE A (SECTION 2).

##### *Form of Oath to be taken by the Members of the Committee.*

Oath of committee.

I, A. B., swear that I will faithfully execute the duties of a member of the committee nominated and appointed by his excellency the governor, under and by virtue of the provisions of the Ordinance No. 97.—So help me God!

(Signed) A. B.

#### SCHEDULE B (SECTION 3).

##### *Form of Oath to be taken by the Secretary to the Committee.*

Oath of secretary.

I, A. B., swear that I will faithfully perform the duties of the office of secretary of the committee nominated and appointed by his excellency the governor, under and by virtue of the provisions of the Ordinance No. 97.—So help me God!

(Signed) A. B.

#### SCHEDULE C (SECTION 11).

##### *Form of Memorial.*

Memorial by person having claim.

Unto the committee nominated and appointed by his excellency the governor, under and by virtue of the provisions of the Ordinance No. 97.

The memorial of A. B. (here insert his description and place of residence), showeth:

That a certain piece of land (or a certain house, or certain houses, as the case may be) [here insert the description of the property claimed, as contained in the enregisterment thereof in the land register of the colony] was, on the 10th day of May, 1805, and still is, enregistered in the land register of the colony as the property of C. D.

That the said C. D. did, by a deed of sale dated the 1st day of November, 1807, sell the said \_\_\_\_\_ to E. F. (insert his description); that on the 8th day of June, in the year 1808, the said E. F. died, leaving only one lawful child, a son, G. H. Memorial by person having claim.

That the said G. H. did, on the 15th day of July in the year 1812, by a verbal agreement made by him in the presence of I. K. and L. M. (insert their description), sell the said \_\_\_\_\_ to N. O. (insert his description), and immediately gave possession of the said \_\_\_\_\_ to N. O., who continued to reside on and possess the same as the proprietor thereof until the 1st September, 1830.

That the said N. O. did, on receiving possession of the said \_\_\_\_\_, pay to the said G. H. the sum of 3,000 rds. as the stipulated price of the same, and did obtain from him a receipt for the said sum, but which receipt does not state that the said sum was paid as the price of the said \_\_\_\_\_

That during the period of five years next after the said 15th July, 1812, the said G. H. resided constantly in the immediate neighbourhood of the said N. O., and did, by a writing signed by him, dated 1st January, 1815, hire from the said N. O. the mill situated on the said land, and did bind himself to pay the sum of 200 rds. as the rent of the same.

That on the 1st September in the year 1830, the said N. O. became insolvent, and his estate was placed under sequestration, and P. Q. was thereafter appointed trustee in the same.

That on the 24th December, 1830, the said \_\_\_\_\_ (inserting the property claimed) was by the said trustee exposed to sale by public auction, and was bought by the memorialist for the sum of 4,000 rds.

That the said C. D., some time in the year 1810, left this colony, in a ship bound to Rio de Janeiro, and that the memorialist, after diligent inquiry, has been unable to discover whether the said C. D. is now alive or dead, or if dead who are his heirs.

That the said G. H., in or about the month of September, 1817, became insane, and has continued in a state of insanity ever since.

That the said I. K. and L. M. are both dead.

That by virtue of the contracts and transactions, and by reason of the facts, matters, and things hereinbefore set forth, the memorialist is justly and lawfully entitled to have the said \_\_\_\_\_ enregistered as his property in the land register of the colony. (When the memorialist claims enregistration in favour of any person having derived right either mediately or immediately from him, then insert the contracts and transactions by which such person has acquired his right, and then state that, by virtue, &c., such person is justly and lawfully entitled to have the said \_\_\_\_\_ enregistered as his property, &c.) But, by reason of the absence from the colony or death of the said C. D., of the insanity of the said G. H., and of the deaths of the said I. K. and L. M., the memorialist is prevented from procuring such enregistration to be made in the way and manner and according to the forms for that purpose by law provided previous to the passing of the Ordinance No. 97.

And he therefore prays that his claim to have the said \_\_\_\_\_ enregistered as his property in the land register of the colony may be investigated and reported upon by the said committee, according to the provisions of the said Ordinance No. 97.

(Signed) A. B.

(N.B. When the memorialist wishes notices or orders of the committee to be served on him at any place other than his residence, that place is to be mentioned in a note at the end of the memorial.)

Place at which notices and orders are to be served.

(Here insert the description of the place.)

SCHEDULE D.

*Form of Memorial to be presented when the claim for Enregistration is made by the legal representative of the person having the title to the Property claimed.*

Unto the committee, &c. &c. (as in Schedule C.)

The memorial of A. B. (here insert his description and place of residence), attorney (or trustee or curator, as the case may be), of R. S. (insert his name and description),

Memorial by legal representative of person having claim.

Showeth, &c. &c. &c. (state the contracts, &c., in virtue of which R. S. has acquired the title to the property, and the causes by which he is prevented from obtaining enregistration in the ordinary way, as in Schedule C.)

That the said R. S. did, by deed passed by him (describe the deed), appoint the said A. B. to be his attorney (here state the manner in which A. B. became the legal representative of R. S., as the case may be), and the said A. B. therefore prays that his claim to have the said \_\_\_\_\_ enregistered as the property of the said R. S. may be investigated, &c. (as in Schedule C., to the end.)

SCHEDULE E.

*Form of Memorial, when the Property claimed has never been enregistered as the Property of any person in the Land Register.*

Unto the committee, &c. (proceed as in Schedule C.)

Memorial in case of property never enregistered.

Showeth: That (here describe the property claimed, by its boundaries and extent, and state the district or town and subdivision of the district or town in which it is situated, and then state the manner in which C. B. acquired from the government his right to the same, and then proceed as in Schedule C. to the end.)

SCHEDULE F.

*Form of Affidavit to be annexed to the Memorial.*

Affidavit.

A. B. (describing him) maketh oath and saith that all the statements made in the memorial to which this affidavit is annexed are true, to the best of his knowledge and belief. A. B.

Sworn this — day of — before me.

## SCHEDULE G.

*Form of brief statement of fact to be annexed to the Memorial, as in Schedule C.*

A. B. to prove that C. D. left this colony for Rio de Janeiro, and has not since been heard of, and that I. K. and L. M. are dead. Annexure of proofs.

D. C. to prove the death of E. F., and that G. H. was his only child, and that the receipt for rds. 3,000, paid by N. O. to G. H., and the writing by which G. H. acknowledged to have hired the mill from N. O., are in the handwriting of G. H., and the insanity of G. H.

F. E. to prove that N. O. resided on, and as the proprietor thereof possessed, the property claimed, and that during five years that he did so G. H. resided constantly within a quarter of a mile of the said property.

H. G. to prove the insolvency of N. O., the appointment of P. Q. as his trustee, and the sale by auction of the property claimed by A. B.

## SCHEDULE H.

*Form of the Order for Enregistration—Order of His Excellency the Governor.*

In consequence of the report hereunto annexed, and by virtue of the powers vested in me by the Ordinance No. 97, I do hereby direct and require the registrar of deeds to enregister in the land register of this colony the \_\_\_\_\_ (here insert the description of the property) as the property of A. B., subject to the servitude of a right of wagon-road over (here describe the part of the property burdened with the servitude), in favour of the proprietor or proprietors for the time being of the place (here describe the place); and I do hereby further direct and require the said registrar of deeds, at the time when the said \_\_\_\_\_ shall be so enregistered by him in obedience to this order, to make an entry on the register of the deed of mortgage or hypothec, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, and by which the said \_\_\_\_\_ is mortgaged and hypothecated in favour of T. U., that from and after the date of the said entry the said \_\_\_\_\_ shall, by virtue of such mortgage or hypothec, continue to be mortgaged and hypothecated for the sum of \_\_\_\_\_ (here state the amount of the accumulated sum specified in the annexed report of the committee), and for no more.

For all which this shall be your warrant.

Given under my hand, at the Cape of Good Hope, this — day of \_\_\_\_\_.

(Signed) G. LOWRY COLE.

(Countersigned) A. B. }  
C. D. } Members of the committee nominated  
E. F. } and appointed by his excellency the  
G. H. } governor under the provisions of the  
Ordinance No. 97.

## SCHEDULE I.

*Deed of Transfer.*

Transfer.

Know all men whom it may concern that, in obedience to an order bearing date the — day of —, made by his excellency the governor under and by virtue of the provisions of the Ordinance No. 97, which has this day been delivered to me by the secretary to government, I, the registrar of deeds, do hereby cede and transfer in full and free property to and on behalf of —, — heirs, executors, administrators, or assigns; and that, by virtue of these presents, the said —, — heirs, executors, administrators, or assigns, now is and henceforth shall be entitled thereto, conformably to local custom; government, however, reserving its rights.

In witness whereof I, the said registrar, have subscribed these presents, and have caused the seal of office to be affixed thereto.

Thus done and executed at the office of the registrar of deeds in Cape Town, Cape of Good Hope, on the — day of the month of —, in the year of our Lord one thousand eight hundred and thirty.

## SCHEDULE K.

*Form of entry to be made by the Registrar of Deeds in the Register of Mortgages or Hypothecs.*

Entry in deeds register.

In obedience to an order bearing date the — day of —, made by his excellency the governor, under and by virtue of the provisions of the Ordinance No. 97, which has this day been delivered to me by the secretary to government, I, the registrar of deeds, do hereby declare that from and after the date of this entry the — (here describe the property mortgaged) shall, by virtue of the mortgage or hypothec on the register, whereof this entry is made, continue and be mortgaged or hypothecated for the sum of — (here insert the sum specified in the order), and for no more.

(Signed) A. B.

Registrar of Deeds.

Cape Town, the — day of —.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 14th February, 1833.

By command of His Excellency the Governor,

(Signed) JOHN BELL,

Secretary to Government.

By order of the Council,

(Signed) K. B. HAMILTON,

Clerk of the Council.

No. 98.—Sd. G. Lowry Cole.]

Ordinance for facilitating the apprehension and regulating the mode of conveyance of Deserters from His Majesty's Land Forces within this Colony to their respective Corps; and for the more prompt Payment of Rewards and Expenses consequent thereupon.

WHEREAS it is expedient to give every facility for the apprehension and conveyance of deserters, and for the payment of rewards and expenses consequent thereupon: Be it enacted by His Excellency the Governor in Council that from and after the passing of this ordinance it shall and may be lawful for any constable or any other individual to apprehend or cause to be apprehended any person reasonably suspected to be a deserter, and to bring him forthwith before the nearest magistrate or justice of the peace, who is hereby empowered to examine such suspected person; and if it shall appear to such magistrate or justice that he is a soldier and deserter from the corps or regiment to which he belongs, such magistrate or justice of the peace shall forthwith cause him to be conveyed to the nearest public prison, or if in the vicinity of a military post shall cause him to be delivered to the officer commanding at such post, who shall give his receipt for such supposed deserter.

2. And be it further enacted that such magistrate or justice shall forthwith transmit to the deputy adjutant-general at Cape Town a description return of such supposed deserter, according to the form marked A in the schedule hereunto annexed, accompanied by vouchers in duplicate according to the forms marked B and C respectively, in the schedule hereunto annexed, in support of the claim to the reward for apprehension (payable from the military chest at Cape Town) and to the remuneration of expenses (payable by the paymaster at the head-quarters of the regiment or corps to which such supposed deserter is presumed to belong); and on receipt thereof, and after it shall be proved that such person is a deserter, the amount shall be forthwith made payable to the magistrate or justice before whom such deserter was brought, to whom notice to that effect shall be given by the military secretary of the commander-in-chief, and shall, on receipt thereof by such magistrate or justice be paid on demand to the party entitled to receive the same.

Preamble.

Authority to constables and other persons to apprehend persons suspected as deserters.

Transmission of description return of deserter to deputy adjutant-general, and vouchers in support of claim for reward.





## FORM C.

Paymaster of the—— regiment.

Form of  
voucher.

(On account of the public service.)

Dr. to (magistrate's or justice's name and residence),  
to be by him paid to (name of person who apprehended  
the deserter).

18——

For the apprehension of—— deserter from the—— regiment.

For apprehension, ... .. £1 0 0

To gaoler, ... .. 0 1 0

„ —— Days' subsistence, at 6d. per day, \_\_\_\_\_

Received from Paymaster——,—regiment, the sum of——  
Sterling, in payment of the above account, for which I have  
signed duplicate receipts.Deputy Commissary-General's Office, Cape Town, this——  
day of—— 18

\_\_\_\_— Signature of magistrate or justice.

Witness:

GOD SAVE THE KING !

Given at the Cape of Good Hope, 30th May, 1833.

By command of His Excellency the Governor,

(Signed) J. G. BRINK,  
Acting Secretary to Government.

By order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Council.

No. 99.—Sd. G. Lowry Cole.] [6th June, 1833.

Ordinance for explaining and amending the Laws relative  
to Commandos.

[Disallowed by the Home Government.]

No. 100.—Sd. T. F. Wade.]

Ordinance for the Prevention of the Discharge of Firearms within certain limits in Table Bay.

Preamble.

WHEREAS it is expedient that the persons engaged in the fisheries in Table Bay should have every facility afforded them of pursuing their avocations free from molestation; and whereas they are oftentimes disturbed and hindered and their lives endangered by persons discharging fire-arms on the beach and in Table Bay: Be it enacted by His Excellency the Acting Governor in Council that from and after the passing of this ordinance any person who shall discharge any musket or other fire-arm within two hundred yards of high-water mark on the sea shore extending between Three Anchor Bay and the mouth of the Salt River, or in the waters of Table Bay within two miles of such high-water mark as aforesaid, shall on conviction thereof pay a fine of not less than five shillings, and not exceeding one pound: Provided always, and be it enacted, that nothing herein contained shall be construed to prevent His Majesty's land and sea forces from discharging fire-arms in the execution of their duty.

Prohibition of discharge of firearms on sea shore within two hundred yards of high-water mark,—or in the waters of Table Bay within two miles of high-water mark.

Penalty, five shillings to £1.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 4th November, 1833.

By command of His Excellency the Acting Governor,

(Signed) J. G. BRINK,  
Acting Secretary to Government.

By order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Council.

No. 101.—Sd. T. F. Wade.]

[11th Nov., 1833.

Ordinance for regulating the Trade in Gunpowder within this Colony.

[Repealed by Ordinance No. 7, 1834.]

No. 102.—Sd. T. F. Wade.] [13th Dec., 1833.

Ordinance for continuing the Provisions of the Ordinance No. 97 until the 31st December, 1834.

[Lapsed; *vide* Ordinance No. 9, 1853, and Act No. 4, 1860.]

No. 103.—Sd. G. Lowry Cole.]

Ordinance for Abolishing the Orphan Chamber within this Colony, and for providing that the Duties heretofore performed by the said Orphan Chamber shall henceforth be performed by the Master for the time being of the Supreme Court of this Colony.

WHEREAS it has been enacted by His Majesty's Royal Charter of Justice, dated at Westminster, on the fourth day of May, 1832, that the Orphan Chamber within this colony shall be abolished, and that the duties heretofore performed by the said chamber should henceforth be performed by the Master for the time being of the Supreme Court of this colony: Be it therefore enacted by His Excellency the Governor in Council that from and after the first day of March next the orphan chamber within this colony, and the offices of the president, masters, secretary, bookkeeper, and clerks thereof, and of the agents thereof in the several districts of this colony, shall be, and the same are hereby declared to be, abolished: Provided, always, that it shall and may be lawful for the governor of this colony, by any proclamation to be by him issued for that purpose, to suspend the abolition of the offices of the secretary and bookkeeper thereof and of such clerks and agents thereof as to him shall seem fit, so long as the existence of such lastmentioned offices shall be necessary for the administration, distribution, and final settlement of all property, estates, matters, and things which previously to the said first day of March next shall lawfully have come or been placed, and shall then be under the administration of the said orphan chamber. And every such office the abolition of which shall be suspended by the said governor in manner aforesaid shall be, and the same is hereby declared to be, finally abolished at such time as shall for that purpose be specified by the said governor by any advertisement or advertisements inserted in the

Preamble.

Abolition of orphan chamber.

Temporary suspension of abolition of certain offices by the governor.

Government Gazette of this colony; and the duties of all such offices the abolition of which shall be suspended in manner aforesaid shall be performed, 'so long as such offices shall continue to exist, under the superintendence and subject to the directions, orders, and absolute control of the master of the supreme court, by the persons holding the same or by such persons as shall hereafter be appointed by the said governor to perform the duties thereof.

Performance by master of the supreme court of the duties of orphan chamber.

2. And be it further enacted that from and after the said first day of March next all the duties which have heretofore been performed by the said orphan chamber, except in so far as shall to the contrary be provided by this or any other law or ordinance, shall henceforth be performed by the master for the time being of the supreme court of this colony.

Transfer of administrations from orphan chamber to master.

3. And be it further enacted that all persons, property, estates, matters, and things which have at any time lawfully fallen or been placed and taken under, and which on the said first day of March next shall respectively be under the guardianship, charge, or administration of the said orphan chamber, shall be, and the same are hereby declared to be from and after the said day placed respectively under the guardianship, charge, and administration of the master of the supreme court.

Custody of books, accounts and documents.

4. And be it further enacted that on the said first day of March next all books, accounts, vouchers, and other documents, of whatsoever description, which if the said orphan chamber had been in existence on that day ought by law then to have been under the charge, control, or custody of the said orphan chamber or of any of the officers thereof, shall be placed and shall thereafter be and remain under the charge, control, and custody of the master of the supreme court.

Proceedings by master to obtain possession of property, books, documents, &c.

5. And be it further enacted that from and after the said first day of March next, the master of the supreme court shall, and he is hereby empowered and required to demand and receive delivery and to take and keep possession of all property, estates, matters, and things, books, accounts, vouchers and documents, which, under and by virtue of the provisions of this ordinance shall be placed and become under his administration, charge, control, or custody. And that if any such property, estates, matters, or things, or books, accounts, vouchers, or documents shall be withheld or withdrawn, or if any attempt shall be made to withhold or

withdraw the same from his possession, charge, control, or custody, the said master shall and may summarily apply for redress according to law in the premises to the supreme court, or if the said court shall not then be sitting to some one of the judges thereof, who shall thereupon respectively make such order as to such court or judge respectively shall seem proper and necessary for carrying into effect the provisions of this ordinance: Provided, always, that nothing herein contained shall extend or be construed to extend to prevent the said master from bringing any action or actions in regular form against any person or persons where such a mode of procedure shall be necessary or expedient for the better carrying into effect the aforesaid provisions of this ordinance: And provided, also, that all bonds and other vouchers of any debts thereon payable to the orphan chamber, or due or payable or belonging to any person or estate which, having been under the guardianship, charge, or administration of the orphan chamber, shall by virtue of the provisions of this ordinance have been placed under the guardianship, charge, or administration of the said master, shall be delivered to and received by the said master on inventory, which shall be signed by the said master and by the person or persons by whom the said bonds or vouchers are delivered to the said master, and shall thereupon be filed in the office of the registrar of the supreme court.

Delivery of  
bonds, &c., to  
master on  
inventory.

6. And be it further enacted that on the said first day of March next all sums of money which shall form part of any estate or estates or of any fund under the administration of the said orphan chamber, and which shall then be in the charge, possession, or custody of any officer or officers of the orphan chamber, shall by such officer or officers be paid over to the said master, who shall grant to him or them a receipt for the same. And every such receipt by the said master shall be a full and sufficient discharge to such officer or officers for the sums therein acknowledged to have been received by the said master. And all sums of money which, by virtue of the provisions of His Majesty's Order in Council dated 28th November, 1828, or otherwise, have been paid into the discount bank, and in the books of such bank have been carried to the account of the said orphan chamber, shall on the said first day of March next be in the books of the said bank carried to the account of the master of the supreme court.

Payment of  
money to  
master.

Transfer of  
bank account  
to master.

Powers of  
master.

7. And be it further enacted that from and after the said first day of March next the master of the supreme court shall and he is hereby authorized and required to do, and cause to be done, every matter and thing, which by virtue of the provisions of His Majesty's Order in Council dated 28th November, 1828, the said orphan chamber, or any of the members or masters thereof, is or are authorized or required to do, or to cause to be done.

Authority to  
master to take  
up and carry  
on, and to  
institute  
actions.

8. And be it further enacted that from and after the said first day of March next it shall and may be lawful for the master of the supreme court, as such, without any previous application to any court or judge, to take up, continue, and carry on all actions and other legal proceedings which shall have been instituted by or against the said orphan chamber, in respect of or with relation to any person, property, estate, matter, or thing under the guardianship, charge, or administration of the said orphan chamber, and which shall on the said first day of March next be still pending in any court in this colony. And likewise to institute every action or other legal proceeding in respect of or with relation to any such person, property, estate, matter, or thing which the said orphan chamber, if it had continued to exist, might lawfully have instituted in respect of or with relation to the same:

Proceedings to  
call in bonds,  
&c.

Provided, always, that it shall not be lawful for the said master to institute any proceedings for calling in or enforcing payment, from any person whose estate shall not be under sequestration as insolvent or who shall not have committed an act of insolvency, of any capital which shall have been lent out to such person by the said orphan chamber, without first advising thereupon with and obtaining the consent thereto of the treasurer-general and auditor-general of this colony, or any other two persons holding civil offices under the government of this colony, who shall be from time to time appointed for that purpose by the governor, or in the event of both or either of them refusing such consent, unless he shall have applied to and obtained from the supreme court or any judge thereof an order of such court or judge authorizing the said master to institute proceedings for the purpose aforesaid.

Transfer of  
immovable  
property.

9. And be it further enacted that from and after the said first day of March next the master of the supreme court shall be and he is hereby empowered and required to execute legal transfers in favour of persons legally entitled thereto of

all immovable property which, having at any time been or placed or taken under the administration of the said orphan chamber, shall not previously to the said day have been duly transferred to the persons entitled by law to receive transfer of the same, and generally to execute every such deed and to do and cause to be done every such matter and thing touching and concerning any person, property estate, matter, or thing, who or which shall under and by virtue of the provisions of this ordinance be placed under his guardianship, charge, or administration, as the said orphan chamber, if it had continued to exist, would have been legally authorized or could have been legally required to execute or to do or cause to be done touching and concerning the same.

10. And be it further enacted that from and after the said first day of March next it shall and may be lawful for any person who if the said orphan chamber had continued to exist might then lawfully have instituted any action or other legal proceeding against the said orphan chamber in respect of or in relation to any person, property, estate, matter, or thing, who or which shall by virtue of the provisions of this ordinance have been placed under the guardianship, charge, or administration of the master of the supreme court, to institute any such action or legal proceeding against the said master as such, and in place of the said orphan chamber. As also to continue and carry on any action or other legal proceeding which previously to the said first day of March next any such person shall have instituted against the orphan chamber in respect of or with relation to any such person, property, estate, matter, or thing as aforesaid against the said master as such, and in the place of the said orphan chamber: Provided, always, that nothing herein contained shall extend or be construed to extend to make it lawful for any person to continue and carry on or to institute against the said master any action or other legal proceeding which such person shall previously to the said first day of March next have instituted, or, if the said orphan chamber had continued to exist, might have instituted against the said orphan chamber or any person or persons who shall at any time have been members or officers of the said chamber, for reparation of any loss, damage, or injury which shall be alleged to have been at any time occasioned by any act improperly done or omitted to be done by the members or

Proceedings at law against orphan chamber to be brought or continued against master, except actions for damages for misconduct by officers of the chamber.

Liability of  
heirs of such  
officers.

officers of the said orphan chamber or any of them in the performance of the duties of their office. And that nothing herein contained shall extend or be construed to extend to free, discharge, or relieve any person or the heirs, executors, or representatives of any person who shall at any time have been a member or officer of the said orphan chamber from any obligation, claim, or demand in or to which any such person has at any time made himself or his heirs, executors, or representatives, liable by reason of any act improperly done or omitted to be done by such person in the performance of the duties of his office of member or officer of the said orphan chamber.

Duties of  
master under  
Ordinance No.  
105.

11. And be it further enacted that the master of the supreme court, so soon after the said first day of March next as may be, shall in order to provide for the proper custody, care, control, maintenance, and education of all such persons as shall by virtue of the provisions of this ordinance be placed under his guardianship and charge, do, and cause to be done, every act and thing which by the provisions of the ordinance No. 105 he shall be authorized and required to do or cause to be done with reference to the custody, care, control, maintenance, and education of such persons as shall by virtue of the provisions of that ordinance be placed under his guardianship and charge.

Administra-  
tion, &c., by  
master in  
conformity  
with the laws  
governing  
administration,  
&c., by orphan  
chamber.

12. And be it further enacted that with respect to all property, estates, matters, and things which shall by virtue of the provisions of this ordinance be placed under the administration of the master of the supreme court, he shall proceed in the administration, distribution, and final settlement thereof in conformity with and according to the rules and regulations in conformity with and according to which the same ought by law to have been administered, distributed, and finally settled by the said orphan chamber if it had continued to exist. And the said master is hereby authorized and required from and after the said first day of March next to demand, exact, receive, and retain, in respect of such property, estates, matters, and things, and in respect of any proceedings touching or concerning the same all such fees as by law would have been due and could have been exacted by the said orphan chamber or any of the officers thereof, if such property, estate, matter, or thing had previously to the said day been administered, distributed, or finally settled by

Payment of  
fees.



the said orphan chamber, or any of the officers thereof. And the said master shall keep a separate and distinct account of all such fees so received or retained by him, and shall account for and pay over the same in like manner as is by law provided in respect of any other fees received or retained by him as master of the supreme court: Provided, always, that it shall and may be lawful for the said master, in all cases in which it shall appear to him expedient so to do, to proceed in the administration, distribution, and final settlement of all such property, estates, matters, and things as aforesaid, in such manner and in conformity with and according to the rules and regulations which shall be provided respectively by the ordinances Nos. 104 and 105, for the administration, distribution, and final settlement of any property, estate, matter, or thing which shall by the provisions of such ordinances respectively be placed under the administration of the said master. And provided, also, that when under and by virtue of the provisions of this ordinance there shall be paid to or received by the said master any money belonging to any person or estate under his guardianship, then and in every such case it shall and may be lawful for the said master to open a debit and credit account in the wards' book with the person or persons to whom or the estate to which such money shall belong, and to pay such money into the discount bank to be carried to the credit of the guardians' fund, in like manner in all respects as is provided by the twenty-sixth, twenty-seventh, twenty-eighth, and twenty-ninth sections of the ordinance No. 105, touching and concerning any money therein mentioned.

Account of fees.

Administration under ordinances No. 104 and 105.

Wards' book, guardians' fund.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 5th July, 1833.

By command of His Excellency the Governor,

(Signed) J. G. BRINK,  
Acting Secretary to Government.

By order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Council.

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No. 104.—Sd. G. Lowry Cole.]

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.

Preamble.

WHEREAS it has been enacted by His Majesty's Royal Charter of Justice dated at Westminster on the 4th day of March, 1832, that the orphan chamber within this colony shall be abolished, and that the duties which have heretofore been performed by the said orphan chamber shall henceforth be performed by the master for the time being of the supreme court: And whereas the registration of wills and the administration of certain estates of persons dying within this colony heretofore formed part of the duties of the said orphan chamber, and were performed by the said orphan chamber and by the agents thereof according to certain regulations contained in certain "instructions" and "provisional instructions for the orphan chamber," and in certain "instructions for the agents to the board of orphan masters in the country districts of the colony of the Cape of Good Hope," which have heretofore been in force or have been enforced in this colony, and in the Ordinance No. 42: And whereas, by reason that the duties hereinbefore specified are henceforth to be performed by the master of the supreme court instead of by the said orphan chamber, many of the said regulations have become impracticable or inexpedient: And whereas it is now expedient in certain respects to alter and amend the law of this colony in so far as relates to the registration of wills and the administration of the estates and property of persons dying either testate or intestate, in so far as the same are situated within this colony: Be it therefore enacted by His Excellency the Governor in Council, that from and after the first day of March next the instructions and provisional instructions hereinbefore mentioned, as also the Ordinance No. 42, shall be and the same are hereby repealed, except in so far as it has been enacted and declared by the Ordinance No. 103, that the said instructions and provisional instructions, and ordinance, or any of the provisions thereof, shall subsist and have force and effect for regulating the administration distribution, and final settlement of such property, estates, matters, and things as by virtue of the provisions of the said Ordinance No. 103 shall be placed under the administration

Repeal of instructions &c., to orphan chamber, and of ordinance No. 42.

of the master of the supreme court: Provided, always, that nothing herein contained shall extend or be construed to extend to repeal any of the enactments or provisions of His Majesty's Order in Council dated 24th November, 1828.

2. And be it further enacted that from and after the said first day of March next it shall and may be competent for any person to lodge in the office of the master of the supreme court, enclosed under a sealed cover, any will, codicil, or testamentary instrument executed by him; and the said master shall keep or cause to be kept a register of the names and descriptions of the persons lodging every such deed and of the date of lodging the same; and every such deed shall be kept under the charge and custody of the said master unopened until the death of the maker thereof, unless redelivery of the same shall be demanded by the said maker, or in his lifetime by his lawful attorney specially authorized for that purpose by any deed duly executed by the said maker; and when any such deed shall be delivered in manner aforesaid, the maker or his attorney, as the case may be, shall sign a receipt for the same in the margin of the aforesaid register, opposite to the entry of such deed.

Lodging of wills, &c., with master.

Register and custody of such testamentary deeds.

3. And be it further enacted that from and after the said first day of March next every person who shall at the time of the death of the maker thereof have in his possession any deed being or purporting to be or entitled the last will, codicil, or other testamentary instrument of any other person, or into whose possession any such deed shall come after the death of the maker thereof, shall forthwith, by the first opportunity, deliver or transmit every such deed at or to the office of the master of the supreme court, when such possessor shall reside in Cape Town, or the district thereof, or the Cape district, or the district of Stellenbosch; and when such possessor shall reside in any other district of the colony then to the resident magistrate of the district in which he shall reside. And every such resident magistrate shall cause a copy of every such deed so delivered or transmitted to him to be made, and shall authenticate such copy with his signature, and shall forthwith by the first opportunity transmit the original deed to the office of the said master of the supreme court, and shall keep and preserve the aforesaid copy thereof until he shall receive information from the said master that such original deed has been safely lodged in his

Persons in possession of wills &c., on testator's death, bound to transmit them forthwith to the master in Cape Town, or the resident magistrate in the country districts.

Transmission of copy in case of loss of original.

office; and when any such magistrate shall receive information that any deed transmitted by him as aforesaid to the office of the master has not arrived there but has been lost or has miscarried, he shall forthwith from the copy in his custody cause another copy to be made, and shall authenticate such copy with his signature, and shall by the first opportunity transmit the same to the office of the said master, and he shall proceed in like manner so often as may be necessary, until he shall receive information from the said master that the copy so transmitted has been safely lodged in his office; and so soon as he shall be so informed that such original deed or copy thereof has been safely lodged in the said office, the copy kept by the said resident magistrate in manner aforesaid shall be delivered to any person having an interest therein who shall apply for the same, or shall be destroyed if no such application be made within twelve months after the original shall have been lodged with such resident magistrate.

Penalty for theft, destruction or concealment of wills &c.: seven years' imprisonment with hard labour.

4. And be it further enacted that if any person shall, either during the life of the testator or testatrix or after his or her death, steal or for any fraudulent purpose destroy or conceal any will, codicil, or other testamentary instrument, every such offender shall, being convicted thereof, be liable at the discretion of the court before which he shall be so convicted to transportation from this colony for seven years, or such punishment by imprisonment with or without hard labour for any period not exceeding seven years, or by fine, or by both, as the said court shall award; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument is the property of any person or is of any value: Provided, always, that nothing herein contained relating to the said offences, nor any proceeding, conviction, acquittal, or judgment to be had or taken thereupon, shall prevent, lessen, or impeach any remedy which any person aggrieved by any such offence might or would by law have had by means of any civil action, suit, or proceeding if this ordinance had not been passed; but, nevertheless, the conviction of any such offender shall not be received as evidence against him nor his acquittal as evidence for him in any such civil action, suit, or proceeding against him. And no person shall be liable to be convicted of the offence aforesaid by any evidence whatever in respect of any act done by him, if he shall at any time previous to his being indicted for such offence have disclosed such act on oath in

Civil actions.

consequence of any compulsory process of any competent court in any civil action, suit, or proceeding which shall have been *bonâ fide* instituted by any party thereby aggrieved, or if he shall have disclosed the same in any examination which he may have undergone under and by virtue of the provisions of the sixty-first and sixty-fourth sections of the Ordinance No. 64.

5. And be it further enacted that the chief justice of the colony, every judge of the supreme court, and every resident magistrate or justice of the peace within the colony, upon information taken on oath being transmitted to him by the attorney-general or any clerk of the peace or upon the information of any person made on oath before any such judge or magistrate that there is reason to suspect that any will, codicil, or other testamentary instrument stolen or concealed for any fraudulent purpose is concealed in any place within the jurisdiction of such judge or magistrate, may by warrant under his hand cause every such place to be searched during the day time.

Warrants to search for stolen or concealed wills by judges, magistrates, &c.

6. And be it further enacted that if any person who shall be in possession of any will, codicil, or other testamentary instrument shall after the death of the testator or testatrix refuse or fail to deliver or transmit the same in manner hereinbefore provided at or to the office of the master of the supreme court, or to the resident magistrate of the district in which such person shall reside, the said master is herewith authorized and required forthwith summarily to apply to the supreme court or any judge thereof for an order of such court or judge on such person forthwith to deliver to the said master such will, codicil, or other instrument; and further, on proof that any such person hath refused or failed to obey such order, to apply for and obtain from the said court or any judge thereof a warrant for the imprisonment of such person until he shall have delivered up to the said master every such will, codicil, or other instrument in his possession or under his control. And every such warrant shall and may be executed in like manner in all respects as any arrest may be made under and by virtue of the provisions of the nineteenth section of the Ordinance No. 73.

Application by master to the court or a judge for an order on persons refusing to give up wills.

7. And be it further enacted that every deed being or purporting to be the will, codicil, or other testamentary instrument of any person which shall have been lodged in or delivered at or transmitted to the office of the master of the supreme court in any manner hereinbefore provided shall

Enregistration of wills &c., at testator's death.

after the death of the maker thereof, in the original be enregistered by the master in a register to be by him for that purpose kept in his said office, and to be called the register of wills, for which purpose the said master is hereby authorized and required to open or cause to be opened every such deed which may be sealed up: Provided, always, that notwithstanding any such registration all questions as to the validity and legal effect of every such deed shall be reserved and remain for the decision of the supreme court or any circuit court in which any action or suit shall be brought or shall depend touching or concerning the validity and effect of any such will.

Inspection and  
copies and ex-  
tracts of wills.

8. And be it further enacted that it shall and may be lawful for any person on any day, Sundays and holidays excepted, at any hour when according to any regulation made by competent authority for that purpose the office of the master of the supreme court shall be directed to be kept open, to apply at the said office, and to demand inspection of any deed enregistered in the register of wills aforesaid, and to demand any copies or extracts thereof; and for every such inspection, copy, or extract there shall be paid by the person demanding the same such fee as is specified in the schedule hereunto annexed, marked A: Provided, always, that every person holding office under the government of this colony shall be and they are hereby authorized without the payment of any fee or charge whatever to inspect any such deeds as aforesaid, and to take copies or extracts thereof whenever it shall be necessary or expedient that the same should be done by any such person in the discharge of the duties of his office.

Death notices  
to master,  
magistrate, or  
field-cornet.

9. And be it further enacted that whenever any death shall occur the nearest relative or connection of the deceased who shall at the time be at or near the place of death, and in default of any such near relative or connection the person who at or immediately after the death shall have the chief charge of the house in or of the place on which the death shall occur, shall cause notice of the death to be given in manner following, that is to say,—where the death shall occur in Cape Town or within six hours' distance thereof, at the office of the master of the supreme court; where the death shall occur elsewhere and in or within six hours' distance of any town or village in which the office of any resident magistrate shall be holden, at such office; and where the death shall occur at any place situated at a greater distance from any

such town or village, to the field-cornet of the field-cornetcy in which the death shall occur. And every person herein required to cause such notice as aforesaid to be given who shall without some lawful and sufficient excuse fail to do so shall on conviction thereof before the resident magistrate of the district at the instance of the clerk of the peace thereof incur a penalty not exceeding five pounds sterling nor less than five shillings, to be levied out of the movable property of such person. And every field-cornet within the Cape district and the district of Stellenbosch to whom any such notice as aforesaid of any death shall be given shall forthwith transmit the same to the office of the master of the supreme court; and every field-cornet in any other district to whom any such notice shall be given shall forthwith transmit the same to the resident magistrate of such district; and every resident magistrate to whom any such notice shall be transmitted shall forthwith transmit the same to the master of the supreme court: Provided, always, that it shall not be necessary for any person to cause notice of any death to be given under and in terms of the provisions of this ordinance before the lapse of the period within which it is hereinafter provided that inventories taken of the property left by deceased persons shall be transmitted in manner hereinafter mentioned, and that such notices may at all times be transmitted along with such inventories in manner hereinafter mentioned, anything herein contained to the contrary notwithstanding.

10. And be it further enacted that all such notices of death as are hereinbefore required to be given shall contain and set forth the following particulars, in so far as the same shall be known to the person giving the same, that is to say:

Particulars of  
death notices.

1. The name and birth-place and names of the parents of the deceased.
2. His or her age.
3. His or her condition.
4. Whether married or unmarried or widower or widow.
5. The day of the decease.
6. At what house or where the person died.
7. Names of the deceased's children, and whether they are majors or minors.
8. Whether deceased has left property of any kind.

Provided, always, that in such notice it shall not be necessary to specify the nature or amount of such property.

Death register. 11. And be it further enacted that a register, to be called the "death register," shall be kept in the office of the master of the supreme court, in which the said master shall cause to be inserted every notice of death which shall be transmitted to him in manner hereinbefore provided, together with all the particulars therein contained.

Preference on estate for funeral expenses. 12. And be it further enacted that every person by whom the funeral of any deceased person shall be performed or caused to be performed shall for the amount of the expenses of such funeral, in so far as the same were suitable to the condition of the deceased, have a preference on the property and assets of the estate of the deceased before any other debt or claim which may have been owing by the deceased at the time of his death, or which may arise against his estate after his death.

Possession by survivor of estate in community until institution of proceedings under ordinance No. 105. 13. And be it further enacted that when one of two spouses who have been married in communion of property shall die, the joint estate shall remain under the charge of the survivor until the executors of the deceased or the tutors testamentary or dative of the minor children of the marriage or the master of the supreme court or curator bonis lawfully appointed to such minor children shall institute proceedings for the administration, distribution, and final settlement of the said joint estate under and by virtue of the provisions of this Ordinance or of the Ordinance No. 105: Provided, always, that nothing herein contained shall extend or be construed to extend to prevent any such joint estate from being placed under sequestration as insolvent at the instance either of the surviving spouse or of any creditor or creditors on such estate, in like manner as the same might have been done under and by virtue of the provisions of the Ordinance No. 64, prior to the passing of this Ordinance.

Inventory of estate in community by surviving spouse within six weeks of the death. 14. And be it further enacted that when one of two spouses who have been married in communion of property shall die, the survivor shall within six weeks after the death of the deceased cause an inventory of all property, goods, and effects, movable and immovable of what kind soever, which at the time of the death shall have formed part or belonged to the estate possessed in community between the predeceasing and surviving spouses, to be made in presence of two witnesses being qualified persons by law to serve on juries in the supreme or circuit courts of this colony, and of such persons having an interest in the distribution of the joint estate as



heirs or legatees of the predeceased spouse who shall attend; and every such inventory shall be subscribed by the surviving spouse, the witnesses aforesaid, and such heirs or legatees as shall be present at the making thereof: Provided, always, that it shall be lawful for the supreme court and circuit courts or any judge of the supreme court on cause being shown by the master of the supreme court or any person having an interest in such joint estate, respectively, to order that an inventory thereof shall be taken by any person or persons named in such order, or to appoint a curator to take the charge and custody of any such joint estate at any time either before or after the lapse of the said period of six weeks.

15. And be it further enacted that every surviving spouse who shall wilfully neglect to cause an inventory of the joint estate to be made in manner and within the period hereinbefore provided, or shall knowingly omit to enter in such inventory any article of property of whatsoever kind, shall in the distribution of such estate forfeit all right to and share in any thing which may accrue to the joint estate after the death of the predeceasing spouse, and in and to such property so omitted in the inventory; and every loss which shall have been caused by the destruction or deterioration of any such property so omitted in the inventory, or which shall have accrued to the joint estate after the death of the predeceasing spouse by the loss or deterioration of any part thereof, shall in the distribution of the estate fall upon and be borne by such surviving spouse solely and exclusively: Provided, always, that nothing herein contained shall extend or be construed to extend to free or exempt any person who shall for any fraudulent purpose make or cause to be made any false inventory of any such joint estate from any penalty or punishment hereinafter or by any other law or ordinance provided with respect to the offence of making false inventories for fraudulent purposes.

16. And be it further enacted that on the death of any person not being one of two spouses married in community of goods, the wife or husband of the deceased, and in default or absence of the wife or husband the child or children of the deceased, or in default, absence, or minority of the child or children the next of kin of the deceased, or in default, absence, or minority of the next of kin the person who at or immediately after the death shall have the chief charge of the house in or of the place on which the death shall occur, shall

Penalties on omission of inventory.

Inventory on the death of persons not being spouses married in community.

secure and take charge of all goods and effects of whatever description belonging to the deceased, and being in the house or upon the premises at the time of the death of the deceased, and shall retain the same in his or her custody and possession until delivery thereof shall be demanded by the executor or executors of the deceased, or by any person lawfully appointed by the supreme court, or by a judge, or the master thereof to receive delivery of the same, and shall within six days after the death make or cause to be made in the presence of two witnesses being persons qualified by law to serve on juries in the supreme or circuit courts of this colony an inventory of all such goods and effects as aforesaid and of all others known by the person making or causing such inventory to be made to have belonged to the deceased; and every such inventory shall be subscribed by the person making or causing the same to be made and by the witnesses aforesaid.

Penalty for false inventory, two years' imprisonment or fine.

17. And be it further enacted that if any person required and directed under and by virtue of the provisions of the fourteenth and sixteenth sections of this ordinance to make or cause to be made an inventory of any estate, goods, or effects, shall for any fraudulent purpose make a false inventory thereof, every such offender being convicted thereof shall be liable, at the discretion of the court before which he shall be so convicted, to punishment by imprisonment with or without hard labour for any period not exceeding two years, or by fine, or by both, as the said court shall award.

Transmission of inventory to master or resident magistrate.

18. And be it further enacted that every person hereinbefore required or directed to make or cause to be made any such inventory as aforesaid shall, so soon as the same has been made, forthwith by the first opportunity deliver or transmit every such inventory at or to the office of the master of the supreme court when such person shall reside in Cape Town or the district thereof, or the Cape district, or the district of Stellenbosch; and when such person shall reside in any other district, then to the resident magistrate of such district; and every such resident magistrate shall cause a copy or copies of every such inventory so delivered or transmitted to him to be made, and shall authenticate such copy or copies with his signature, and shall transmit the original of every such inventory to the office of the said master: Provided, always, that when such inventory as aforesaid shall have been made by the survivor of two spouses to whom

the predeceasing spouse shall by will have lawfully bequeathed all the share of the said joint estate belonging to such predeceasing spouse, or whom the predeceasing spouse shall by will or other lawful instrument have appointed the executor of his or her will, and the tutor of his or her minor children, and the administrator (boedelhouder) of the said joint estate during the minority of such children, then and in every such case it shall and may be lawful for such spouse, if he or she shall think fit so to do, to transmit every such inventory as aforesaid, sealed up, to the office of the master of the supreme court, or to the resident magistrate of the district respectively, in manner hereinbefore provided. And when any such inventory, so sealed up, shall be transmitted to any resident magistrate there shall also be transmitted to such magistrate a duplicate and triplicate of such inventory, also sealed up. And such resident magistrate shall transmit the original of every such sealed inventory to the office of the said master; and for and with respect to the transmission of such original inventory, whether sealed up or open, and of such copy or copies thereof as aforesaid and of such duplicate and triplicate thereof as aforesaid, shall do and cause to be done every thing which under and by virtue of the provisions of the third section of this ordinance such resident magistrate is required to do or cause to be done for the transmission of the originals and copies of wills, and shall proceed in all respects in like manner as is therein directed: Provided, always, that no such duplicate or triplicate shall be redelivered by such resident magistrate to any person except the surviving spouse by whom the same was transmitted to him or to some person authorized by such survivor to receive the same; and that no such sealed inventory, or duplicate or triplicate thereof, shall be opened, except by virtue of an order of the supreme court or some judge thereof, on sufficient cause for opening the same being shown by the master of the supreme court, or by some person having an interest in the said joint estate.

Transmission of original by resident magistrate to master.

19. And be it further enacted that the estates of all persons dying either testate or intestate, in so far as the same shall be situated within this colony, shall be administered and distributed according to law under and by virtue of letters of administration to be granted in the form contained in the schedule hereunto annexed, marked B, by the master of the supreme court, to the testamentary executors duly appointed

Letters of administration.

by such deceased persons, or to such persons as shall in default of testamentary executors be appointed executors dative to such deceased persons, in manner hereinafter mentioned:

Appointment of curator bonis until issue of letters of administration.

Provided, always, that in all cases where the same may be necessary or expedient, the master of the supreme court shall and may appoint a curator bonis, to take the custody and charge of any such estate until letters of administration shall be granted to executors testamentary or dative for the due administration and distribution thereof; and that every appointment so made by the said master of any curator bonis shall, on the application of any person having an interest in such estate, be subject to be reviewed and confirmed or set aside by the supreme court or any judge thereof; and such court or judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person to be curator bonis.

Letters of administration to executors appointed by will.

20. And be it further enacted that in all cases in which any deceased person shall by his will have duly appointed any person or persons to be his executor or executors, the master of the supreme court shall upon the application of such executor or executors forthwith grant letters of administration to him or them so soon as the will of the deceased shall have been lodged in the office of the said master in manner hereinbefore mentioned: Provided, always, that if it shall appear to the said master, or if any person by writing lodged at the office of the said master shall object, that any deed by virtue whereof any person or persons shall claim to be the testamentary executor or executors of any person deceased is not in law sufficient to warrant and support such claim, then and in every such case letters of administration shall not be granted until the validity and legal effect of such deed shall have been determined by the judgment of some competent court, or until such objection as aforesaid shall have been withdrawn by the party by whom the same was made.

Proceedings on failure of appointment of executors, or on death, incapacity or refusal to act.

21. And be it further enacted that when any person shall have died without having by any valid deed appointed any person or persons to be his executor or executors, or where any person or persons duly appointed to be the executor or executors of any deceased person shall have predeceased him, or shall refuse or become incapacitated to act as such, then and in every such case the master of the supreme court shall cause to be published in the Gazette of this colony, and

in such other manner as to him shall seem fit, an edict, calling the surviving spouse (if any), the next of kin, legatees, and creditors of the deceased to attend at his office at the time therein specified, not being less than six weeks from the day of publication, to see letters of administration granted to such person or persons as shall then be appointed by him executor or executors dative to the estate of such deceased person: Provided, always, that when it shall appear to the said master necessary or expedient so to do, it shall and may be lawful for him in such edict to call such persons as aforesaid to attend at the office of any resident magistrate at such time as aforesaid for the purpose of proposing some person or persons to be by such magistrate reported to the master as fit and proper to be by him appointed executor or executors dative. And the said master shall, at the meeting so to be holden at his office or upon receiving the report of such resident magistrate, appoint such person or persons as to him shall seem fit and proper to be executor or executors dative of the estate of the deceased and shall grant letters of administration accordingly, unless it shall appear to him necessary or expedient to postpone such appointment and to call another or other such meeting or meetings as aforesaid: And provided, also, that when it shall appear to the satisfaction of the said master that the estate of any such deceased person as is hereinbefore mentioned is manifestly insolvent, then and in every such case it shall not be necessary for the said master to take any such proceedings as aforesaid for the appointment of an executor or executors dative, and no such proceedings shall by him be taken for that purpose; and it shall and may be lawful for him and he is hereby declared and required to take the necessary proceedings for having such estate placed under sequestration as insolvent under and by virtue of the provisions of the third section of the Ordinance No. 64.

Proceedings on  
insolvency of  
estate.

22. And be it further enacted that in every case in which a competition shall take place for the office of executor dative, the surviving spouse, whom failing the next or some of the next of kin, whom failing a creditor or creditors, whom failing a legatee or legatees, shall be preferred by the master of the supreme court to the office of executor dative: Provided, always, that nothing herein contained shall prevent any one or more of the above-mentioned classes of persons from being conjoined in the said office with one or more of any other of

Competition  
for office of exo-  
cutor dative.

the above-mentioned classes of persons. 'And that when it shall appear to the master or to the supreme court or any judge thereof, on reviewing the appointment of the master, that any valid objection exists to the appointment of all or any of the above-mentioned persons or classes of persons as executor or executors dative, such objectionable person or class of persons shall be passed by and some other fit and proper person or persons shall by the said master or by such court or judge be appointed executor or executors dative: And provided, also, that every such appointment so made by the said master shall on the application of any person having an interest in such estate be subject to be reviewed and confirmed or set aside by the supreme court or any judge thereof; and such court or judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person or persons to be executor or executors dative.

Review of master's appointment by court or judge.

Appointment of tutors of minors, where minors would have been entitled to appointment.

23. And be it further enacted that when it shall happen that any of the next of kin or creditors or legatees of any deceased person shall be minors under the guardianship of any tutor or tutors duly appointed, then and in every such case such tutor or tutors shall be entitled to be preferred to the office of executor or executors dative under the provisions of the immediately preceding section of this ordinance, in like manner in all respects as the minor or minors whose tutor or tutors he or they are would if of full age have been entitled to be preferred to that office under the provisions of the said section.

Assumption of executors under power contained in will.

24. And be it further enacted that nothing herein contained shall extend or be construed to extend to prevent any testamentary executor or executors of any testator from assuming any other person or persons as executor or executors of such testator under and by virtue of any power for that purpose to him or them committed by such testator by his will or by any other deed duly executed by him: Provided, always, that no person shall be entitled or qualified to act as assumed executor until letters of administration shall have been granted to him as such by the master of the supreme court, who is hereby directed and required to grant the same on production to him of the will or other deed by which the assumption of such executor is authorized, and of the deed by which such testamentary executor or executors has or have assumed such person as executor. And every

Letters of administration to assumed executors.

provision of this and of every other law or ordinance applicable or relating to or affecting executors dative shall be deemed and taken to and shall apply and relate to and affect every such executor so assumed.

25. And be it further enacted that when by reason of any <sup>Proceedings in</sup> testamentary or assumed executor to whom letters of admin- <sup>case of death,</sup> istration shall have been granted for the administration of <sup>incapacity or</sup> any estate having died or become incapacitated to act as <sup>removal of</sup> such, or having been removed from his office by the decree <sup>testamentary</sup> of any competent court, there shall not remain for the <sup>or assumed</sup> administration of such estate any executor whatever or so <sup>executors.</sup> many executors, either testamentary or assumed, as by the provisions of the deed by which such executors were appointed or permitted to be assumed shall be required to form a quorum of executors for the administration of such estate, and when it shall happen that any executor dative shall, after letters of administration have been granted to him, die or become incapacitated or be removed in manner aforesaid, then and in every such case proceedings in order to the appointment of an executor dative in place of such executor so dying or becoming incapacitated or removed shall be had and taken by the master of the supreme court, in like manner in all respects as is hereinbefore provided by the provisions of the twenty-first, twenty-second, and twenty-third sections of this ordinance.

26. And be it further enacted that letters of administration <sup>Revocation of</sup> granted to any person as testamentary executor shall at all <sup>letters of ad-</sup> times be subject to be revoked and annulled by the decree of <sup>ministration by</sup> the supreme or of any circuit court on the proof to the <sup>decree of court,</sup> satisfaction of such court that the deed in respect of which <sup>or in some</sup> such letters have been granted to such person is null or has <sup>instances by</sup> been revoked either wholly or in so far as relates to the <sup>master.</sup> nomination and appointment of such executor: and that letters of administration granted to any person as executor dative shall be at all times subject to be revoked and annulled by the order of the master of the supreme court, on production to him of any valid deed by which any other who shall then be legally capable and qualified and who shall consent to act as executor has been legally nominated and appointed testamentary executor to the estate which such executor dative has been appointed to administer: Provided, always, that if the non-production of such deed prior to letters of administration having been granted to the executor dative

has been owing to the fault or negligence of the person therein appointed testamentary executor such person shall be personally liable for all expenses which have been incurred in respect of and with reference to the appointment of the executor dative.

Security by  
executor dative  
for due ad-  
ministration.

27. And be it further enacted that every executor dative shall before he shall be permitted to enter on the administration of the estate find security to the satisfaction of the master of the supreme court for the due and faithful administration of the estate of which he has been appointed executor dative, to such amount as in the circumstances of each particular case shall be reasonable.

Inventory by  
executors.

28. And be it further enacted that every executor, whether testamentary or dative, shall so soon as letters of administration shall have been granted to him in manner aforesaid forthwith make an inventory of all property, goods, and effects, movable and immovable of what kind soever, belonging to or forming part of the estate which such executor shall have been appointed to administer, and shall in like manner from time to time thereafter and so soon as such executor shall find or know of any other such property, goods, or effects, belonging to or forming part of such estate and not contained in such first-mentioned inventory make an additional inventory or inventories of all such last-mentioned property, goods, and effects. And every such executor, either testamentary or dative, shall forthwith cause every such inventory and additional inventory to be transmitted to the office of the said master. And when any such additional inventory shall be so transmitted by any executor dative he shall find such further security as aforesaid as shall be required of him: Provided, always, that when the person by whom any testamentary executor has been appointed shall by any deed duly executed by him have directed that such testamentary executor shall not transmit to the office of the said master any such inventory or additional inventory as aforesaid, then and in every such case no such executor shall be required,—and that the survivor of any two spouses married in community of property to whom the predeceasing spouse shall by will have lawfully bequeathed all the share of the said joint estate belonging to such predeceasing spouse or whom the predeceasing spouse shall by will or other lawful instrument have appointed the executor of his or her will and the tutor of his or her minor children and the

Transmission of  
inventory to  
master.

Cases in which  
inventory need  
not be trans-  
mitted.



administrator (boedelhouder) of the said joint estate during the minority of such children shall not in any case be required,—to transmit to the office of the said master or to produce any such inventory as aforesaid, except when an order for the production of the same shall have been made by the supreme court or any judge thereof on sufficient cause for the production of the same being shown by the master or by some person having an interest in the said joint estate, anything to the contrary herein contained notwithstanding.

29. And be it further enacted that if previously to letters of administration being granted by the master of the supreme court to any executor or executors, testamentary or dative, for the administration of any estate, any person shall take upon himself to administer, distribute, or in any wise dispose of such estate or any part thereof, except in so far as may be absolutely necessary for the safe custody or preservation thereof, or for providing a suitable funeral for the deceased, or for the subsistence of the family or household or live-stock left by the deceased; or if any person to whom letters of administration have been granted either as executor testamentary or dative shall administer, distribute, or in any wise dispose of any property or effects belonging to the estate of which he is the executor and which shall not have been contained in the inventory or inventories of such estate lodged in the office of the said master previously to the granting of the said letters of administration or shall not be contained in any additional inventory or inventories made by him and transmitted by him to the said office in terms of the provisions of the twenty-eighth section of this ordinance, every such person shall thereupon and in respect and by reason of such undue administration, distribution, or disposal of any such estate or any part thereof become and be personally liable to pay to the creditors and legatees of the deceased all debts due by the deceased at the time of his death, or which have thereafter become due by his estate, and all legacies left by the deceased, in so far as the proceeds and assets of such estate shall be insufficient for the full payment of such debts or legacies: Provided, always, that when any person who shall be sued for the payment of any debt or legacy which he shall have rendered himself personally liable to pay in manner aforesaid shall prove to the satisfaction of the court before which he shall be sued that the true amount and value of the property which has actually, been unduly

Liability in certain cases for debts and legacies by persons who previously to the granting of letters of administration have inter-meddled with estates, and by persons to whom letters have been granted,—in respect of property not contained in inventory.

administered, distributed, or disposed of by him did not exceed a certain sum and that his administration, distribution, or disposal of the same was not fraudulent, then and in every such case such person shall only be personally liable for the amount of such sum, or for such part thereof as he shall fail to prove has been distributed or disposed of in such manner and for such purposes as by law the same ought to have been distributed or disposed of and for the amount of the costs by him incurred in and concerning such suit, as well as for the amount of the taxed costs incurred in and concerning such suit by the plaintiff therein, notwithstanding that by reason of such person's personal liability to have been restricted in manner aforesaid such plaintiff shall not have recovered from such person any part of the debt or legacy sued for.

Public notice by executors to creditors and others to lodge their claims.

30. And be it further enacted that every executor, whether testamentary or dative, shall so soon as he shall have entered on the administration of any estate forthwith cause a notice to be published in the Gazette of this colony and in such other manner as may be deemed expedient, calling upon the creditors of and all others having claims against the deceased or his estate to lodge the same with such executor within such period from the date of the publication thereof as shall be therein specified, not being less than six weeks or more than four calendar months, as in the particular circumstances of each case shall by such executor be deemed proper.

Suspension of execution of judgments against deceased until expiration of period of notice.

31. And be it further enacted that it shall not be lawful for any person who shall have obtained the judgment of any court against any deceased person in his lifetime or against his executor or executors in any suit or action commenced against such executor or executors, or which having been pending against the deceased at the time of his death shall thereafter have been continued against the executor or executors of such person, to sue out or obtain any process in execution of any such judgment before the expiration of the period notified in the Gazette in manner hereinbefore provided. As also that it shall not be lawful for any such person as aforesaid to sue out or obtain any process in execution of any such judgment as aforesaid within six months from the time when letters of administration shall have been granted to the executor or executors against whom execution of such judgment is sought without first obtaining an order from the supreme court or some judge thereof for the issuing of such process.

Order of court or of a judge for execution within six months after date of letters of administration.

32. And be it further enacted that on the expiration of the period notified in the Gazette in manner hereinbefore provided, every such executor or executors as aforesaid shall forthwith proceed to rank according to their legal order of preference all such debts and claims against the deceased or his estate as have been lodged with them or of the existence of which they shall have knowledge, and shall pay off and discharge the same so soon as the funds necessary for that purpose shall have been realized out of the estate. And if the proceeds of such estate shall be found to be insufficient for the payment of all the just and valid claims to which it is liable, the executor or executors thereof shall be liable to pay to any person having any such just and valid claim the amount which such person would have been entitled to receive in respect of such claim if ranked according to the legal order of preference in so far as such executor or executors shall have within the said period last-mentioned or afterwards, at any time when he or they knew of the existence of such claim, paid such amount to any person or persons the payment of whose claims against the deceased or his estate according to the legal order of preference ought to have been postponed until such just and valid claim as aforesaid had been satisfied; reserving always to such executor or executors recourse against the person or persons to whom payment of their claims may have been improperly made: Provided, always, that such notice to creditors as aforesaid shall have been duly published as aforesaid, no creditor or claimant on the estate of any deceased person who shall not have lodged the same with the executor or executors within such period as aforesaid or thereafter before the distribution of the funds of the estate shall in respect thereof, be entitled to recover from any person having a just and valid claim against such estate restitution of any part of such sums which may have been paid to such person in satisfaction thereof, after the expiry of such period and before the claim of the person seeking such restitution was lodged with the executor or executors, although if lodged in due time such last-mentioned claim would according to the legal order of preference have been preferent to that of the person to whom such payment had previously been made; nor shall such person have any claim against any executor or executors in respect of any such distribution as aforesaid of the funds of any such estate made by him or them after the

Duties of executors after expiration of period for lodging claims.

Payment of debts.

Liability of executors in regard to preferent debts.

expiry of such period as aforesaid, and before the claim of such person shall have been made known to such executor or executors.

Filing of account of administration by executor with the master and resident magistrate.

33. And be it further enacted that every executor, whether testamentary or dative, shall so soon as the estate under his administration shall have been fully administered and distributed lodge with the master of the supreme court and the resident magistrate of the district within which such estate was situated, who shall respectively cause the same to be preserved and registered in their offices for the inspection of all concerned, a full and true account of the whole administration and distribution of such estate. And every person having an interest in such estate shall and may at any time after the expiration of six months from the day on which the letters of administration were granted to such executor or executors summon him or them to show cause before the supreme court or any circuit court why such account as aforesaid has not been lodged with the said master and said resident magistrate. And every executor who shall fail to lodge such account as aforesaid in manner herein provided and who shall have no lawful and sufficient excuse for such failure shall by reason thereof forfeit all claim to any fees which he might otherwise be entitled to receive in respect of his administration of such estate.

Summons if account has not been lodged within six months.

Forfeiture of fees.

Appointment by master of executors to intestate estates under £40.

34. And be it further enacted that when any person shall die intestate whose estate in so far as situated within this colony shall appear to the master of the supreme court to be under the value of forty pounds, then and in every such case the said master shall and may cause such estate to be administered and distributed according to law by an executor dative, to be by him summarily appointed by letters of administration granted by him for that purpose.

Movable property of officers, crew, passengers, &c. of ships in colonial harbours dying on land not affected by this ordinance.

35. And be it further enacted that none of the provisions of this ordinance shall extend or apply to the estate, property, or effects actually on board any vessel lying or being in any harbour, port, or place of or within the limits of this colony or the dependencies thereof, and belonging to any person who, being one of the officers or crew of or passengers by such vessel, shall die on land within this colony or on board of any such vessel while lying or being in any such harbour, port, or place as aforesaid, unless such person so dying shall at the time of his death have left property situated on land within this colony, not being wearing apparel, bedding, or

other articles of the like nature, or unless it shall be shown to the supreme court or one of the judges or the master thereof that for the preservation or due administration and distribution of such property, it is necessary or expedient that such property and effects should be administered, distributed, and disposed of under and by virtue of the provisions of this ordinance; and that none of the provisions of this ordinance shall extend or apply to the estate, property, or effects (except immovable property situated within this colony) of any officer employed on or belonging to the staff, or of any commissioned or non-commissioned officer or private soldier present with or belonging to any regiment or corps of His Majesty's Army serving in this colony who shall die whilst so employed or belonging to the said staff, regiment, or corps.

Officers in the army, soldiers, &c.

36. And be it further enacted that if any person who shall die after the first day of March next shall by any will of a testamentary nature unrevoked at the time of his death have appointed the orphan chamber or the master of the supreme court to be the executor of his estate, then and in every such case such person shall be deemed and taken in law to have died without having appointed any executor, and the like proceedings shall be had and taken for and in respect of the appointment of executors to administer and distribute his estate as would have been had or taken under and by virtue of the provisions of this ordinance, if no such deed had ever been executed by such deceased person.

Invalidity of appointment after 1st March 1834, of the orphan chamber or the master as executor.

37. And be it further enacted that the law respecting the duties, powers, rights, relief, and responsibility of executors, and touching and concerning the administration by the survivor of two spouses of the joint estate of such spouses during the minority of the children of the predeceased spouse (boedelhouderschap,) in force within this colony prior to the passing of this ordinance, shall, except in so far as the same has been expressly repealed or altered by the provisions of this ordinance, remain in full force and effect in like manner as if this ordinance had not been made, any thing to the contrary herein contained notwithstanding: Provided, always, that every executor, either testamentary or dative, shall in respect of his administration, distribution, and final settlement of any estate be entitled to claim, receive, or retain out of the assets of such estate or from any person who as heir legatee, or creditor shall be entitled to the whole or any part

Retention of colonial law as to duties of executors and as to "boedelhouderschap," except where expressly repealed.

of such estate such fees only as are specified in the tariff contained in the schedule hereunto annexed, marked C, and shall not be entitled to claim, receive, or retain any other reward or remuneration whatever for his trouble or personal expenses touching or concerning the same.

Transmission by executors to the master of claims of unrepresented minors and lunatics against the estates administered by them.

38. And be it further enacted that every executor, either testamentary or dative, who shall in administering, distributing, and settling any estate find that any minor not having a tutor testamentary or dative or any lunatic not having a lawful curator or any person absent from this colony and not having a lawful representative within the same has any just and lawful right or claim to such estate or any part thereof, such executor shall forthwith transmit in writing to the office of the master of the supreme court a statement containing the name of such minor, lunatic, or absent person, and specifying the nature and amount of the property to which such minor, lunatic, or absent person has such right or claim as aforesaid.

Register of executors and of their sureties.

39. And be it further enacted that the master of the supreme court shall cause to be kept in his office a register containing the names of every executor, either testamentary or dative, to whom any letters of administration shall have been granted, and of every surety for any executor dative. And whenever any order for sequestration shall under and by virtue of the provisions of the nineteenth section of the ordinance No. 64 be delivered to the said master, he shall cause such register to be examined, and if upon such examination it shall appear that the person whose estate has been placed under sequestration by such order is either an executor or the surety of an executor of any estate not previously administered, distributed, and finally settled, the master shall in the first notice of such sequestration which shall be published in the Gazette of this colony insert a statement of every such estate as aforesaid of which such insolvent is an executor, or for the executor of which such insolvent is a surety; and specifying whether he is the executor or the surety for the executor of such estate.

Notice in Gazette by the master in case of the insolvency of executors or their sureties.

Master's fees.

40. And be it further enacted that the master of the supreme court shall and he is hereby authorized and required to charge and to demand, receive, retain, or recover, in respect of the acts, matters, and things done or caused to be done by him or in his office, under and by virtue of the provisions of this ordinance, all such fees as are specified in

the tariff contained in the schedule hereunto annexed, marked A, and shall account for and pay over the same in like manner as is by law provided in respect of any other fees received or retained by him as master of the supreme court: Provided, always, that nothing herein contained shall extend or be construed to extend to repeal any law now in force requiring any stamp to be used for any purpose or any stamp duty to be paid in respect of any proceeding except in so far as any such alteration shall be expressly made in the tariff of fees hereinbefore mentioned.

Retention of stamp law except where expressly altered in tariff.

41. And be it further enacted that whenever and so often as the words "any law in force within this colony prior to the passing of this ordinance" occur in any of the provisions of this ordinance, then and in every such case the said words shall be construed and deemed to be taken to mean such law as was then in force within this colony, independently and exclusively of the provisions or enactments of the instructions and of the ordinance No. 42 hereinbefore repealed, and of any other instructions or regulations which had at any previous time been in force within this colony touching or concerning the functions, duties, or powers of the orphan chamber.

Interpretation of words "any law in force within this colony prior to the passing of this ordinance."

SCHEDULE A.

	Tariff of fees.
Section 2.—For filing and registering any will, codicil, or testamentary instrument, or for the re-delivery thereof . . . . .	£0 2 6
Section 8.—For every search or inspection . . . . .	0 1 0
For office copies of wills, codicils, or testamentary instruments, or any other documents, not exceeding one folio of 100 words . . . . .	0 2 0
— exceeding 100 words, at the rate of, per folio . . . . .	0 0 6
Section 19.—For letters of administration, &c. . . . .	0 5 0
Section 21.—For attending any meeting of the next of kin, legatees, creditors &c., whether by the master or resident magistrate . . . . .	0 10 6
Section 22.—For every edict . . . . .	0 3 0
For approving security given by executors dative, and certificate thereof . . . . .	0 2 6
For enregistering accounts . . . . .	0 0 6
Filing inventories . . . . .	0 0 6
Deeds of assumption . . . . .	0 2 6
For taxing bills of remuneration of executors testamentary or dative, 4 per cent. on the taxed amount thereof,	

## SCHEDULE B.

Form of letters  
of administra-  
tion.

These are to certify, that A. B. has been duly appointed the executor testamentary (or dative, as the case may be), and is hereby authorized as such to administer the estate of C. D. deceased.

(Signed) E. F.

Master of the Supreme Court.

Cape Town, day of ——— 18 .

## SCHEDULE C.

Assessment of  
executors' com-  
pensation by  
master.

Section 37.—To be paid out of the assets of the estate a reasonable compensation, to be assessed and taxed by the master; subject, nevertheless, to the review of the supreme court upon the petition of the executor testamentary or dative, or any person having an interest in the estate.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 5th July, 1833.

By command of His Excellency the Governor.

(Signed) J. G. BRINK.

Acting Secretary to Government.

By order of the Council,

(Signed) K. B. HAMILTON,

Clerk of the Council.

No. 105.—Sd. G. Lowry Cole.]

Ordinance for providing for the due Administration and Management of the Estates and Property of Minors, Lunatics, and Persons absent from the Colony, and for the proper Care of the Persons of Minors and Lunatics.

Preamble.

WHEREAS it has been enacted by His Majesty's Royal Charter of Justice dated at Westminster on the 4th day of May, 1832, that the orphan chamber within this colony shall be abolished and that the duties which have heretofore been performed by the said orphan chamber shall henceforth be performed by the master for the time being of the supreme



court: And whereas the administration of the estates and property of minors and in certain cases of persons absent from the colony, and the care of the persons of minors heretofore formed part of the duties of the said orphan chamber: And whereas, by the ordinance No. 104 the regulations according to which such duties were performed by the said orphan chamber have from and after the first day of March next been repealed, and it has now become expedient to provide for the due administration and management of the estates and property of minors, lunatics, and in certain cases of persons absent from this colony, and also for the proper care of the persons of minors and lunatics: Be it therefore enacted by His Excellency the Governor in Council that from and after the first day of March next it shall not be lawful for any person except the father of any minor or mother of any minor whose father is dead, by any will or other deed to nominate and appoint any tutor or tutors to administer and manage the estate or to take care of the person of such minor: Provided, always, that nothing herein contained shall extend or be construed to extend to prevent any person who shall give or bequeath any property to any person to appoint any curator or curators to administer and manage such property during the minority or during the continuance of the insanity of the person to whom the same shall be given or bequeathed in like manner and as fully in all respects as the same might lawfully have been done prior to the passing of this ordinance; and that all curators so appointed for any such purpose shall be called and known in law by the style and appellation of curators nominate.

Appointment  
by father or  
mother only of  
tutors to  
minors.

Curators nomi-  
nate.

2. And be it further enacted that all tutors nominated and appointed by fathers or mothers in manner aforesaid to their minor children shall be called and known in law by the style and appellation of tutors testamentary, whether such tutors shall have been nominated and appointed by wills, or by any other deeds duly executed by such fathers or mothers; and that no tutor testamentary shall assume or enter upon the administration or management of the estate or property of any minor, except in so far as may be necessary for the preservation and safe custody of the same, until letters of confirmation shall have been granted to him by the master of the supreme court in the form contained in the schedule hereunto annexed marked A.

Tutors testa-  
mentary.

Confirmation  
of tutors  
testamentary  
by master.

Mode of grant-  
ing letters of  
confirmation.

3. And be it further enacted that the master of the supreme court shall on application in writing being made to him for that purpose grant letters of confirmation as tutor testamentary to every person who shall have been lawfully nominated and appointed tutor testamentary to any minor by any valid deed produced by such person together with his application, or which shall previously have been registered in the office of the said master under and by virtue of the provisions of the Ordinance No. 104. And it shall and may be lawful for any person who shall have been appointed tutor testamentary to any minor by any will, codicil, or other testamentary instrument, which such person shall under and by virtue of the provisions of the said Ordinance No. 104 be required to transmit or to cause to be transmitted to the office of the said master to transmit to the master together with such deed an application for letters of confirmation as tutor testamentary. And whenever it shall come to the knowledge of the said master that any person who has been duly nominated and appointed tutor testamentary by any valid deed has not applied for letters of confirmation, the said master shall by writing require of such person to inform him whether he is willing to act as such tutor testamentary, and if he shall consent so to do shall grant him letters of confirmation accordingly: Provided, always, that letters of confirmation as tutor testamentary shall not in any case be granted to any person who shall at the time be by law incapacitated or disqualified to hold the office of tutor.

Letters of  
confirmation  
to curators  
nominate.

4. And be it further enacted that no curator nominate shall assume or enter upon the administration or management of such estate or property, except in so far as may be necessary for the preservation and safe custody of the same, until letters of confirmation shall have been granted to him by the master of the supreme court. And in order to the granting of such letters of confirmation proceedings shall be had and taken by any such person and by the master, in like manner in all respects as is hereinbefore provided by the provisions of the third section of this ordinance as to the granting of letters of confirmation to tutors testamentary, and such letters shall be in the form contained in the schedule hereunto annexed marked B.

Security "*rem  
papilli salvam  
fore*" by tutors  
and curators  
nominate in

5. And be it further enacted that it shall and may be lawful for the supreme court or any judge thereof on the application of the master thereof or of any relation or of

any person having an interest in the due administration of the estate or property of any minor, in every case in which prior to the passing of this ordinance any tutor testamentary might by law have been required to give security *rem pupilli salvam fore*, to make an order that letters of confirmation shall not be granted to any such tutor testamentary or curator nominate as aforesaid until he shall have found security to the satisfaction of the said master to such an amount as, in the circumstances of each particular case shall be reasonable, for the due and faithful administration and management of such estate or property.

6. And be it further enacted that in every case in which it shall come to the knowledge of the master of the supreme court that any estate or property within this colony has devolved on or come to belong to any minor being within this colony and not being at the time under the natural guardianship of his or her father or mother or of a tutor or tutors testamentary duly confirmed, then and in every such case the said master, except when it shall be known to him that a tutor or tutors testamentary has or have been duly nominated and appointed to such minor by any valid deed (in which case he shall proceed in manner for that purpose provided by the third section of this ordinance), shall cause to be published in the Gazette of this colony and in such other manner as to him shall seem fit an edict calling on the relations of the minor, both paternal and maternal, to attend at his office at the time therein specified, not being less than three weeks or more than eight weeks from the day of the publication thereof, to see letters of confirmation granted to such persons as shall therein be appointed by him tutor or tutors dative of such minor : Provided, always, that when it shall appear to the said master necessary or expedient so to do, it shall and may be lawful for him in such notice to call on the relations of such minor, both paternal and maternal, to attend at the office of any resident magistrate at the time therein specified for the purpose of stating any objections which may exist to any of the next of kin or other person being appointed tutor dative or of proposing some person or persons to be by such magistrate reported to the master as fit and proper to be by him appointed tutor or tutors dative. And the said master shall at the meeting so to be holden at his office or upon receiving the report of such resident magistrate appoint such person or persons as to him shall

like manner  
as before the  
passing of this  
ordinance.

Appointment  
of tutors dative  
by master.

Publication of  
edict.

seem fit and proper to be the tutor or tutors dative of such minor, and shall grant to him or them letters of confirmation as such, unless it shall appear to him necessary or expedient to postpone such appointment and to call another or other such meeting or meetings as aforesaid. And provided, also, that when any such minor shall not be possessed of or have claim to any other estate or property except such as shall have been given or bequeathed to such minor by some person who has duly appointed a curator or curators nominate to administer and manage the same during the minority of such minor, it shall not be necessary for the said master to take any such proceedings as aforesaid for the appointment of a tutor dative, and no such proceedings shall by him be taken for that purpose.

Selection of persons to be appointed tutors dative.

Review of appointment.

7. And be it further enacted that when it shall be necessary to appoint a tutor dative to any minor in manner hereinbefore provided, the master of the supreme court shall appoint as tutor or tutors dative the mother and one or two or more of the nearest male relations, paternal or maternal, of such minor, who shall have attained the age of twenty-one years and shall be willing to act as such: Provided, always, that when it shall appear to the master or to the supreme court or any judge thereof on reviewing the appointment of the master that any valid objection exists to the appointment of all or any of such relations to be the tutor or tutors dative of such minor, such objectionable person or persons shall be passed by, and some other fit and proper person or persons shall by the said master or by such court or judge be appointed tutor or tutors dative. And provided, also, that every such appointment so made by the said master shall, on the application of any of the relations, either paternal or maternal, of or of the curator or curators nominate of any estate or property belonging to such minor, be subject to be reviewed and confirmed or set aside by the supreme court or any judge thereof, and such court or judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person or persons to be the tutor or tutors dative of such minor.

Assumption, under power in will or deed, of other persons by tutors testamentary and curators nominate.

8. And be it further enacted that nothing herein contained shall extend or be construed to extend to prevent any tutor or tutors testamentary of any minor or curator or curators nominate of any estate from assuming respectively any other person or persons as tutor or tutors of such minor or curator

or curators of such estate under and by virtue of any power for that purpose to him or them committed by the will of or any other deed duly executed by the person by whom such tutor or tutors testamentary or curator or curators nominate shall have been appointed: Provided, always, that no person shall be entitled or qualified to act as assumed tutor or curator until letters of confirmation shall have been granted to him as such by the master of the supreme court, who is hereby directed and required to grant the same on production to him of the will or other deed by which the assumption of such tutor or curator is authorized, and of the deed by which such tutor or tutors testamentary or curator or curators nominate has or have respectively assumed such person as tutor or curator. And every provision of this and of every other law or ordinance applicable or relating to or affecting tutors or curators dative, shall be deemed and taken to and shall apply and relate to and affect every such tutor or curator so assumed respectively.

Confirmation  
by master of  
assumed tutor  
or curator.

9. And be it further enacted that when by reason of any tutor of any minor, either testamentary or assumed, or of any curator of any estate, either nominate or assumed, to whom letters of confirmation shall have been granted having died or become incapacitated to act as such or having been removed from his office by the decree of any competent court, there shall not remain for the guardianship of such minor or for the administration or management of such estate, respectively, any tutor or curator whatever or so many tutors, either testamentary or assumed, or curators nominate or assumed, as by the provisions of the deed by which such tutors or curators were respectively appointed or permitted to be assumed shall be required to form a quorum of tutors or curators of the guardianship of such minor, or for the administration and management of such estate respectively, and when it shall happen that any tutor dative shall after letters of confirmation have been granted to him die or become incapacitated or be removed in manner aforesaid, then and in every such case proceedings in order to the appointment of a tutor dative in place of the person so dying or becoming incapacitated or removed shall be had and taken by the master of the supreme court, in like manner and in all respects as is hereinbefore provided by the provisions of the sixth and seventh sections of this ordinance.

Proceedings in  
case of death,  
incapacity, or  
removal of  
tutors or  
curators.

Revocation of letters of confirmation by supreme or circuit court; and, as to tutors dative, by master on production of a valid deed appointing a tutor testamentary.

10. And be it further enacted that letters of confirmation granted to any person as tutor testamentary or as curator nominate of the estate of any minor shall be at all times subject to be revoked and annulled by the decree of the supreme court or of any circuit court on proof to the satisfaction of such court that the deed in respect of which such letters have been granted to such person is null or has been revoked either wholly or in so far as relates to the appointment of such tutor or curator, and that letters of confirmation granted to any person as tutor dative shall be at all times subject to be revoked and annulled by the order of the master of the supreme court on production to him of any valid deed by which any other person, who shall then be legally capable and qualified and who shall consent to act as tutor, has been legally appointed tutor testamentary of the minor to whom such tutor dative had been appointed: Provided, always, that if the non-production of such deed prior to letters of confirmation having been granted to the tutor dative has been owing to the fault or negligence of the person therein appointed tutor testamentary, such person shall be personally liable for all the expenses which have been incurred in respect of and with reference to the appointment of the tutor dative.

Appointment of curators dative for the benefit of lunatics, by the court on the application of the master or other persons interested.

11. And be it further enacted that in every case in which it shall come to the knowledge of the master of the supreme court that any estate or property within this colony (not being an estate or property for the administration and management of which a curator nominate has been duly appointed in manner hereinbefore mentioned) has devolved on or come to belong to any lunatic or insane person being within this colony and not being at the time under the guardianship of some person lawfully appointed his curator dative, then and in every such case the said master shall apply to the competent court to appoint some fit and proper person or persons to be the curator or curators of such lunatic or insane person, and to make an order for the safe custody of such lunatic or insane person; and every such application shall be made by the master, and every such appointment and order shall be made by such court, in like manner in all respects as the same ought by law to have been made prior to the passing of this ordinance; and all curators so appointed to any lunatic or insane persons shall be called and known in law by the style and appellation of curators dative: Provided, always, that nothing herein contained shall extend or be construed to extend to prevent any person other

than the said master from making such application for the appointment of a curator dative to any lunatic or insane person in like manner as the same might by law have been made by any such person prior to the passing of this ordinance: And provided, also, that it shall and may be lawful for the said master or any other person at any time to apply to any competent court to make an order for the safe custody of any lunatic or insane person, although such lunatic or insane person shall not be possessed of or have right to any estate or property, or although any property or estate of which he may be possessed or to which he may have right shall be under the administration and management of any curator or curators nominate duly appointed for that purpose.

12. And be it further enacted that when after any person shall have been found and declared by the decree of any competent court to be a lunatic or insane and shall have had a curator dative appointed to him or an order shall have been made for his safe custody, it shall happen that the curator dative of such lunatic or insane person or the curator nominate of any estate or property which has been given or bequeathed to such person shall die or become incapacitated to act as such or be removed from his office by the decree of any competent court, then and in every such case proceedings in order to the appointment of a curator dative to such lunatic or insane person in place of the person so dying or becoming incapacitated or removed shall be had and taken by the master of the supreme court in like manner in all respects as is hereinbefore provided by the provisions of the sixth and seventh sections of this ordinance as to the appointment of tutors dative to minors.

13. And be it further enacted that in every case in which it shall come to the knowledge of the master of the supreme court that in consequence of the death of any person any estate or property hath devolved on or come to belong to any person absent from this colony and not having a legal representative within the same, then and in every such case the said master shall cause to be published in the Gazette of this colony, and in such other manner as to him shall seem fit, an edict calling on all whom it may concern to attend at his office at the time therein specified, not being less than six weeks from the day of the publication thereof, to see letters of confirmation granted to such person as shall then

Custody of lunatic.

Proceedings on death, incapacity, or removal of curator dative of lunatic or curator nominate of his property.

Appointment of curator dative of property belonging to absent person not having a legal representative in the colony.

be appointed by him curator dative of the estate or property of such absent person; and the said master shall at the meeting so to be holden at his office appoint some fit and proper person to be such curator dative as aforesaid: Provided, always, that when the only property known by the said master to belong to any such absent person shall consist of a sum or sums of money due and payable to him by the executor of any deceased person or by the trustee of the sequestrated estate of any insolvent person it shall not be necessary for the said master to take any such proceedings as aforesaid for the appointment of a curator dative, and no such proceedings shall be had or taken; but it shall and may be lawful for the said master to demand, recover, and receive payment of all such sums of money, to be after the same are so received by him disposed of in manner herein-after provided.

Appointment of curator ad litem by supreme or circuit court:

And of curator bonis by master, subject to review by the court or judge.

Retention of colonial law as to powers, &c., of curators ad litem and curators bonis, except where specially repealed.

14. And be it further enacted that nothing herein contained shall extend or be construed to extend to prevent the supreme court or any circuit court after the passing of this ordinance from appointing a curator ad litem to any person in every case and in the same manner in all respects in which such appointment might by law have been made by such court prior to the passing of this ordinance. And that in all cases when the same may be necessary or expedient the master of the supreme court shall and may appoint a curator bonis to take the custody and charge of any estate or property until, in order to the due administration and management of the same, letters of confirmation shall be granted to some person as tutor testamentary or dative or as curator nominate or dative in manner hereinbefore provided. And every such appointment as curator bonis so made by the said master shall on the application of any person having an interest in such estate be subject to be reviewed and confirmed or set aside by the supreme court or any judge thereof; and such court or judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person to be curator bonis.

15. And be it further enacted that nothing herein contained shall extend or be construed to extend to repeal or alter the law in force within this colony prior to the passing of this ordinance in so far relates as to the powers, rights, duties, obligations, and liabilities of curators ad litem or



curators bonis, except in so far as the same is hereinbefore or hereinafter expressly repealed or altered by any special provision of this ordinance.

16. And be it further enacted that every tutor dative and every curator dative who shall be appointed by the master of the supreme court or any court or judge to administer the estate or property of any minor or lunatic or insane or absent person shall, before he shall be permitted to enter on the administration of such estate or property, find security to the satisfaction of the master of the supreme court to such amount as in the circumstances of each particular case shall be reasonable for the due and faithful administration and management of such estate and property.

Security for due administration by tutor dative and curator dative.

17. And be it further enacted that every person shall be deemed incapacitated and disqualified to hold and shall be incapable of holding the office of tutor, either testamentary or dative, or of curator, either nominate or dative, in every case and by and for every cause in, by, and for which any person appointed tutor testamentary would previously to the passing of this ordinance have been deemed incapacitated and disqualified to hold and would have been incapable of holding the office of tutor testamentary under and by virtue of any law then in force within this colony. And that every tutor, either testamentary or dative, and every curator, either nominate or dative, whose estate shall be placed under sequestration as insolvent under and by virtue of the provisions of the Ordinance No. 64 shall cease to exercise or hold, and shall thereupon be deemed to have been removed and shall *ipso facto* be removed from, his office as tutor or curator aforesaid so soon as the order for such sequestration has been made when the same has been made on the petition of the insolvent himself, and so soon as the sequestration has been adjudged by the competent court when the order for the same has been made on the petition of any creditor or creditors of the insolvent. And every such tutor or curator as aforesaid shall be subject to be removed from his office by the supreme court or any circuit court or to be suspended therefrom by any judge of the supreme court in every case and for every cause in or for which any tutor testamentary might previously to the passing of this ordinance have been removed or suspended from his office by any court or judge under and by virtue of any law then in force within this colony.

Disqualifications of persons as tutors or curators.

Removal *ipso facto* of insolvent tutors and curators.

Removal and suspension for cause of tutors and curators.

Inventory within eight weeks, by tutors and curators.

Additional inventories.

Transmission of sealed inventory by tutor testamentary or curator nominate;

and by surviving parent to master.

Order of court or judge for opening of sealed inventory.

18. And be it further enacted that all tutors, either testamentary or dative, and all curators, either nominate or dative, shall within eight weeks at most after entering upon the administration of their office make or cause to be made and shall subscribe, an inventory of all property, goods, effects, movable and immovable, forming part of or belonging to the estates or persons under their guardianship in the same manner and form in all respects in which any tutor testamentary ought prior to the passing of this ordinance to have made any such inventory under and by virtue of any law then in force within this colony; and every such tutor and curator shall thereafter from time to time and so soon as any such property, goods, or effects as aforesaid shall come into his possession or to his knowledge make in like manner and form as aforesaid an additional inventory thereof; and every such tutor or curator shall, respectively, forthwith transmit all such inventories to the office of the master of the supreme court: Provided, always, that when the person by whom any tutor testamentary or curator nominate has been appointed shall in the deed by which such appointment is made or in any other deed duly executed by him have directed that the inventory and additional inventories to be made by such tutor or curator in manner hereinbefore provided shall be transmitted to the said master sealed up, then and in every such case it shall and may be lawful for such tutor or curator,—and when any such inventory shall have been made by the survivor of two spouses whom the predeceasing spouse shall by will or other lawful instrument have appointed the tutor of his or her minor children and the administrator (boedelhouder) of the joint estate of such spouses during the minority of such children, then and in every such case it shall and may be lawful for such spouse, if he or she shall think fit so to do,—to transmit every such inventory, sealed up, to the office of the said master; and no such sealed inventory shall be opened except by virtue of an order of the supreme court or some judge thereof, on sufficient cause for opening the same being shown by the said master or by some person having an interest in the said joint estate; and with every such inventory, whether sealed or unsealed, there shall be transmitted a list of the names of every person who shall by virtue of any bond or other written instrument be indebted to the estate to which such inventory relates and of every surety for every such debtor.

19. And be it further enacted that every tutor or curator who shall fail to make up and transmit any such inventory as aforesaid in manner hereinbefore provided and who shall have no lawful and sufficient excuse for such failure shall by reason thereof and in addition to every other liability, consequence, and penalty which he shall thereby by law subject himself to and incur, be liable to pay all the expenses which shall have been and shall be incurred as well with reference to his own appointment as to the appointment of the tutor or curator who shall on his removal be appointed in his place.

Penalties on failure of tutors and curators to make and transmit inventory.

20. And be it further enacted that if any tutor or curator required and directed under and by virtue of the seventeenth section of this ordinance to make or cause to be made an inventory of any estate, goods, or effects shall for any fraudulent purpose make a false inventory thereof, every such offender being convicted thereof shall be liable, at the discretion of the court before which he shall be so convicted, to punishment by imprisonment with or without hard labour for any period not exceeding two years, or by fine or by both as the said court shall award.

Penalty on conviction of tutor or curator for making false inventory.

21. And be it further enacted that when letters of confirmation shall have been granted to any tutor, either testamentary or dative, or to any curator, either nominate or dative, then and in every such case, except in so far as shall to the contrary herein be provided, every such tutor shall in all respects and for all intents and purposes, and every such curator shall in so far as relates to the particular estate or property which has been placed under his guardianship, have every power, right, and privilege and shall do and cause to be done every act, matter, and thing touching and concerning the inventorisation, administration, and management of the estate or property under their guardianship, and every such tutor or curator and his estate shall in respect and by reason of every act, matter, or thing done or omitted to be done by him, incur and be subject to every liability, obligation, and penalty which by any law in force within this colony prior to the passing of this ordinance any tutor testamentary would then respectively have had or have been directed or required to do and which he and his estate would then in respect and by reason of any such act, matter, or thing done or omitted to be done by him have incurred or been subject to. Provided, always, that nothing herein

Duties and liabilities of tutors and curators after confirmation.

**Powers of curators nominate and tutors dative as to maintenance, &c , defined by order of court or judge.** contained shall extend or be construed to extend to give any curator nominate or dative any power or authority as to the maintenance, education, or custody of the person of any minor or lunatic or insane person, except in so far as the same may have been specially given and committed to him by the decree or order of any competent court or judge :

**Obligation of tutors testamentary and curators nominate to conform to directions in deed of appointment.** And provided, also, that every tutor testamentary and curator nominate shall in the discharge of such their office and in the administration of the estate and property respectively under their guardianship, conform and obey every lawful direction touching and concerning the same which shall have been given by the person by whom such tutor or curator shall have been appointed in the deed by which such appointment was made or in any other writing duly executed by such person.

**Proceedings by tutor of minor to cause inventory of estate in community to be made by surviving parent :** 22. And be it further enacted that when by reason of the death of one of two spouses who have been married in community of property any part of the joint estate of such spouses shall devolve to any minor, then and in every such case, except when the survivor shall have been by the predeceasing spouse appointed the tutor of his or her children and the administrator (boedelhouder) of the joint estate of such spouses during the minority of such children, the tutor either testamentary or dative or curator nominate of such minor shall and he is hereby authorized and required to take such proceedings as may be necessary to cause the surviving spouse to make an inventory of the joint estate in such manner and form as is provided by the fourteenth section of the Ordinance No. 104 ; or when such inventory has been made before letters of confirmation have been granted to such tutor to cause an additional inventory to be made of all property, goods, or effects movable or immovable of what kind soever which at the time of the death shall have formed part of or belonged to the estate possessed in community between the predeceasing and surviving spouses and which shall have been omitted in the inventory made by the surviving spouse : and so soon as the amount and extent of such property, goods, or effects as aforesaid which shall have formed part of or belonged to the said joint estate shall have been ascertained by the inventory or inventories hereinbefore mentioned every such tutor as aforesaid shall forthwith take such proceedings for ascertaining and securing the share of such estate to which such minor shall have

**and to ascertain and secure minor's share.**

right as shall be in conformity with any lawful directions for that purpose given by the deceased spouse in any will or other deed duly executed by such spouse, or in default of such directions as shall be most expedient for the interest of the minor and as shall be consistent with the lawful rights of the surviving spouse: Provided, always, for the more effectual securing the interest of such minors, that no matrimonial court within this colony shall authorize or permit, and all such courts are hereby prohibited to authorize or permit, the father or mother of any such minor heirs to remarry until there shall be produced to such court a certificate under the hand of the master of the supreme court or of such person or persons as shall have been duly appointed tutor or tutors testamentary or dative or curator or curators bonis to such minors that the shares due to such minors out of such joint estate as aforesaid have been ascertained and secured according to law; and every such father or mother who shall remarry before the shares due to their minor children out of such joint estate as aforesaid have been ascertained and secured in manner aforesaid shall forfeit one-fourth part of his or her share in the said joint estate for the benefit of his or her aforesaid minor children.

Prohibition of remarriage of surviving parent until minor's shares have been secured.

23. And be it further enacted that nothing herein contained shall extend or be construed to extend to repeal or alter any law in force within this colony prior to the passing of this ordinance touching and concerning the administration by the survivor of two spouses of the joint estate of such spouses during the minority of the children of the predeceased spouse (boedelhouderschap), or touching and concerning the execution, requisites, and privileges of bonds passed by surviving spouses previously to their remarriage for securing the inheritance due to the minor children of their predeceased spouse (kinderbewyzen) or touching and concerning the paternal power, guardianship, duties, and obligations of fathers and mothers over and to their legitimate children and of mothers over and to their illegitimate children, or touching and concerning the maintenance and education of minor children either by their parents or others, and either out of the interest accruing from the paternal or maternal inheritance to which such children have succeeded or otherwise,—or touching and concerning the charge and custody of the persons of minors,—or touching and concerning the rights, privileges, remedies, or obligations of minors or other persons under the

Retention (except where expressly repealed) of colonial law relative to "boedelhouderschap."

"Kinderbewyzen."

Paternal and maternal authority,—

Maintenance and education,

Charge and custody of minors. Rights and privileges,

and actions  
competent to  
minors.

guardianship of tutors or curators, or touching and concerning any action competent to such minors against their tutors or curators or competent to their tutors or curators against such minors or other persons as aforesaid, except in so far as any such law is hereinbefore or hereinafter expressly repealed or altered by any special provision of this ordinance: Provided, always, that when any question shall arise touching and concerning the maintenance or education or the charge or custody of the person of any minor, then and in every such case it shall and may be lawful for any judge of the supreme court to make such temporary order as to him shall seem necessary to provide for the due maintenance, education, and the charge and custody of the person of such minor until such question shall be decided by the decree of the supreme court or any circuit court.

Temporary  
order by a  
judge as to  
maintenance,  
custody, &c., of  
minor.

Prohibition of  
alienation of  
immovable  
property by  
tutor or  
curator, except  
by order of  
court, or of a  
judge, or by  
direction in  
deed of  
appointment.

24. And be it further enacted that no tutor, either testamentary or dative, and no curator, either nominate or dative, or curator bonis shall sell, alienate, or mortgage any immovable property belonging to any minor or forming part of any estate under the guardianship of such tutor or curator unless the supreme court or any judge thereof shall by any order made by such court or judge have authorized such sale, alienation, or mortgage, or unless the person by whom any such tutor testamentary or curator nominate shall have been appointed shall have directed such sale, alienation, or mortgage to be made.

Payment to  
master by  
tutors dative  
and curators  
dative and  
curators bonis,  
of all moneys  
except as far  
as required for  
instant pay-  
ment of debts.

25. And be it further enacted that every tutor dative and every curator dative or curator bonis shall forthwith pay over to the master of the supreme court all moneys belonging to the person or estate under his guardianship so soon as the same shall be received by or come into the possession of such tutor or curator, except in so far as the same may be required for the instant payment of debts due by such estate or for the immediate maintenance of such person; and if any such tutor or curator shall without any lawful and sufficient excuse retain and fail to pay over to the said master any such moneys as it is herein directed shall be so paid over to the said master, every such tutor or curator shall be liable to pay to and for the benefit of the person or estate to whom or which such money belongs interest on the same at the rate of ten per cent. per annum for the whole period during which such money shall be so improperly retained and shall not be paid over to the master; and shall be liable

Penalty,  
interest at ten  
per cent. for  
the period  
during which  
such money  
has been  
improperly  
retained.

to be removed from his office of tutor or curator by the decree of any competent court if it shall appear expedient to such court so to do; and whenever it shall come to the knowledge of the said master that any such money has been so retained and not paid over to him by any such tutor or curator, he shall forthwith institute an action against such tutor or curator in order to recover payment thereof and of the above-mentioned penal interest due thereon.

Action by master to recover amount with penal interest.

26. And be it further enacted that it shall and may be lawful for any tutor testamentary or curator nominate to whom it shall seem expedient so to do, except where the person by whom such tutor or curator has been appointed shall have directed that the same shall not be done, to pay over to the master of the supreme court any money belonging to the person or estate under the guardianship of such tutor or curator and which by law such tutor or curator might lend out on interest.

Liberty to tutor testamentary or curator nominate to pay moneys in their possession to master.

27. And be it further enacted that the master of the supreme court shall so soon as any money shall be paid over to or received by him under the provisions of the thirteenth, twenty-fifth, and twenty-sixth sections of this ordinance open in a book to be kept for that purpose, and which shall be called and known in law by the style and appellation of the "Wards' Book," a debit and credit account with the person or persons to whom or with the estate to which such money shall belong, and in this account shall enter to the credit of such person or estate all such money then or which may hereafter be paid over to him or received by him on account of such person or persons or estate; and when such money shall belong to more persons than one the said master shall ascertain the amount of the share actually belonging to each of such persons, and shall open such account as aforesaid with each of such persons separately and not with the whole collectively, and shall in such account place to the credit of each the amount of the share actually belonging to each respectively; and when it shall not be known to what person or persons any such money or any part thereof shall belong, then the account aforesaid in so far as relates to the share or shares of such unknown person or persons shall be opened in the name of the estate of which such money formed part or from which it has proceeded.

Wards' book.

Separate accounts.

28. And be it further enacted that every sum which shall be placed to the credit of any person or estate in any such,

Interest on  
accounts in  
'Wards' Book.'

Accumulation  
of interest.

Cessation of  
interest.

Interest on  
money belong-  
ing to 'absent  
persons.'

Cessation of  
interest after  
lapse of five  
years.

Rate of interest  
for purposes of  
twenty-eighth  
section, six  
per cent. per  
annum.

account so to be opened as aforesaid shall bear interest from the first day of the second month which shall occur after such money shall have been entered in such account, and such interest shall be at the rate of one per cent. less than the legal rate of interest current at the time within this colony; and on the first day of January in each year all such interest as shall have become due to any such person as aforesaid and shall not have been paid to him or on his account shall be accumulated with the capital then due to such person, and the accumulated sum shall be placed to his credit in such account, and bear interest in like manner as is hereinbefore mentioned: Provided, always, that no such money as aforesaid shall bear interest after the period at which the person to whom it shall belong being or having a legal representative within this colony might by reason of his or her having attained the age of majority, or otherwise, have demanded and received payment of the same: And provided, also, that when such money shall belong to any person absent from this colony and not having any known legal representative within the same or to any unknown person or persons, such interest shall so long as such person shall be unknown or absent from the colony without having a legal representative within the same, provided such period shall not exceed five years, be at the rate of one half of the legal rate of interest current at the time within this colony; and such interest shall on the first day of January in each year be placed to the credit of the person to whom it has become due or of the estate on which it has accrued, but it shall not be accumulated with the capital nor bear interest; and after the lapse of such period of five years, if the person or persons to whom it shall belong shall so long continue to be unknown or absent from the colony without having a legal representative within the same, no such money as aforesaid shall bear any interest whatever.

29. And be it further enacted that for the purposes of the provisions of the twenty-eighth section of this ordinance the legal rate of interest current within this colony shall be deemed and taken to be and shall be calculated at the rate of six per cent. per annum, until some other rate of interest shall by any law hereafter to be made be declared and established for the purpose aforesaid.

30. And be it further enacted that of the moneys which shall be paid over to or received by the master of the



supreme court in manner before provided there shall be formed a fund which shall be called and known in law by the style and appellation of the "Guardian's Fund," and that immediately after the promulgation of this ordinance a debit and credit account shall be opened in the books of the discount bank of this colony with and in the name of the said guardian's fund; and the master of the supreme court shall on every day on which the said discount bank shall be open for the transaction of business and before the hour of closing the same for the day pay or cause to be paid into the said bank to be carried to the credit of the guardian's fund all moneys which on or previously to every such day shall have been paid to or received by him under and by virtue of the provisions of the thirteenth, twenty-fifth, and twenty-sixth sections of this ordinance, as also all such moneys as shall have been so paid to or received by him in payment of the interest or repayment of the principal of money belonging to the said guardian's fund, and lent out on bond by him in manner hereinafter provided. And it shall and may be lawful for the said master from time to time to withdraw the whole or any part of the moneys so paid into the said discount bank and placed to the credit of the guardian's fund upon cheques signed by him, and specifying the purpose for which the sum contained in every such cheque is to be appropriated, and no part of such moneys as aforesaid shall be withdrawn from the said bank otherwise than upon such cheques as aforesaid.

31. And be it further enacted that it shall and may be lawful for the master of the supreme court to pay any sum of money which in the wards' book aforesaid is placed to the credit of any person or of any estate to the person (or legal representative of the person) by law entitled to demand and receive the same as also to pay to any tutor or curator (upon the written order or receipt of such tutor or curator) of any minor, lunatic, insane, or absent person or of any estate, the whole or any part of such sum of money as in the wards' book aforesaid shall at the time be placed to the credit of such minor, lunatic, insane, or absent person or such estate as aforesaid, and as such tutor or curator is by law authorized or required to expend or dispose of for any purpose touching or concerning or in respect of or with reference to the person or estate under the guardianship of such tutor or curator; and when it shall appear to the

Establishment  
of 'Guardian's  
Fund.'

Payment by  
master to pay  
moneys placed  
to the credit of  
persons or  
estates to per-  
sons entitled to  
receive the  
same or to  
tutors or  
curators.

Review by court or judge of master's refusal to make such payment.

said master that it is either unnecessary or illegal for such tutor or curator to expend or dispose of any such sum of money for the purpose for which it is alleged that the same is to be appropriated it shall and may be lawful for the said master to refuse or to suspend making such payment until the supreme court or some judge thereof shall have made an order directing such payment to be made.

Loans on mortgage by master of moneys to the credit of guardian's fund.

32. And be it further enacted that the master of the supreme court shall from time to time and so soon as he shall find opportunity so to do lend or cause to be lent on the mortgage of immovable property situated within this colony and with or without additional security, as may in each particular case be deemed expedient, all such money as shall at the time be placed to the credit of the guardian's fund in account with the said discount bank and as shall not be required to meet the current expenditure of the said guardian's fund: Provided, always, that no such loan shall be made by the said master without first advising thereupon with the treasurer-general and auditor-general of this colony or any other two persons holding civil offices under the government of this colony who shall be from time to time appointed for that purpose by the governor, or in the event of both or either of them refusing such consent unless he shall have applied to and obtained from the supreme court or any judge thereof an order of such court or judge authorizing the said master to make such loan: And provided, also, that it shall not be lawful for any such loan to be made to or in favour or on account of the said master or of any of the two civil officers of government appointed for the time being in manner aforesaid for the purpose of advising with the said master touching and concerning such loan.

Advice there-upon of treasurer and auditor-general

Bonds to be payable to guardian's fund.

33. And be it further enacted that all bonds which shall be taken for any money so to be lent out shall be taken payable to the guardian's fund; and it shall and may be lawful for the said master to demand, receive, recover, and enforce by proceedings at law payment of all such bonds and of the interest which may be due thereon, in like manner to all intents and purposes as if the said bonds had been taken payable to the master of the supreme court; and he shall pay or cause to be paid all sums received by him either as the principal or interest due on any such bonds into the discount bank, to be placed to the credit of the

guardian's fund : Provided, always, that it shall and may be lawful for the said master to assign any such bond to any person lawfully entitled to demand and receive payment of any sum which shall be placed to the credit of any person or estate in the wards' book aforesaid in payment of the same if such first-mentioned person shall consent to receive such bond in payment of his just demand, but not otherwise.

Assignment of bonds.

34. And be it further enacted that it shall be the duty of the master of the supreme court and he is hereby required and directed so to regulate the amount and duration of the loans to be made of the money belonging to the guardian's fund as that when any sum placed in the wards' book to the credit of any minor shall become payable by reason of such minor having attained majority, there shall then be money sufficient for the payment of the sum placed to the credit of the guardian's fund in account with the discount bank : Provided, always, that if it shall at any time happen that there shall not be so placed to the credit of the guardian's fund money sufficient to make any payment or payments which ought to be made by the said master out of the guardian's fund, then and in every such case it shall and may be lawful for the said master to overdraw by such cheques as aforesaid the account of the guardian's fund with the discount bank to any amount not exceeding two thousand pounds to be employed by him in making such payment or payments, and the amount so overdrawn shall be paid by the said bank and shall in the said account be placed to the debit of the guardian's fund, and no interest shall be charged by the bank in respect of any money so overdrawn.

Regulation of duration of loans so as to have sufficient to make payment to minors on attaining majority.

35. And be it further enacted that on the first day of July, in the year 1834, or so soon thereafter as may be within the said month of July, and at the same period in every succeeding year the master of the supreme court, the treasurer-general, and the auditor-general shall balance the wards' book and ascertain the total amount of principal and interest due on the thirtieth day of June preceding to all the persons and estates with whom or with which such accounts as aforesaid shall then be open in the said book, and they shall also ascertain the amount which shall on the said day have been placed to the credit of the guardian's fund in account with the discount bank, as also the amount of all sums belonging to the guardian's fund which shall have been lent on bonds in manner hereinbefore provided and of

Balancing of wards' book in July of each year.

Ascertaining of amount to credit of guardians' fund :

And of amount of moneys lent on bonds.

Certificate of excess of moneys due to guardian's fund above the amount to the credit of persons and estates in wards' book.

Appropriation of such excess.

Lapse to the crown of moneys unclaimed for forty years.

the repayment of which when due there shall then appear to be no reason to doubt; and they shall grant a certificate in writing signed by them of the amount of the sum, if any, by which the total amount of the money due to the guardian's fund by the discount bank and in virtue of such bonds as aforesaid shall on the said thirtieth day of June have exceeded the total amount then placed to the credit of persons and estates with whom and with which accounts shall then have been open in the wards' book, and the said certificate shall thereupon be filed in the office of the registrar of the supreme court; and the sum the amount of which shall be so certified shall thereupon be appropriated in the first place to replace any sums which prior to the said first day of July have been withdrawn from the ten thousand pounds placed in deposit in the discount bank under and by virtue of the provisions of His Majesty's Order in Council dated 24th November, 1828, and the balance of the sum so certified remaining after replacing the sums so withdrawn from such deposit fund as aforesaid shall thereupon and in respect of such certificate become due and payable out of the guardians' fund to the public revenue of this colony; and the master of the supreme court shall and he is hereby authorized and required to draw by such cheque or cheques as aforesaid for such amount on the account of the guardian's fund with the discount bank and to pay the same to the treasurer-general or to assign over to the treasurer-general any good bond or bonds due to the guardian's fund, in order that the treasurer-general may, as he is hereby authorized and required to do, demand, receive, and recover payment of the same; and the treasurer-general shall grant a receipt for such money so paid or such bonds so assigned to him by the said master as aforesaid.

36. And be it further enacted that when any money which shall have been placed in the wards' book to the credit of any person or estate shall remain and shall not have been claimed by any person having a just and lawful right thereto for the period of forty years from the date of the entry of such money in the wards' book, then and in every such case every account with such person or estate shall be closed and all such money shall in respect of the lapse of such period become and be forfeited to the Crown, and shall be applied by the master of the supreme court or be by him paid over to the treasurer-general for the like purposes and

in the like manner in all respects as by the provisions of the thirty-fifth section of this ordinance is hereinbefore provided with respect to any sum or sums of money certified in manner aforesaid as being the amount of the excess of the guardian's fund over the total amount due to the persons and estates having at the time open accounts in the wards' book aforesaid.

37. And be it further enacted that on the first day of October next and on the first days of July and of October respectively in every succeeding year the master of the supreme court shall cause to be drawn up an exact account of the amount of all estates or property which shall be entered in the wards' book and shall belong to any persons unknown, or not residing and not having some known legal representative within this colony, with a statement of the names and designations of the persons so far as known who are supposed to be interested therein, and shall cause the same to be inserted in the Gazette of this colony, and shall forthwith deliver two copies thereof to the secretary to the government of this colony, who shall cause the same to be transmitted for publication in the London Gazette and other newspaper or newspapers of the country to which the persons interested in such estates or property may be supposed to belong; and in the said advertisements all persons interested shall be required to transmit their claims to the master of the supreme court; and the expense of such advertisements shall be borne proportionately by the estates to which they relate.

Publication in Gazette of the colony, in London Gazette, and other newspapers, of estates or property belonging to persons unknown.

38. And be it further enacted that every tutor, either testamentary or dative, and every curator, either nominate or dative or bonis, shall on or before the fifteenth day of February in every year lodge with the master of the supreme court (who shall cause the same to be preserved and registered in his office for the inspection of all concerned) a just, true, and exact account of his administration of the estate or property under his guardianship up to the thirty-first day of December preceding; and every such tutor or curator who shall fail to lodge such account as aforesaid in manner herein provided and who shall have no lawful and sufficient excuse for such failure shall by reason thereof forfeit all claim to any fees which he might otherwise be entitled to receive in respect of his administration of such estate during the year preceding the said thirty-first day of Decem-

Accounts of administration by tutors and curators.

Penalty on failure of due lodging of account.

Exception in favour of tutors testamentary and curators nominate by direction of deeds of appointment.

and in favour of surviving spouses administering the joint estate.

Compensation of tutors and curators.

Nullity of appointment of orphan chamber or of master as tutor or curator.

ber: Provided, always, that when the person by whom any testamentary tutor or curator nominate has been appointed shall by any deed duly executed by him have directed that such tutor or curator shall not lodge with the said master any such annual account of his administration as aforesaid, then and in every such case no such tutor or curator shall be required to lodge any such annual account in manner aforesaid; and that the survivor of two spouses whom the predeceasing spouse shall by will or other lawful instrument have appointed the tutor of his or her minor children and the administrator (boedelhouder) of the joint estate of such spouses during the minority of such children shall not in any case be required to lodge any such annual account in manner aforesaid, any thing to the contrary herein contained notwithstanding.

39. And be it further enacted that every tutor either testamentary or dative, and every curator either nominate or dative, shall in respect of his administration and management of any estate be entitled to claim, receive, or retain out of the assets of such estate a reasonable compensation for his care and diligence in the said administration, to be assessed and taxed by the master of the supreme court, subject to the review of the said court upon the petition of any such tutor or curator or of any person having an interest in the said estate.

40. And be it further enacted that if any person who shall die after the first day of March next shall by any deed unrevoked at the time of his death have appointed, or if any person who shall after the said day give any estate or property to any minor, lunatic, or insane person shall appoint, the orphan chamber or the master of the supreme court to be the tutor testamentary of any minor or curator nominate of any estate or property given or bequeathed by him to any minor or lunatic or insane person, then and in every such case every such appointment shall be null and void and of no effect; and the like proceedings shall be had and taken for and in respect of the appointment of tutors dative or curators dative to such minor, lunatic, or insane person as would have been had and taken under and by virtue of the provisions of this ordinance if no such appointment of the orphan chamber or of the master of the supreme court had ever been made.

41. And be it further enacted that the master of the supreme court shall cause to be kept in his office a register

containing the names of every tutor, either testamentary or dative, and of every curator, either nominate or dative, to whom any letters of confirmation shall have been granted, and of every surety for every such tutor or curator, and of every person who shall by virtue of any bond or other written instrument be indebted to any minor, lunatic, insane or absent person whose estate has by virtue of letters of confirmation been placed under the guardianship of any tutor or curator, and of every surety for any such debtor; and whenever any order for sequestration shall under and by virtue of the provisions of the nineteenth section of the Ordinance No. 64 be delivered to the said master he shall cause such register to be examined, and when upon such examination it shall appear that the person whose estate has been placed under sequestration by such order is then either a tutor or curator to any minor, lunatic, or insane or absent person, he shall forthwith take such proceedings in order to the appointment of a tutor or curator dative in the place of such insolvent as are hereinbefore directed for that purpose; and when it shall appear that such insolvent is then the surety for any tutor curator he shall forthwith require such tutor or curator to give such other additional security as in the circumstances of the case shall be reasonable for the due and faithful administration and management of the estate or property under his guardianship; and when it shall appear that such insolvent is the debtor of any minor, lunatic, or insane or absent person, or is then surety for any such debtor, the master shall in the first notice of such sequestration which shall be published in the Gazette of this colony insert a statement containing the name of the person or persons to whom such insolvent is indebted as aforesaid or for whose debtor such insolvent is a surety, and specifying whether he is the debtor or surety for the debtor of any such person or persons as aforesaid.

Register of  
tutors and  
curators and  
their sureties  
and of debtors  
to minors.

Proceedings  
by master in  
case of insol-  
vency of tutors  
or curators or  
of sureties to  
tutors or  
curators.

42. And be it further enacted that the master of the supreme court shall and he is hereby authorized and required to charge and to demand, receive, retain, or recover in respect of the acts, matters, and things done or caused to be done by him or in his office under and by virtue of the provisions of this ordinance, all such fees as are specified in the tariff contained in the schedule hereunto annexed, marked D, and shall account for and pay over the same in like manner as is by law provided in respect of any other fees received or retained

Master's fees.

by him as master of the supreme court : Provided, always, that nothing herein contained shall extend or be construed to extend to repeal any law now in force requiring any stamp to be used for any purpose or any stamp duty to be paid in respect of any proceeding, except in so far as any such alteration shall be expressly made in the tariff of fees hereinbefore mentioned.

Liability of  
master for  
costs of actions  
by or against  
him.

43. And be it further enacted that when the master of the supreme court shall be plaintiff or defendant in any action instituted by him or against him in his official capacity and with reference to any matter or thing placed under his guardianship, control, or superintendence or which he is required to do or cause to be done under and by virtue of the provisions of this ordinance, and the party against whom such action has been instituted by the said master or by whom it has been instituted against him shall have his or their costs in and with respect to such action adjudged to him or them by the court before which such action shall have depended, then and in every such case such court shall cause the registrar thereof to certify on the record thereof whether in opinion of such court the said costs so adjudged to the said party shall be paid by the master out of his private funds or out of the guardian's fund ; and when it shall be certified as the opinion of such court that the said costs should be paid out of the guardian's fund such certificate shall be a sufficient warrant to the said master to draw the amount of such costs from the guardian's fund by any such cheque or cheques as aforesaid, and with the money so drawn to pay the same : Provided, always, that although it shall be certified as the opinion of such court that the said costs should be paid by the master out of his private funds, it shall and may be lawful for the governor of this colony by any writing under his hand to authorize (and any such writing shall have the effect of authorizing,) the said master to draw the amount of such costs out of the guardian's fund and to pay the same in manner aforesaid.

Appointment  
of appraisers  
for the valuation  
of estates  
and property.

44. And be it further enacted that it shall and may be lawful for the master of the supreme court and he is hereby authorized and required from time to time to appoint such and so many persons as to him shall seem fit and as shall be necessary to act as appraisers for the valuation of all estates and property the appraisement of which shall become necessary or shall be had for the better ascertaining



of the amount of the share or shares thereof which may belong or be due to any person or persons who or to any estate or estates which shall at the time be under the guardianship of the said master, or of any tutor either testamentary or dative or curator nominate or dative or bonis; and every such appraiser shall in respect of every such appraisement so to be made by him be entitled to demand and receive, and shall be paid out of the estate or property by him appraised, a reasonable compensation, to be assessed and taxed by the master of the supreme court: Provided, always, that no person shall act as such appraiser in any case in which he has an interest in the estate to be valued or appraised.

Payment of appraisers.

45. And be it further enacted that every person who shall be appointed by the master of the supreme court to act generally as an appraiser of such estates or properties as aforesaid shall, before he shall proceed to act in virtue of such appointment, take an oath before any judge of the supreme court, resident magistrate, or justice of the peace, that he will appraise all such estates or properties as may be submitted to his valuation according to the just, proper, and true valuation thereof, to the best of his skill and knowledge, and shall transmit the said oath so taken by him and certified by the judge, magistrate, or justice of the peace before whom the same shall have been taken to the office of the said master; and when any such person or persons shall be appointed in manner aforesaid to appraise any particular estate or property, it shall and may be lawful for the said master in such his appointment to direct whether such person or persons shall be required before proceeding to make such appraisement to take such oath as aforesaid or not: Provided, always, that when any such person or persons as last above mentioned shall have made such appraisement without having taken such oath as aforesaid it shall and may be lawful for the said master, or any person having an interest in the estate or property appraised, to require that the person or persons by whom the same has been appraised shall before such appraisement shall be received and acted on take an oath in manner aforesaid that such estate and property has been by him or them appraised according to the just, proper, and true valuation thereof, to the best of his or their skill and knowledge.

Oath of appraisers before judge, magistrate, or justice of the peace.

46. And be it further enacted that nothing herein contained shall extend or be construed to extend to revive or

Laws, &c., repealed by ordinances Nos. 103 and 104 not

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revived, except where expressly re-enacted in this ordinance.

Interpretation of words,—  
“any law in force prior to the passing of this ordinance”

preserve in force or effect the “provisional instructions for the orphan chamber,” or the “instructions for the agents to the board of orphan masters in the country districts of the colony of the Cape of Good Hope,” or the Ordinance No. 42, or any other law or ordinance repealed or altered by the provisions of the Ordinances Nos. 103 and 104, except in so far as any of the provisions of such instructions, laws, or ordinances so repealed or altered shall have been expressly re-enacted by some special provision of this ordinance; and that, whenever and so often as the words “any law in force within this colony prior to the passing of this ordinance” occur in any of the provisions of this ordinance, then and in every such case the said words shall be construed and deemed and taken to mean such law as was then in force within this colony, independently and exclusively of the provisions or enactments of the said instructions and of the said Ordinance No. 42, so repealed or altered as aforesaid, and of any other instructions or regulations which had at any previous time been in force within this colony touching or concerning the functions, duties, or powers, of the orphan chamber.

#### SCHEDULE A.

##### *Form of Letters of Confirmation of Tutors.*

Letters of confirmation of tutors,

These are to certify that A. B. has been duly appointed and is hereby authorized to act as the tutor testamentary (or dative, as the case may be) of C. D.

(Signed) E. F., Master of the Supreme Court.

Cape Town, the — day of — 18—.

#### SCHEDULE B.

##### *Form of Letters of Confirmation of Curators.*

of curators.

These are to certify that A. B. has been duly appointed and is hereby authorized to act as the curator nominate of the estate given (or bequeathed, as the case may be) to C. D. by G. H. (here describe the deed of gift or bequest by its date and otherwise, or as the case may be), as the curator dative of the estate of C. D.

(Signed) E. F., Master of the Supreme Court.

Cape Town, — day of — 18—.

#### SCHEDULE C.

Fees of tutors and curators.

Tariff of fees to be taken by tutors and curators, under and by virtue of the provisions of this ordinance.—(See Section 39.)

## SCHEDULE D.

Tariff of Fees to be taken by the Master of the Supreme Court under and by virtue of the provisions of this Ordinance.	Fees in the Master's office.
Sections 2, 3, and 6.—For letters of confirmation of the appointment of tutors testamentary or dative, and of curators, bonis, nominate, or dative, for each letter, - - - - -	£0 5 0
For taxing bills of remuneration of tutors, curators, or appraisers, 4 percent. on the taxed amount thereof.	
Sections 6 and 12.—For summoning by edict the relatives of minors or next of kin of absentees, &c., for each summons, - - - - -	0 3 0
For approving the security given by curators and tutors, - - - - -	0 2 6
Sections 17, 37, and 40.—For registering accounts of tutors or curators, and the names of curators, sureties, &c., for each enregisterment, - -	0 0 6
Section 21.—For every certificate under the hand of the master, - - - - -	0 2 6
For office copies of any documents not exceeding one folio of 100 words, - - - - -	0 2 0
” ” exceeding 100 words, at the rate of, per folio, - - - - -	0 0 6
Attending any meeting of the relatives of minors, next of kin, or absentees, &c., whether by the master or resident magistrate, - - - - -	0 10 6
For every report, in the discretion of the master, subject to taxation before the court or a judge thereof, or not less than, - - - - -	0 10 6
For drawing advertisements, - - - - -	0 3 0
For filing and enregistering any order of court, (Exclusive of Stamps.)	0 7 6

## SCHEDULE E.

Tariff of Fees to be paid to Appraisers, under and by virtue of the provisions of this Ordinance.—(See Section 44.) Fees of appraisers.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 5th July, 1833.

By command of His Excellency the Governor,

(Signed) J. G. BRINK.  
Acting Secretary to Government.

By order of the Council,  
(Signed) K. B. HAMILTON,  
Clerk of the Council.

No. 1. (Local).—Sd. R. Bourke.] [31st August, 1826.

For establishing a Toll at Du Toit's Kloof in the District of Stellenbosch.

[Expired in 1831.]

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No. 2. (Local).—Sd. R. Bourke.] [5th Dec., 1826.

For preserving the Brushwood along the coast at Port Elizabeth.

[Lapsed in the disallowance of Ordinance No. 1, of 1825.]

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No. 3. (Local).—Sd. R. Bourke.] [29th Dec., 1826.

For the better regulation of the Turnpikes on the Road leading from Cape Town to Simon's Town, through the Upper and Lower Gates of the Military Lines, and for fixing the Tolls to be levied thereat.

[Repealed by Ordinance No. 3, 1845.]

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No. 4. (Local).—Sd. G. Lowry Cole.]

For authorizing a Sum of Money to be raised in Shares for Erecting an English Church at Cape Town.

Preamble.

WHEREAS several persons have subscribed certain sums of money for the purpose of erecting a Church at Cape Town for the celebration of divine service according to the rites of the United Church of England and Ireland as by law established, on the site consecrated for that purpose by the late Lord Bishop of Calcutta, upon the principle that such subscribers should have a right of property in the pews of the said church, and in or about the month of October, in the year of our Lord 1827, a committee of management was appointed for carrying their intention into effect, which committee hath received part of the said subscriptions together with several sums of money from various persons by way of donations for furthering the building of the said church: And whereas His Excellency the Governor hath

agreed to grant from the treasury of this colony towards the building and completing the said church, to the persons who shall undertake and become bound for completing the same, a sum not exceeding the sum of five thousand pounds sterling, in manner following,—that is to say, the sum of five hundred pounds when the foundations are up to the surface and completed; five hundred pounds when the walls are as high as the bottom of the windows; five hundred pounds when the walls are as high as the tops of the windows; one thousand pounds when the walls are roof high, the wall-plates on, and the roof in frame; one thousand pounds when the mason's and bricklayer's work is completed, including the tower; five hundred pounds when the plastering inside and outside is completed; five hundred pounds when the joiner's work is completed; and the remainder of the said sum of five thousand pounds to be paid when the whole building is taken over from the contractors in a complete state: And whereas the said committee have received and approved of a plan and specification for building the said church, together with tenders for the building thereof according to the said plan and specification, but the several sums before mentioned have been found to be insufficient for completing the said building; whereupon at a public meeting of the said subscribers and committee of management, holden pursuant to advertisement and notice thereof in the Commercial Advertiser newspaper on the twenty-seventh day of August now last, it was agreed and resolved by the said subscribers and committee of management (amongst other things) that the said scheme should be peremptorily relinquished, and that in order to raise a sum of money amounting together with the said sum to be granted by His Excellency the Governor as aforesaid and the said donations to the sum of twelve thousand and seventy pounds, being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of,—that is to say, the number of two hundred and fifty shares at twenty-five pounds each: And whereas several of the said subscribers and other persons have agreed to take shares in the said loan as aforesaid,—that is to say, the Honourable Sir John Wylde, Knight (chief justice of this colony), the honourable Lieutenant-Colonel John Bell, C. B., and the Reverend George Hough, M. A., ten shares each; Lieutenant-Colonel William Hopper, eight

shares; Rice Jones Jones and Hamilton Ross, six shares each; George Thompson and John Bardwell Ebden, five shares each; William Hayward (assistant commissary-general), the Reverend Edward Judge, M. A., William Scott, Laurence Twentyman, Hudson, Donaldson, and Dixon, and William Hawkins, (agent to the honourable the East India Company), four shares each; Ewan Christian and Samuel Oliver, three shares each; Thomas Kift Deane, William Hutchons, George Greig, John Deane, Francis Collison, James Horne, George Wilson Prince, John Blore, John Robert Thomson, William Heyward, Edward Durham & Co., Charles Baron de Lorentz, William Wilberforce Bird, Henry Buckton, John Barker, Joseph Simpson, John Thomas Buck, the honourable William Westbrooke Burton (one of the judges of the supreme court), Antonio Chiappini, Edward Smith, William Hunt, Benjamin Phillips, Charles Mackenzie, Isaac Manuel, Carel Ferdinand Heinrich von Ludwig, Robert Waters, Edward George, Lieutenant James Bance (of the royal navy), Robert Reeves, Major George Jackman Rogers, the Honourable Joachim Willem Stoll, Anthony Oliphant (His Majesty's attorney-general for this colony), Charles Dixon, Daniel Jacob Cloete, Henry Hewitt, James Smith, William Billingsley, Thomas Fairclough, Clerke Burton (master of the supreme court), the Honourable George Kekewich (one of the judges of the supreme court) Hendrik Cloete, L.'s son, Herman Schutte, Major Charles Cornwallis Michell, Thomas and John Sinclair, Lieutenant-Colonel William Cuthbert Elphinstone Holloway (of the royal engineers), James Carfrae & Company, and James Carey, two shares each; William John Mackrill, Frederick Dickinson, William Lawson, John Hartfield Tredgold, George William Silberbauer, George Herbert, Frederik Stephanus Watermeyer, Hercules Tennant, Captain William Ronald, James Duff Watt (deputy assistant commissary-general) William Benson, Pieter Gerhard Brink (auditor-general), Joseph Dixie, John Brown, Mrs. Johanna Adriana Hardman, Samuel Capon, William Gadney, Thomas Elliot, Thomas Hall, Andries Thomas Stadler, Willem Anthon Joseph Liesching, Edwin Oldham, Andrew Steedman, Richard Stone, Joseph Sturgis, John Syme, Thomas Heyward, John William Lolley, Thomas Ansdell, Daniel Mills, jun., Robert Crozier, Pieter Donald Hohne, Joseph Trueman, William Bridekirk, Egbert Andries

Buyskes, John Marshall, Jacob Davies Gregory, Adriaan Christian Deneys, Edward Eagar, Joseph Day, Thomas Henry Bowles (registrar of the supreme court), Petrus Borchardus Borchards (judge of police), Thomas Tennant, Harrison Watson, Alexander Thomson, John Fairbairn, Michiel Christian Wolff, James Molton, Frederick Venables, Richard Huntley, Michiel de Kock, Johannes Henoeh Neethling, the Honourable Sir Johannes Andreas Truter, Knight, Major Abraham Josias Cloete, John Skirrow, Abraham de Smidt, William McDonald Mackay, Edwin Maude, Frederick Wilhelm Heideman, Ker Bailie Hamilton, Lancelot Cooke, John Chisholm, senior, Ralph Rogerson, Carel Gerhard Blanckenberg, John Samuel Merrington, and Howson Edward Rutherford, one share each: And whereas the said persons have made application that an ordinance may be passed to sanction and confirm the plan adopted at the said meeting; and to provide for carrying the same into effect: Now, therefore, be it enacted by His Excellency the Governor in Council that from and after the passing of this ordinance the said firstmentioned scheme shall and may be abandoned and relinquished; and that it shall and may be lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this ordinance hereafter agree to take shares in the said loan to raise amongst themselves, in manner and for the purpose aforesaid, such a sum of money as, together with the said sum so to be granted from the colonial treasury and the said donations shall amount to the sum of twelve thousand and seventy pounds; and it shall and may be lawful for such persons to become shareholders in the said loan and to take such shares therein (not exceeding by any one person the number of ten shares) as such persons have already agreed or shall hereafter agree to take in the said loan, until the whole number of two hundred and fifty shares shall have been disposed of.

Authority to raise money on loan by shares.

2. And be it enacted that no share shall be transferable by any holder thereof, nor any right nor interest therein, until all the calls thereon shall have been paid as hereinafter mentioned; but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: Provided, however,

Power to transfer shares.

Sale by private contract only.

that no sale of any such share shall take place by public auction, but shall be by private contract only; and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Interest.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the day on which the said church shall be opened for divine service therein, and not sooner.

Preference in allotment of shares to subscribers to original plan for building the church.

4. And be it enacted that all persons who have subscribed to the original plan for building the said church and have already paid the first instalment of their subscription shall until and upon the fourth day of September next be entitled to become shareholders in the said loan, in preference to all others who have not so subscribed and paid as aforesaid; and all those subscribers who shall decline to take shares in the said loan shall be entitled to demand and receive back from the committee of management during the time of their continuance in office, and afterwards from the trustees, all such sums of money as they shall have paid as aforesaid.

Diminution of number of shares of individual holders under certain circumstances.

5. And be it enacted that if it should happen that the whole number of two hundred and fifty shares shall be taken before the fourth day of September next, and there should then be other persons desirous of taking shares, those who have agreed to take more than five shares shall relinquish each one share, beginning with the holder of the greatest number of shares, until the required number of shares shall be provided; and the order in which such shares shall be relinquished by the holders of an equal number of shares shall, if need be, be determined by ballot amongst them: Provided, however, that the original holder of a greater number of shares who shall in manner before mentioned have been reduced to be the holder of a smaller number shall not be again obliged to relinquish or give up a share, nor be included in any such ballot as aforesaid, until all the original holders of such smaller number shall each have relinquished and given up a share.

Rights of shareholders to vote in election of trustees, &c.

6. And be it enacted that all the shareholders in the said loan shall have the right of voting in the election of trustees and in all matters relating to the erection of the said church and the management of the funds thereof until the said loan shall have been wholly repaid and discharged, according to the number of their respective shares,—that is



to say, the holder of one share shall be entitled to one vote; the holder of two or three shares shall be entitled to two votes; the holder of four or five shares, to three votes; the holder of six or seven shares, to four votes; and the holder of eight, nine, or ten shares, to five votes.

7. And be it enacted that on the completion of the said church and after the proper number of pews shall have been set apart and allotted for the use of the governor, minister, and churchwardens as hereinafter mentioned, all shareholders shall have a right to become each the renter of a pew in preference to any other persons who possess no shares; and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six according to the number of their shares, the holder of the greater number of shares to have the prior choice; and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided, however, that it shall and may be lawful for the trustees at their discretion, upon the application of any shareholder whose family may require a greater number of seats in the said church than six, to permit and allow such shareholder to choose two adjoining pews, such two pews containing not more than ten sittings.

Preference of shareholders in renting pews.

8. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number or description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof; and no second choice shall be afterwards made by any holder of the same shares or any of them except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Pew-book.

Second choice of pew.

9. And be it enacted that upon any shareholder having duly made choice of a pew, the said shareholder, his heirs and assigns shall and may for ever afterwards possess and occupy the same without the hinderance or disturbance of any person whatsoever, so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable, and shall continue to hold the share or shares in respect of which the said pew was chosen,

Right of shareholder, his heirs and assigns in pew.

or the same shall have been paid off by the trustee by virtue of any of the provisions of this ordinance.

General meet-  
ings of share-  
holders.

10. And be it enacted that a general meeting of the shareholders shall be holden on the first Monday of October in every year, at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this colony fourteen days at least before the same is to be holden; and it shall and may be lawful for the trustees or the auditors, or either of the auditors, to be elected as hereinafter mentioned at any time to call a general meeting of the shareholders upon giving the like notice thereof.

First general  
meeting for  
election of  
trustees and  
auditors.

11. And be it enacted that on the ninth day of September now next a general meeting of the shareholders shall be holden at some convenient place in Cape Town, notice whereof shall be given by the said committee of management by advertisement in one of the public papers of this colony six days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors; and it shall and may be lawful for the said shareholders, or the greater part assembled at such meeting, to elect out of the said shareholders any number of persons not exceeding nine, to be trustees, and two other persons to be auditors of the accounts of the said trustees.

Duration of  
office of trus-  
tees.

12. And be it enacted that the trustees so elected by the shareholders, and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as herein-aftermentioned, shall continue in office until the first Monday in October next after the said church shall be erected and completed; and that upon the said first Monday in October, and yearly afterwards on the same day, three of the said trustees shall go out of office, and three other trustees shall be elected instead of them, by and out of the shareholders in manner aforesaid, until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall if necessary be determined by ballot amongst them.

Annual elec-  
tion of auditors.

13. And be it enacted that two persons not being trustees, shall be elected by and out of the shareholders yearly on the first Monday in October, to be auditors of the accounts of the said trustees.

Delivery of  
books, papers,  
&c.,

14. And be it enacted that the said committee of management shall, upon the election of trustees as aforesaid and

upon their acceptance of the said office, deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said church in their custody or power and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.

by committee  
of management  
to trustees.

15. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions (except such part thereof as shall be liable to be returned to subscribers demanding the same as aforesaid), and of all such sums of money as shall at any time hereafter be granted to them from the colonial treasury as aforesaid or shall arise from payments made by the shareholders in respect of their said shares or otherwise; and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid, or in aid of the fund of the said church; and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the enclosed ground about the same, or in the burial-ground belonging to the said church as herein-after-mentioned, and for digging vaults in the said burial-ground, upon trust in the first place, and until the said church shall be erected and completed; to cause the said church to be erected and completed according to the said plan and specification thereof; and from and after the erection and completion of the said church upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say,—in the first place, to pay thereout the cost of all necessary repairs and expenses in and about the said church for repairing, keeping up, and maintaining the same; secondly, in payment of the interest together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares in an equal rate, when and as the funds at their disposal shall enable them so to do; and, lastly, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient

Powers and  
duties of trustees  
in the possession  
and application  
of church funds.

to pay off a part of the said loan at a rate of not less than one pound sterling upon each share, until the whole of the said loan shall be paid off and discharged.

Power of trustees to compel payment, enter into contracts, &c.

16. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this ordinance; and in their own names to make and enter into, perform and execute, and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power to bring actions.

17. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent court in this colony as they shall deem necessary, in performance of the trust reposed in them, against any shareholder or other person whatsoever; and all such suits and actions shall and may be brought by them in the names of "the trustees of the English Church at Cape Town," or "the trustees of Church at Cape Town" (describing the same by its name, after it shall have been named), as the case may require, without specifying the christian or surnames of the trustees; and no action shall abate by reason of the death or removal or going out of office of any trustee.

Mode of bringing actions against trustees.

18. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, or which shall arise or accrue to any person whatsoever against the said shareholders jointly, shall be brought by such person against the said trustees in manner and in the names aforesaid, and not against any individual shareholder or shareholders.

Calls upon shares.

19. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as together with the donations and sum of money to be granted from the colonial treasury as aforesaid they may deem necessary for carrying on the building and completing the said church as aforesaid: Provided, however, that no such call shall at

any one time exceed one-fifth part of the amount of the said shares, and that the whole of such calls shall not, except in the case hereinafter provided for, exceed the amount of twenty-five pounds in respect of each share: Provided, In case of deficiency. always, and be it further enacted that if the expense of building and completing the church according to the said plan and specification should exceed the sum of twelve thousand and seventy pounds, then it shall and may be lawful for the trustees to make a further call on each shareholder for a proportional part of the said deficiency; such last-mentioned call, however, in no case to exceed the sum of five pounds sterling in respect of each share.

20. And be it enacted that the trustees shall cause all calls made by them to be advertised in the public newspapers of this colony, together with the time and place appointed by them for payment thereof, fourteen days at least before the said time. Advertisement of calls.

21. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees, if they shall think fit, to declare and pronounce the share or shares of such shareholder to be forfeited, and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided, however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do, instead of declaring and pronouncing his share or shares to be forfeited as aforesaid. Forfeiture of shares on neglect of payment of calls.

22. And be it enacted that the trustees shall keep an account, wherein they shall enter all money received and paid by them under and by virtue of the provisions of this ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account, together with any report of the auditors or either of them thereon, shall be laid before the shareholders for their inspection at their general annual meetings, and the said Mode of keeping accounts

accounts shall be thereupon published in one of the public newspapers of this colony.

**Bank account.** 23. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding twenty pounds open an account with the Government Discount Bank in this colony in the names of the trustees; and such sum and every other sum exceeding twenty pounds so received by them shall be forthwith paid into the said bank, to be placed to the credit of such account; and all cheques or orders for payment of any such money out of the said bank shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees, or by two of them for themselves and co-trustees.

**Penalty on improper retention of money by trustees.** 24. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding twenty pounds, part of the church fund, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid into the said bank, or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money, part of the church fund, shall and may be removable by the said shareholders from his said office, and shall, moreover, forfeit and pay, for the benefit of the church fund, double the amount of the sum so retained or employed, and which shall and may be recovered by the other trustees by action in any competent court.

**Winding up of accounts on completion of church.** 25. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection; and no further call shall be afterwards made upon the shareholders in respect of their shares.

**Death, resignation, or removal of trustee.** 26. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid, the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one so dying or desiring to resign or being removed as aforesaid; and the same notice shall be given of the time and place of the said meeting and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall be permitted to resign his office until he shall

have duly accounted to the satisfaction of the shareholders for all sums of money at any times received by him.

27. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the trustees shall take over and enter upon the same; and the care and government of the said church shall thenceforward, and until the said loan shall have been wholly paid off in manner hereinbefore provided together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent then one of the trustees elected by them; and in case of an equality of votes at any meeting of such vestry the president shall have a casting vote.

Formation of vestry.

28. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

Duty of vestry.

29. And be it enacted that there shall be two churchwardens chosen yearly, on the first Monday in October, by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof, and for preserving to all persons their rights in the said pews and sittings.

Election of churchwardens out of vestry.

30. And be it enacted that before any choice of pews by the shareholders shall take place there shall be set apart and allotted by the vestry a pew sufficient to hold ten persons at least for the use of His Excellency the Governor of this colony, another pew sufficient to hold six persons for the minister, and a third sufficient to hold four persons for the churchwardens; and there shall be also set apart in some convenient part of the said church three hundred free seats at the least for the use of poor persons.

Pews, for governor, minister, and churchwardens.

Free seats.

31. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall call together the shareholders of each class according to their number of shares, for the purpose of exercising their right in the choice of pews; and the rents of all such pews as shall be chosen by shareholders shall be fixed according

Selection of pews.

Rent. to the number of sittings at which such pews respectively shall be rated at fifteen shillings yearly for each sitting, and no more.

Notice of vacant pews. 32. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose the trustees shall give notice of all the pews and seats which are then vacant, by affixing the same in writing upon the door of the said church and otherwise as they shall see fit ; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are vacant or will become vacant at the commencement of the next year.

Letting of pews. 33. And be it enacted that all the pews and seats in the said church except the pews set apart for His Excellency the Governor, the minister, and churchwardens, and the said free seats and the pews chosen by shareholders shall and may be let by the said trustees by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to the same respectively by the vestry, and payable at such times and in such manner as shall be appointed by the trustees ; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns, without any hinderance or disturbance by any person whatsoever until the end of the said term ; provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

Proceedings in case of arrear pew rents 34. And be it enacted that it shall and may be lawful for the trustees, whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up the possession thereof ; and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the purposes of this ordinance without any other form or proceeding whatever ; and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew : Provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent court.

Burials. 35. And be it enacted that no burial shall take place within or under the said church, or any part of the enclosed



ground about the same; but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted, or which may hereafter be consecrated and allotted, to the said church for that purpose.

36. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monuments to be erected or placed in such convenient parts of the said church, or of the enclosed ground about the same, or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon the payment to the fund of the said church for such permission by the person or persons desiring to erect and place any monument in the said church or enclosed ground about the same, or in the said burial-ground, or to dig and make any vault in the said burial-ground, of such a reasonable fee as shall be affixed by the said vestry for such permission, according to the terms and extent thereof.

Monuments,  
vaults, &c.

37. And be it enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or enclosed ground about the same, or in the said burial-ground, or digging and making any vault in the said burial-ground by and with such permission as aforesaid, to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever.

Rights of  
owner of mo-  
nument, vault,  
&c.

38. And be it enacted that on the first Monday in the month of October next after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid, the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Monday in October, and yearly afterwards on the same day, by and out of the resident inhabitants of Cape Town, being members of and holding communion with the United Church of England and Ireland as by law established, a like number of persons, who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and a like number of other persons to be auditors of the accounts of the said vestry; and the trustees last in office as aforesaid shall upon the last-mentioned vestry entering upon their said office surrender and give up

Determination  
of office of  
trustees, audi-  
tors, &c.

Election of  
vestry.

to the said last-mentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and the administration of the funds thereof, and all sums of money in their custody, possession, or control arising from and belonging to the church fund.

Powers and duties of vestry.

39. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church, and the care and government thereof, and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry or either of them constituted and elected by such shareholders as aforesaid under and by virtue of any of the provisions of this ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church.

Public ordinance.

40. And be it enacted that this ordinance shall be deemed and taken to be a public ordinance, and shall be judicially taken notice of as such by all judges, magistrates, and others, without being specially pleaded.

GOD SAVE THE KING !

Given at the Cape of Good Hope, 1st September, 1829.

By command of His Excellency the Governor,

(Signed) JOHN BELL.

Secretary to Government.

By order of the Council,

(Signed) K. B. HAMILTON,

Clerk of the Council.

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No. 5. (Local).—Sd. G. Lowry Cole.]

For Authorizing a Sum of Money to be raised in Shares for building a Church at Bathurst.

Preamble.

WHEREAS several persons being desirous of erecting a church at Bathurst for the celebration of divine service according to the rites of the United Church of England and Ireland

as by law established, and being ready and willing to raise and provide by way of loan for that purpose a certain sum of money as hereinafter mentioned, at a public meeting of the said persons holden at Bathurst on the 27th day of April in the year of our Lord 1829 a committee of management was appointed for carrying their intention into effect : And whereas His Excellency the Governor hath agreed to grant from the treasury of this colony as a donation towards the building and completing the said church, to the persons who shall undertake and become bound for completing the same, the sum of two hundred and fifty pounds in manner following, that is to say : the sum of two hundred pounds when and as soon as the sum of five hundred pounds of the said loan so to be raised and provided by the said persons as aforesaid shall have been paid by them, and the remainder of the said sum of two hundred and fifty pounds when the whole building shall be taken over from the contractors in a complete state : And whereas the venerable Society in England for the Promoting of Christian Knowledge hath agreed to grant and place at the disposal of His Excellency the Governor a certain sum of money for furthering the religious interests of this colony, according to a mode of appropriation to be recommended by His Excellency and subject to the approval of the said Society : And whereas His Excellency the Governor hath recommended to the said Society that a sum of two hundred pounds or three hundred pounds of their said grant, according as the said Society shall think fit, shall be appropriated as a donation towards the building of the said church at Bathurst, and His Excellency hath also accordingly agreed to pay to the persons who shall undertake and become bound for completing the said church the said sum of two hundred and fifty pounds or three hundred pounds, or such other sum as shall be approved of and granted by the said Society for this purpose, when and as the said money shall be received by him from the said Society : And whereas several other persons have agreed to subscribe certain sums of money by way of donations for furthering the building and completing of the said church : And whereas at a public meeting of the persons interested in the said church, holden pursuant to notice thereof on the 14th day of September in the year of our Lord 1831, it was agreed and resolved by the said persons, that in order to raise a sum of money amounting together with the said sum of

money agreed to be granted by His Excellency the Governor from the colonial treasury as aforesaid and the said sum of money agreed to be granted by the Society for Promoting Christian Knowledge as aforesaid and the said other donations to the sum of one thousand pounds, being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of, that is to say, one hundred and four shares at five pounds each: And whereas the following persons have agreed to take shares in the said loan as aforesaid,—that is to say, the Reverend William Wright, Walter Currie, the Reverend William Carlisle, and the Honourable Captain Andrew Stockenstrom, four shares each; John Smith, three shares; James Corbould Wilmot, Thomas Hartley, George Anderson, William John Earle, Henry Augustus Crause, William Burnet Biddulph, Joseph Weakley, Alexander Bisset, Thomas Frederik Cowderoy, William Gilfillan, Robert Wood Bagot, William Austin, Donald Moodie, William Waddel, John Carlisle, Benjamin Norden, Thomas Hewson, Jonathan Wainwright, John Norton, and Richard Peacock, two shares each; Samuel Harper Bradshaw, Richard Bradshaw, John Centlivres Chase, John Morris, Edward Hunt Dell, William Lyall, George Mugglestone, William Roberts, William Rowland Thompson, Robert Godlonton, George Gilbert, William Edward Crout, James Boardman, Isaac Dyason, John Henry Dixon, John Mandy, Peter Campbell, George Fredrik Stokes, Leopold Schmidt, Ralph Goddard, William Edward Smith, Charles Stone, Richard Stone, George Edward Joseph, John Rafferty, John M'Kenny, Mynhardus Johannes van Nuldt Onkruydt, the Reverend George Morgan, Philip Richard Marillier, Robert O'Connor, the Reverend John Philip, D.D., the Reverend George Shepheard Porter, William Ayton, Charles Maynard, Henry Maynard, George Palmer, William Lucas, George Dyason, John Pratt, William Thomas Allen, William Forward, John Crause, William Turkington, Thomas Phillips, and John Holt, one share each:

Capital to be raised by shares and loan.

And whereas the said persons have made application that an ordinance may be passed to sanction and confirm the plan adopted at the last-mentioned meeting and to provide for carrying the same into effect: Now, therefore, be it enacted by His Excellency the Governor in Council that from and after the passing of this ordinance it shall and may be lawful for the said persons who have already agreed and all

such as shall by virtue of any of the provisions of this ordinance hereafter agree to take shares in the said loan to raise and provide in manner and for the purpose aforesaid such a sum of money as, together with the said sum so to be granted from the colonial treasury and the said sum so to be granted by the Society for Promoting Christian Knowledge and the said donations, shall amount to the requisite sum for building and completing the said church; and it shall and may be lawful for such persons to become shareholders in the said loan, and to take such shares therein (not exceeding by any one person the number of ten shares), as such persons have already agreed or shall hereafter agree to take in the said loan until the whole number of one hundred and four shares shall have been disposed of.

2. And be it enacted that no share shall be transferable by any holder thereof, or any right or interest therein, until all the calls thereon shall have been paid as hereinafter mentioned; but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: Provided, however, that no sale of any such share shall take place by any public auction, but shall be by private contract only; and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Shares saleable and transferable.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the first Wednesday in October next after the said church shall be erected and completed and opened for divine service therein, and not sooner.

Interest upon capital paid up.

4. And be it enacted that all shareholders in the said loan shall at all public meetings of the shareholders have the right of voting in the election of trustees and in all matters relating to the erection of the said church and the management of the funds thereof, until the said loan shall have been wholly repaid and discharged, according to the number of their respective shares; that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares to two votes; the holder of four or five shares to three votes; the holder of six or seven shares to four votes; and the holder of eight, nine, or ten shares to five votes.

Shareholders' rights of voting.

Free sittings.

5. And be it enacted that on the completion of the said church a part of the whole number of sittings shall be appropriated to the use of the public as free sittings, and that the number of free sittings shall bear the same proportion to the whole number of sittings as the sum raised by donations shall bear to the whole sum raised by shares and donations together.

Sittings for shareholders.

6. And be it enacted that on the completion of the said church and after the proper number of pews and sittings shall have been set apart and allotted for the use of the minister and the churchwardens and public aforesaid, all shareholders shall have a right to become each the renter of a pew in preference to any other persons who possess no shares; and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six according to the number of their shares, the holder of the greater number of shares to have the prior choice, and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided, however, that it shall and may be lawful for the trustees at their discretion, upon the application of any shareholder whose family may require a greater number of seats in the said church than six, to permit and allow such shareholder to choose two adjoining pews.

Record of sittings.

7. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number and description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof; and no second choice shall be afterwards made by any holder of the same shares or any of them except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Rights of shareholders in pews.

8. And be it enacted that upon any shareholder having duly made choice of a pew the said shareholder, his heirs and assigns, shall and may for ever afterwards possess and occupy the same without the hinderance or disturbance of any person whatever so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable, and shall continue to hold the

share or shares in respect of which the said pew was chosen, or the same shall have been paid off by the trustees by virtue of any of the provisions of this ordinance.

9. And be it enacted that a general meeting of the shareholders shall be holden on the first Wednesday of October in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this colony twenty-one days at least before the same is to be holden; and it shall and may be lawful for the trustees or the auditors, or either of the auditors to be elected as hereinafter mentioned, at any time to call a general meeting of the shareholders upon giving the like notice thereof.

General meetings of shareholders.

10. And be it enacted that as soon as conveniently may be after the passing of this ordinance a general meeting of the shareholders shall be holden at Bathurst, notice whereof shall be given by the said committee of management by advertisement in one of the public papers of this colony twenty-one days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors; and it shall and may be lawful for the said shareholders or the greater part assembled at such meeting to elect out of the said shareholders any number of persons, not exceeding nine, to be trustees and two other persons to be auditors of the accounts of the said trustees.

First election of trustees and auditors.

11. And be it enacted that the trustees so elected by the shareholders, and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as hereinafter mentioned, shall continue in office until the first Wednesday in October next after the said church shall be erected and completed; and that upon the said first Wednesday in October, and yearly afterwards on the same day, three of the said trustees shall go out of office and three other trustees shall be elected instead of them by and out of the shareholders in manner aforesaid until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall if necessary be determined by ballot amongst them.

Time of first trustees holding office.

Annual election of trustees.

12. And be it enacted that two persons, not being trustees, shall be elected by and out of the shareholders, yearly on the first Wednesday in October, to be auditors of the accounts of the said trustees.

Election of auditors.

Custody of  
books, papers,  
and funds, &c.

13. And be it enacted that the said committee of management shall upon the election of trustees as aforesaid and upon their acceptance of the said office deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said church in their custody or power, and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid, or securities for the same, in their possession or control; and the said committee of management and the office and duties thereof shall thereupon cease and determine.

Application of  
the church  
funds.

14. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions, and of all such sums of money as shall at any time hereafter be granted to them from the colonial treasury as aforesaid or from the Society for Promoting Christian Knowledge, or shall arise from payments made by the shareholders in respect of their said shares, or otherwise and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid or in aid of the funds of the said church, and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the burial-ground belonging thereto, or for digging vaults in the said burial-ground, or otherwise, upon trust, in the first place and until the said church shall be erected and completed, to cause the said church to be erected and completed according to such plan and specification thereof as shall be approved of and adopted by them, and from and after the erection and completion of the said church upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say,—in the *first* place, to pay thereout the cost of all necessary repairs and expenses in and about the said church for repairing, keeping up, and maintaining the same; *secondly*, in payment of the interest together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares in an equal rate, when and as the funds at their disposal shall enable them so to do; and, *lastly*, upon trust to pay and apply the residue thereof in discharge of the loan advanced



by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan, at a rate of not less than five shillings sterling upon each share, until the whole of the said loan shall be paid off and discharged.

15. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this ordinance, and in their own names to make and enter into, perform and execute and compel the performance and execution of, all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power of trustees to compel payment of church funds and to make contracts, &c.

16. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent court in this colony as they shall deem necessary in performance of the trust reposed in them against any shareholder or other person whatsoever; and all such suits and actions shall and may be brought by them in the name of "the trustees of Bathurst Church," or "the trustees of Church at Bathurst" (describing the same by its name after it shall have been named), as the case may require, without specifying the christian or surnames of the trustees; and no action shall abate by reason of the death or removal or going out of office of any trustee.

Actions by trustees.

17. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever, from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed, by the said trustees in the execution of the said trust or which shall arise or accrue to any person whatsoever against the said shareholders jointly shall be brought by such person against the said trustees in manner and in the name aforesaid, and not against any individual trustee or trustees, shareholder or shareholders.

Actions against trustees or shareholders.

18. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as together with the donations and sums of money to be granted from the colonial treasury and by the Society for Promoting Christian Knowledge as aforesaid they may deem necessary

Power of the trustees to make calls upon shares.

for carrying on the building and completing the said church as aforesaid : Provided, however, that no such call shall at any one time exceed one-third part of the amount of the said shares, and that the whole of such calls shall not exceed the amount of five pounds in respect of each share.

Advertisement  
of calls.

19. And be it enacted that the trustees shall cause all calls to be made by them to be advertised in one of the public newspapers of this colony, together with the time and place appointed by them for payment thereof, twenty-one days at least before the said time.

Shares upon  
which calls not  
paid may be  
forfeited and  
disposed of.

20. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees, if they shall think fit, to declare and pronounce the share or shares of such shareholder to be forfeited, and the same shall thereupon be forfeited accordingly ; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided, however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do, instead of pronouncing and declaring his share or shares to be forfeited as aforesaid.

Consequences  
of non-pay-  
ment of calls.

Accounts of  
trustees.

21. And be it enacted that the trustees shall keep an account wherein they shall enter all money received and paid by them under and by virtue of the provisions of this ordinance, which account the auditors or either of them may inspect at all reasonable times ; and the said account, together with any report of the auditors or either of them thereon, shall be laid before the shareholders for their inspection at their general annual meetings.

Receipts by  
trustees  
exceeding £10.

22. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding ten pounds open and keep an account with any person or persons not being trustees who shall be appointed by the shareholders for that purpose at any general meeting, and every other sum of money exceeding ten pounds so received by the said trustees shall be forthwith paid into the hands of the person or

persons so to be appointed by the shareholders for that purpose, to be placed to the credit of such account ; and all cheques or orders for payment of any such money thus deposited shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees or by two of them for themselves and co-trustees.

Drafts by trustees.

23. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding ten pounds, part of the church fund, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid to the person or persons appointed as aforesaid, or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money, part of the church fund, shall and may be removable by the said shareholders from his said office, and shall, moreover, forfeit and pay, for the benefit of the church fund, double the amount of the fund so retained or employed, and which shall and may be recovered by the other trustees by action in any competent court.

Penalty for retaining or employing funds.

24. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection ; and no further call shall be afterwards made upon the shareholders in respect of their shares.

Final accounts of trustees.

25. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid, the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one dying or desiring to resign or being removed as aforesaid ; and the same notice shall be given of the time and place of the said meeting and the same proceedings shall be observed thereat as upon the original election of trustees : Provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any time received by him.

Death, resignation, or removal of trustees.

26. And be it enacted that as soon as the said church shall be erected and completed the trustees shall take over and enter upon the possession of the same ; and the care and government of the said church shall thenceforward, and

Temporary care and government of church.

until the said loan shall have been wholly paid off in manner hereinbefore provided, together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent then one of the trustees elected by them; and all the members of the said vestry shall have an equal right of voting in matters belonging to it, except that in case of an equality of votes the president shall likewise have a casting vote.

*Duty of the trustees' vestry.*

27. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

*Churchwardens' election and duties of.*

28. And be it enacted that there shall be two churchwardens chosen yearly on the first Wednesday in October by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof, and for preserving to all persons their rights in the said pews and sittings.

*Free pews.*

29. And be it enacted that before any choice of pews by the shareholders shall take place there shall be set apart and allotted by the vestry a pew sufficient to hold six persons for the minister and another sufficient to hold four persons for the churchwardens; and there shall also be set apart in some convenient part of the said church the due proportion of free seats for the use of poor persons.

*Choice of pews by shareholders, and rent thereof.*

30. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall call together the shareholders of each class according to their number of shares, for the purpose of exercising their right in the choice of pews; and the rents of all such pews as shall be chosen by shareholders shall be fixed by the vestry according to the number of sittings therein.

*Notice of vacant pews.*

31. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose, the trustees shall give notice of all the pews and seats which are then vacant, by affixing the same in writing upon the door of the said church and otherwise as they shall see fit;

and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are then vacant or will become vacant at the commencement of the next year.

32. And be it enacted that all the pews and seats in the said church, except the pews set apart for the minister and churchwardens and the said free seats and the pews chosen by shareholders, shall and may be let by the trustees by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to the same respectively by the vestry, and payable at such times and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hinderance or disturbance by any person whatsoever until the end of the said term; provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

Renting of un-  
appropriated  
pews.

33. And be it enacted that it shall and may be lawful for the trustees, whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the purposes of this ordinance without any other form or proceeding whatever; and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew: Provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent court.

Remedy for  
non-payment  
of pew rent.

34. And be it enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which hereafter may be consecrated and allotted to the said church for that purpose.

No burials  
within the  
church.

35. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monuments to be erected or placed in such convenient parts of the said church or of the enclosed

Erection of  
monuments  
and vaults.

ground about the same or in the burial-ground belonging thereto or vaults to be dug and made in the said burial-ground upon the payment to the fund of the said church for such permission by the person or persons desiring to erect or place any monument in the said church or enclosed ground about the same or in the said burial-ground or to dig and make any vault in the said burial-ground, of such a reasonable fee as shall be affixed by the said vestry for such permission, according to the terms and extent thereof.

Rights in monuments or vaults.

36. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or enclosed ground about the same or digging and making any vault in the said burial-ground, by and with such permission as aforesaid, to have, maintain, and keep up such monument or vault according to the terms of such permission, to and for the sole and separate use of the said person or persons and his or their heirs for ever.

Permanent care and government of church.

37. And be it enacted that on the first Wednesday in the month of October next after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Wednesday in October, and yearly afterwards on the same day, by and out of the resident inhabitants of Bathurst and of the parochial limits thereof, being members of and holding communion with the United Church of England and Ireland as by law established, a like number of persons who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and two other persons to be auditors of the accounts of the said vestry; and the trustees last in office as aforesaid shall, upon the lastmentioned vestry entering upon their said office, surrender and give up to the said lastmentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and to the administration of the funds thereof, and all sums of money in their custody, possession, or control, arising from and belonging to the church fund.

Powers and duties of shareholders' vestry.

38. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church

and the care and government thereof and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry or either of them constituted and elected by such shareholders as aforesaid, under and by virtue of any of the provisions of this ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church.

39. And be it enacted that this ordinance shall be deemed <sup>Public ordi-</sup> and taken to be a public ordinance, and shall be judicially <sup>nance.</sup> taken notice of as such by all judges, magistrates, and others, without being specially pleaded.

GOD SAVE THE KING!

Given at the Cape of Good Hope, this 13th day of June, 1832.

By command of His Excellency the Governor,

(Signed) JOHN BELL,

Secretary to Government.

By order of the Council,

(Signed) K. B. HAMILTON,

Clerk of the Council.

No. 6. (Local).—Sd. T. F. Wade.]

For Authorizing a Sum of Money to be raised in Shares for building a Church at Wynberg.

WHEREAS several persons have subscribed certain sums of <sup>Preamble.</sup> money for the purpose of erecting a church at Wynberg for the celebration of divine service according to the rites of the United Church of England and Ireland as by law established, on the site appropriated for the same by His Excellency the late Governor and consecrated by the Lord Bishop of Calcutta, upon the principle that such subscribers should have a right of property in the pews of the said church: And whereas the venerable Society in England for Promoting Christian Knowledge hath agreed to grant and place at the disposal of His Excellency the Governor a certain sum of money for furthering the religious interests of this colony according to a mode

of appropriation recommended by His Excellency, and subject to the approval of the said Society: And whereas His Excellency the late Governor hath recommended to the said Society that a sum of four hundred and fifty pounds of their said grant shall be appropriated as a donation towards building the said church at Wynberg: And whereas several other persons have agreed to subscribe certain sums of money, by way of donations, for furthering and completing the building of the said church: And whereas at a public meeting of the persons interested in the said church, holden pursuant to notice thereof on the 16th day of July in the year of our Lord 1832, a committee of management was appointed for carrying their intention into effect, and it was agreed and resolved by the said meeting that in order to raise a sum of money amounting, together with the sum of money agreed to be granted by the Society for Promoting Christian Knowledge as aforesaid and the said other donations, to the sum of one thousand five hundred pounds, being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of, that is to say, one hundred and fifty shares at five pounds each: And whereas the following persons have agreed to take shares in the said loan as aforesaid, that is to say, Major George Jackman Rogers and William Macdonald Mackay, six shares each; John Steuart, five shares; Joseph Hare, the Rev. Edward Judge (Master of Arts), and William Wilberforce Bird, four shares each; the Honourable William Menzies (senior puisne judge of the supreme court), three shares; His Excellency Lieutenant-Colonel Thomas Wade, Charles Blair, Ker Hamilton, Anthony Oliphant, William Hawkins, William Moore, and Edward George, two shares each; James Carey, H. C. Macartney, Robert Cooper, Captain Thomas Blair, Petrus Borchardus Borchards, the Rev. Chas. Wimberley, R. W. Maxwell, George F. Wilmot, Wm. Lutterman, and John Skirrow, one share each: And whereas the said persons have made application that an ordinance may be passed to sanction and confirm the plan adopted at the lastmentioned meeting and to provide for carrying the same into effect: Now, therefore, be it enacted by His Excellency the acting Governor in Council that from and after the passing of this ordinance it shall and may be lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this ordinance hereafter agree to take shares in the said

Capital to be raised by shares and loan.



loan to raise and provide in manner and for the purpose aforesaid such a sum of money as together with the said sum so to be granted by the Society for Promoting Christian Knowledge and the said donations shall amount to the requisite sum for building and completing the said church and other works connected therewith; and it shall and may be lawful for such persons to become shareholders in the said loan and to take such shares therein (not exceeding by any one person the number of ten shares) as such persons have already agreed or shall hereafter agree to take in the said loan until the whole number of shares have been disposed of.

2. And be it enacted that no share shall be transferable by any holder thereof or any right or interest therein until all the calls thereon shall have been paid as hereinafter mentioned; but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: provided, however, that no sale of any such share shall take place by any public auction, but shall be by private contract only, and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Shares saleable and transferable.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the day on which the said church shall be opened for divine service therein, and not sooner.

Interest upon capital paid up.

4. And be it enacted that all shareholders in the said loan shall at all public meetings of the shareholders have the right of voting in the election of trustees and in all matters relating to the erection of the said church and the management of the funds thereof until the said loan shall have been wholly repaid and discharged, according to the number of their respective shares; that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares to two votes; the holder of four or five shares to three votes; the holder of six or seven shares to four votes; and the holder of eight, nine, or ten shares to five votes.

Shareholders' rights of voting.

5. And be it enacted that on the completion of the said church a part of the whole number of sittings shall be appropriated to the use of the public as free sittings, and that the number of free sittings shall bear the same proportion to the

Free sittings.

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whole number of sittings as the sum raised by donations shall bear to the whole sum raised by shares and donations together.

Sittings for  
shareholders.

6. And be it enacted that on the completion of the said church and after the proper number of pews and sittings shall have been set apart and allotted for the use of the minister and the churchwardens as hereinafter mentioned, all shareholders shall have a right to become each the renter of a pew in preference to any other persons who possess no shares, and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six, according to the number of their shares, the holder of the greater number of shares to have the prior choice and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided however, that it shall and may be lawful for the trustees, at their discretion, upon the application of any shareholder whose family may require a greater number of seats in the said church than six to permit and allow such shareholder to choose two adjoining pews.

Record of  
sittings.

7. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their shares respectively, and the number and description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof, and no second choice shall be afterwards made by any holder of the same shares or any of them, except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Rights of  
shareholders in  
pews.

8. And be it enacted that upon any shareholder having duly made choice of a pew, the said shareholder, his heirs, and assigns, shall and may for ever afterwards possess and occupy the same without the hinderance or disturbance of any person whatever so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable, and shall continue to hold the share or shares in respect of which the said pew was chosen, or the same shall have been paid off by the trustees by virtue of any of the provisions of this ordinance.

General meet-  
ings of share-  
holders.

9. And be it enacted that a general meeting of the shareholders shall be holden on the first Wednesday of October

in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this colony fourteen days at least before the same is to be holden; and it shall and may be lawful for the trustees or the auditors, or either of the auditors to be elected as hereinafter mentioned, at any time to call a general meeting of the shareholders upon giving the like notice thereof.

10. And be it enacted that as soon as conveniently may be after the passing of this ordinance a general meeting of the shareholders shall be holden at Wynberg, notice whereof shall be given by the said committee of management by advertisement in one of the newspapers of this colony six days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors; and it shall and may be lawful for the said shareholders or the greater part assembled at such meeting to elect out of the said shareholders any number of persons not exceeding nine to be trustees, and two other persons to be auditors of the accounts of the said trustees.

First election  
of trustees and  
auditors.

11. And be it enacted that the trustees so elected by the shareholders and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as hereinafter mentioned, shall continue in office until the first Wednesday in October next after the said church shall be erected and completed; and that upon the said first Wednesday in October, and yearly afterwards on the same day, two of the said trustees shall go out of office and two other trustees shall be elected instead of them by and out of the shareholders in manner aforesaid until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall, if necessary, be determined by ballot amongst them.

Time of first  
trustees hold-  
ing office.

12. And be it enacted that two persons not being trustees shall be elected by and out of the shareholders yearly on the first Wednesday in October to be auditors of the accounts of the said trustees.

Election of  
auditors.

13. And be it enacted that the said committee of management shall, upon the election of trustees as aforesaid and upon their acceptance of the said office, deliver over to the said trustees all deeds, books, plans, and vouchers relating to the said church in their custody or power and all and any sums of money, donations, or subscriptions given or subscribed

Custody of  
books, papers,  
funds, &c.

for the purpose aforesaid or securities for the same in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.

Application of  
church funds.

14. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions, and of all such sums of money as shall at any time hereafter be granted to them from the colonial treasury or from the Society for Promoting Christian Knowledge or shall arise from payments made by the shareholders in respect of their said shares or otherwise, and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid or in aid of the funds of the said church, and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the burial-ground belonging thereto or for digging vaults in the said burial-ground or for placing monuments and digging vaults in the ground surrounding the said church, or funds arising from the sale of burial-places as hereinafter provided, or otherwise, upon trust in the first place, and until the said church shall be erected and completed, to cause the said church to be erected and completed according to the plan and specification thereof which has been approved of by His Excellency the late Governor and by the said committee of management and the building whereof has been commenced, and from and after the completion of the said church, inclosing the surrounding ground and the burial-ground belonging thereto and other necessary works connected therewith, upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say, in the *first* place, to pay thereout the cost of all the necessary repairs and expenses in and about the said church, for repairing, keeping up, and maintaining the same, and repairing and keeping up the fences and gates of the burial-ground belonging to the said church, and of the inclosed ground surrounding the said church; *secondly*, in payment of the interest, together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares, in an equal rate, when and as the funds

at their disposal shall enable them so to do ; and *lastly*, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan, at a rate of not less than five shillings sterling upon each share, until the whole of the said loan shall be paid off and discharged.

15. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this ordinance, and in their own names to make and enter into, perform, and execute, and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power of trustees to compel payment of church fund, and to make contracts, &c.

16. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent court in this colony as they shall deem necessary in performance of the trust reposed in them against any shareholder or other person whatsoever, and all such suits and actions shall and may be brought by them in the name of the "trustees of the English church at Wynberg," or "the trustees of ——— church at Wynberg" (describing the same by its name, after it shall have been named), as the case may require, without specifying the christian or surnames of the trustees, and no action shall abate by reason of the death, or removal, or going out of office of any trustee.

Actions by trustees.

17. And be enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement, or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust or which shall arise or accrue to any person whatsoever against the said shareholders jointly shall be brought by such person against the said trustees in manner and in the name aforesaid, and not against any individual trustee or trustees, shareholder or shareholders.

Actions against trustees or shareholders.

18. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as, together

Power of the trustees to make calls upon shares.

with the donations and sums of money to be granted from the donation of the Society for Promoting Christian Knowledge as aforesaid, they may deem necessary for carrying on the building and completing the said church, fences, and other works as aforesaid: Provided, however, that no such call shall at any one time exceed one-third part of the amount of the said shares, and that the whole of such calls shall not exceed the amount of five pounds in respect of each share.

Advertisement  
of calls.

19. And be it enacted that the trustees shall cause all calls to be made by them to be advertised in one of the public newspapers of this colony, together with the time and place appointed by them for payment thereof, fourteen days at least before the said time.

Consequence  
of non-pay-  
ment of calls.

20. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees, if they shall think fit, to declare and pronounce the share or shares of such shareholder to be forfeited, and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided, however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do, instead of pronouncing and declaring his share or shares to be forfeited as aforesaid.

Accounts of  
trustees.

21. And be it enacted that the trustees shall keep an account wherein they shall enter all money received and paid by them under and by virtue of the provisions of this ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account together with any report of the auditors or either of them thereon shall be laid before the shareholders for their inspection at their general annual meetings.

Receipts by  
trustees ex-  
ceeding £10.

22. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding ten pounds open an account with the government discount bank or the savings' bank in this colony in the names of the trustees;

and such sum and every other sum exceeding ten pounds so received by them shall be forthwith paid into either of the said banks, to be placed to the credit of such account; and all cheques or orders for payment of any such money out of either of the said banks shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees, or by two of them for themselves and co-trustees.

23. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding ten pounds, part of the church fund, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid into one or other of the said banks, or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money, part of the church fund, shall and may be removable by the said shareholders from his said office, and shall, moreover, forfeit and pay for the benefit of the church fund double the amount of the sum so retained or employed, and which shall and may be recovered by the other trustees by action in any competent court.

Penalty for retaining or employing church funds.

24. And be it enacted that as soon as the said church shall be erected and the other works connected therewith completed as aforesaid, the accounts of the said trustees shall be finally wound up and audited and laid before the shareholders for their inspection; and no further call shall be afterwards made upon the shareholders in respect of their shares.

Final accounts of trustees.

25. And be it enacted that in case any trustees shall die or desire to resign his said office or shall be removed as aforesaid, the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one dying or desiring to resign or being removed as aforesaid; and the same notice shall be given of the time and place of the said meeting, and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any time received by him.

Death, resignation, or removal of trustees.

26. And be it enacted that as soon as the said church shall be erected and completed the trustees shall take over and enter upon the possession of the same, and the care and government of the said church shall thenceforward and

Temporary care and government of church.

until the said loan shall have been wholly paid off in manner hereinbefore provided, together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent, then one of the trustees elected by them; and all the members of the said vestry shall have an equal right of voting in matters belonging to it, except that in case of an equality of votes the president shall likewise have a casting vote.

Duty of the  
trustees' vestry.

27. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

Churchwardens' election  
and duties of.

28. And be it enacted that there shall be two churchwardens chosen yearly on the first Wednesday in October by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings.

Free pews.

29. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall set apart for the use of the minister a pew or pews sufficient to hold six persons, and shall also set apart another pew sufficient to hold four persons for the churchwardens; and thereafter shall call together the shareholders of each class according to their number of shares for the purpose of exercising their right in the choice of pews; and the rents of all such pews as shall be chosen by shareholders shall be fixed by the vestry according to the number of the sittings therein.

Choice of pews.

Notice of  
vacant pews.

30. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose the trustees shall give notice of all the pews and seats which are then vacant by affixing the same in writing upon the door of the said church, or otherwise as they shall see fit; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are then vacant or will become vacant at the commencement of the next year.

Renting of un-  
appropriated  
pews.

31. And be it enacted that all the pews and seats in the said church, except the pews set apart for the minister and



churchwardens and the said free seats and the pews chosen by shareholders, shall and may be let by the said trustees by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to the same respectively by the vestry, and payable at such times and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without any hinderance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

32. And be it enacted that it shall and may be lawful for the trustees, whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the purposes of this ordinance without any other form or proceeding whatever; and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew; provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent court.

Remedy for non-payment of pew rents.

33. And be it enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted for that purpose or in the inclosed ground surrounding the said church as hereinafter provided.

No burials within the church.

34. And be it enacted that it shall and may be lawful for the trustees during the subsistence of the said trust, and on the expiration thereof for the minister and churchwardens for the time being, to permit any monuments to be erected or placed in such convenient parts of the said church or of the inclosed ground around the same or in the burial-ground belonging thereto or vaults to be dug and made in the said burial-ground and inclosed ground, upon payment to the fund of the said church for such permission by the person or persons desiring to erect or place any such monument or

Erection of monuments and vaults.

to dig any such vault of such a reasonable fee as shall be affixed by the trustees during the subsistence of the said trust, and on the expiration thereof by the minister and churchwardens, and the spot for the said monument or vault being approved of by them.

Burial places.

35. And be it enacted that it shall and may be lawful for the trustees from and after the passing of this ordinance and during the subsistence of the said trust, and on the expiration thereof for the minister and churchwardens, to sell and dispose of lots or areas of ground for burial-places within the said burial-ground or the inclosed ground surrounding the church, upon payment to the fund of the said church by the person or persons desiring to purchase the said lots of ground of such a reasonable sum as shall be fixed by the said trustees or the minister and churchwardens as the price of the said lots of ground, and which lots of ground shall thereafter become the sole and separate property of the person or persons making such purchase as aforesaid and his or their heirs for ever for burial-places, and for no other purpose: Provided, however, that it shall not be lawful for the trustees during the subsistence of the said trust, or on the expiration thereof for the minister and churchwardens, to permit burials to take place in any part of the inclosed ground surrounding the said church except along the line of the external boundaries of the same, nor at a greater distance from the said line than the space of fifteen feet; nor to sell or dispose of any lots of ground for burial-places situated at a greater distance than fifteen feet from the said boundary line.

Rights in monuments or vaults.

36. And be it enacted that it shall and be lawful for any person or persons erecting or placing monuments in the said church or inclosed ground surrounding the same or digging and making any vault in the said burial-ground or inclosed ground by and with such permission or after the purchase of ground as aforesaid to have, maintain, and keep up such monument or vaults according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever.

Permanent care and government of church.

37. And be it enacted that on the first Wednesday in the month of October next after the whole of the said loan and interest shall have been paid off and discharged as aforesaid the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Wednesday in October, and

yearly afterwards on the same day, by and out of the inhabitant householders of Wynberg and of the vicinity thereof, being members of and holding communion with the United Church of England and Ireland as by law established, a like number of persons, who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and two other persons to be auditors of the accounts of the said vestry; and the trustees last in office as aforesaid shall upon the lastmentioned vestry entering upon their said office surrender and give up to the last mentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and to the administration of the funds thereof, and all sums of money in their custody, possession, or control arising from and belonging to the church fund.

38. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry, or either of them, constituted and elected by such shareholders as aforesaid under and by virtue of any of the provisions of this ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church.

Powers and duties of shareholders' vestry.

39. And be it enacted that this ordinance shall be deemed and taken to be a public ordinance, and shall be judicially taken notice of as such by all judges, magistrates, and others, without being specially pleaded.

Public ordinance.

GOD SAVE THE KING!

Given at the Cape of Good Hope, this 11th day of November, 1833.

By Command of His Excellency the Acting Governor,  
(Signed) J. G. BRINK,  
Acting Secretary to Government.

By Order of the Council,  
(Signed) K. B. HAMILTON,  
Clerk of the Council.

No. 7. (Local).—Sd. T. F. Wade.] [18th Dec., 1833.

For erecting a Toll on the New Road through Howison's Poort.

[Repealed by Ordinance No. 3, 1845.]

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No. 8. (Local).—Sd. T. F. Wade.] [7th Jan., 1834.

For regulating the Toll at Port Elizabeth.

[Repealed by Ordinance No. 3, 1845.]

**ORDINANCES**  
**OF THE**  
**CAPE OF GOOD HOPE.**

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**PART IV.**

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**ORDINANCES** passed by the **LEGISLATIVE COUNCIL**, from  
1834 to 1853.



# ORDINANCES OF THE CAPE OF GOOD HOPE.

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## PART IV.

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No. 1.—Sd. B. D'Urban.] [3rd June, 1834.

Ordinance for altering and amending an Ordinance entitled "Ordinance of His Honour the Lieutenant-Governor in Council, for making Regulations for the Conduct and Proceedings of the Masters and Crews of Merchant Vessels arriving in the Ports of this Colony," dated the 27th day of November, 1827.

[Repealed, in the repeal of Ordinance No. 29, which it amended, by Ordinance No. 4, 1844.]

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No. 2.—Sd. B. D'Urban.] [4th June, 1834.

Ordinance for altering and amending an Ordinance entitled "Ordinance of His Excellency the Governor in Council, for fixing the Quantities of Wines and other Liquors allowed to be sold under Licence, and the Stamp Duties to be paid for Licences; and for regulating certain matters in regard to the making and selling of such Liquors," dated the 27th day of June, 1832.

[Repealed by Ordinance No. 29, 1846. *Vide* Ordinance No. 9, 1851.]

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No. 3.—Sd. B. D'Urban.] [11th June, 1834.

Ordinance for altering and amending the Ordinances entitled respectively, "Ordinance of His Honour the Lieutenant-Governor in Council, for the better regulation of the Post Office in the Colony of the Cape of Good Hope," dated the 9th day of October, 1826, and "Ordinance of His Excellency the Governor in Council, for altering and amending the Ordinance No. 25, entitled, 'An Ordinance for the better regulation of the Post Office in the Colony of the Cape of Good Hope,'" dated the 9th day of February, 1829.

[Repealed by Ordinance No. 1, 1846.]

No. 4.—Sd. B. D'Urban.] [31st July, 1834.

Ordinance for erecting, constituting, and establishing Police Courts to be holden in Cape Town and Simon's Town respectively, and for defining the Duties and Jurisdiction of the Judge and Superintendent of Police of Cape Town, and of the Justice of the Peace of Simon's Town, respectively.

[As to Simon's Town repealed by Ordinance No. 14, 1847; wholly repealed by Act No. 11, 1860.]

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No. 5.—Sd. B. D'Urban.] [3rd December, 1834.

Ordinance for applying a Sum not exceeding £40,590 1s. 8½d. to the Contingent Services of the Year 1835.

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No. 6.—Sd. B. D'Urban.] [3rd December, 1834.

Ordinance for continuing the Provisions of an Ordinance, bearing date the 14th day of February 1833, entitled "An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Register."

[Lapsed. *Vide* Ordinance No. 9, 1853, and Act No. 4, 1860.]

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No. 7.—Sd. B. D'Urban.]

Ordinance for regulating the Trade in Gunpowder within this Colony.\*

**WHEREAS** it is expedient to remove the restrictions which now exist upon the purchase and sale of gunpowder within

\* By Ordinance No. 5, 1851, the dealing in gunpowder was regulated for one year, and all provisions of Ordinance No. 7, 1834, repugnant to or inconsistent with Ordinance No. 5, 1851, were repealed. Ordinance No. 5, 1851, with Ordinance No. 7, 1852, which amended it, was repealed, except in as far as it repealed former laws, by Ordinance No. 2, 1853, regulating the dealing in gunpowder, firearms, and lead, until the expiration of 1854. Act No. 5, 1854, continued Ordinance No. 2, 1853, in force to the end of 1855; Act No. 7, 1855, to the end of 1856; Act No. 19, 1856, to the end of 1857, with some amendments; Act No. 14, 1857, to the end of 1858, with further amendments; Act No. 8, 1858, to the end of 1859; Act No. 5, 1859, to the end of 1860; and Act No. 20, 1860, to the end of 1861.



this colony, and to render the dealing therein as free as a due regard to the public safety will admit; and also to make provision for the prevention of accidents in storing and transporting the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that, from and after the passing of this ordinance, the proclamation of the 27th June, 1797, and all other laws, ordinances, and proclamations relating to the trade in gunpowder in so far as they relate thereto and in so far as they have not been repealed by the Order of His Majesty in Council bearing date the 22nd day of February, 1832, shall be and the same are hereby repealed accordingly.

2. And be it further enacted that unless by the special permission of the Governor no gunpowder imported into this colony shall be landed at any place other than in Table Bay, Simon's Bay, or Algoa Bay, and only at such places in the said bays as the Governor shall from time to time appoint by any proclamation to be by him duly published in that behalf.

3. And be it enacted that every importer or consignee of gunpowder imported into this colony for colonial consumption shall, before applying for or obtaining from any officer of the customs any warrant or permit to land the same, apply for and obtain from the commissioner or distributor of stamps for the district or place within which such gunpowder is intended to be landed, who are hereby respectively authorized and required to grant the same, a permit to store such gunpowder signed by such collector or distributor of stamps respectively, on paper stamped of the value of three-pence for every pound of gunpowder so intended to be landed; and if any officer of customs shall grant any warrant or permit to land any such gunpowder at any place within this colony without such stamped permit so signed as aforesaid having been first produced to him he shall for every such offence incur and be liable to a fine of fifty pounds; and every person who shall land, cause to be landed, or attempt to land at any place within this colony any such gunpowder without having first obtained such stamped permit to store the same as aforesaid, shall for every such offence incur and be liable to a fine not exceeding one hundred pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding one year, and all such gunpowder landed or attempted to be landed

without such stamped permit for storing the same having first been obtained in manner aforesaid shall be forfeited to His Majesty.

Transit permit before removal of powder from store.

4. And be it further enacted that no officer of customs shall permit any gunpowder to be delivered from any bonding magazine for colonial consumption unless the proprietor of such gunpowder shall lodge with such officer of customs a warrant or permit from the commissioner or distributor of stamps for the district or place within which such bonding magazine is situate, who are hereby respectively authorized and required to grant the same on paper stamped of the value of three pence for every pound of gunpowder required to be delivered. And if any officer of customs shall permit any gunpowder to be delivered from any bonding magazine without such warrant having been lodged with him as aforesaid, he shall for every such offence incur and be liable to a fine of fifty pounds.

No powder to be landed before notice to the customs or without the presence of a customs officer.

5. And be it enacted that every importer or consignee of gunpowder imported into this colony shall give to the collector of customs for the place at which any such gunpowder is to be landed twenty-four hours' notice of the time when he intends to land the same, by delivering such notice in writing to such collector personally or by leaving the same at the custom-house; and the proper officer of customs shall thereupon attend at the time and place appointed for landing the same, and shall cause all the regulations for landing gunpowder hereinbefore or hereinafter mentioned to be attended to; and if any person shall land or cause to be landed any gunpowder unless such custom-house officer as aforesaid be present, or shall break any of the regulations hereinafter mentioned relative to the landing and removing of gunpowder, he shall for every such offence incur and be liable to a fine not exceeding ten pounds; and all gunpowder illegally landed or removed or attempted to be landed or removed in violation of any such regulations as aforesaid shall be forfeited to His Majesty.

Regulations for the landing and removal of powder.

6. And be it further enacted that all gunpowder shall be landed and removed to and from the powder magazines under the regulations hereinafter mentioned, that is to say:

1st. No gunpowder shall be landed before the hour of nine in the morning nor after three in the afternoon.

2d. Before the magazine of the vessel containing any gunpowder is opened all fire and light in the said vessel shall be extinguished.

3d. During the removal of the gunpowder from such vessel all other work therein shall be suspended.

4th. The bottom of the boat in which any gunpowder is landed shall be covered with hides, sails, cloth, or other proper substance by which the casks containing the gunpowder shall be prevented from coming in contact with the bottom of the boat.

5th. If the proper means of conveyance should not be in attendance so that the gunpowder when landed may be removed immediately, the gunpowder shall be carefully placed upon hides, sails, cloth, or other fit substance spread upon the beach, and shall be left in charge of some proper person until the means of conveyance shall arrive.

6th. If the gunpowder shall be removed from the place of debarkation in wagons or carts, there shall be spread on such wagons or carts hides, sails, or cloth, so that the casks containing the powder shall not come in contact with the wood or iron-work of the wagon or cart.

7th. Every such wagon or cart shall be driven at a walking pace to and from the powder magazine whilst proceeding through any town or village.

7. And be it further enacted that it shall be lawful for any person or persons, in any place which he or they shall deem expedient, to erect a private magazine or magazines for the storing of gunpowder for colonial consumption, and to store gunpowder within the same: Provided, always, that the site and plan of every such private magazine shall first have been approved of by the Governor on the report of some fit person by him appointed to report thereon.

Private  
magazines per-  
mitted.

8. And be it enacted that the proprietor or proprietors of every such private magazine shall appoint some proper person, to be remunerated by them, and who shall be approved by the Governor, to be the storekeeper thereof, and who before entering upon his said office shall be sworn duly and honestly to discharge the duties thereof, and whose name and appointment shall be thereupon published in the Government Gazette.

Magazine  
keeper to be  
appointed.

9. And be it further enacted that the storekeeper of every private magazine shall keep an exact and true account of all gunpowder received into and issued from his magazine, and which shall contain the quantities of gunpowder received and the time when and by whom the same was stored, as also the quantities issued and the time when and to whom the same were issued respectively. And whenever any gunpowder shall be so received into or issued from any such magazine, such storekeeper shall within fifteen days transmit to the

Account of  
receipts and  
issues of  
powder to be  
kept and  
transmitted to  
magistrate.

resident magistrate of the district within which such magazine is situate a true copy of such accounts as aforesaid of all such gunpowder so received or issued, as also all such certificates hereinafter mentioned as shall have been delivered to him under and by virtue of the provisions of the twenty-second section of this ordinance. And every person hereinbefore required to keep and transmit such accounts and certificates as aforesaid who shall fail so to do in manner hereinbefore provided shall incur and be liable to a fine not exceeding twenty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding four months; and every person who shall make any false entry in any such account or who shall transmit to the resident magistrate any paper purporting to be a true copy of any such account kept by him which shall not be a true copy thereof shall incur and be liable to a fine of fifty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for a period of six months.

Issue of powder  
may be  
prohibited.

10. And be it further enacted that it shall and may be lawful for the Governor at all times when he shall see fit, by any proclamation to be by him issued for that purpose, to prohibit the issue of gunpowder from all or any of the said magazines.

Licences for  
dealing in  
powder to be  
granted.

11. And be it enacted that it shall and may be lawful for the commissioner of stamps in Cape Town and the distributors of stamps in the several districts of the colony respectively, and they are hereby authorized and required, to grant to all persons residing within their respective districts who shall apply for the same licences in the form set forth in the schedule hereunto annexed, marked A, on paper stamped of the value of three pounds, to deal in gunpowder and to sell the same at such places as are mentioned in the said licence: Provided, always, that persons in partnership and carrying on business under one firm, and proving such partnership, shall not be required to take out more than one licence to deal in gunpowder at any one place; and provided, also, that if any person to whom any such licence as aforesaid shall have been granted, and which shall then be in force for any one place, shall desire to remove and to deal in gunpowder at any other place, it shall and may be lawful for such person to apply to the commissioner or distributor of stamps for the district in which such last-mentioned place shall be

situate, who are hereby respectively on such application authorized and required to make and sign an endorsement on such licences, setting forth that from the date of such endorsement such licence shall no longer be in force for the place or premises originally specified therein, but shall henceforth be in force for the place or premises specified in such endorsement.

12. And be it further enacted that if any person who shall have obtained any such licences to deal in gunpowder as aforesaid shall die or shall wish to assign the same before the expiration of the period of such licence, it shall and may be lawful for the person authorized to grant any such licence in manner aforesaid to transfer such licence by endorsement to the assignee of such person or to the heirs, executors, or administrators of such person in the case of his death.

Transference of licences.

13. And be it further enacted that every person who shall have obtained any such licence to deal in gunpowder as aforesaid shall cause to be painted on some conspicuous place on the wall or on a board affixed to some such conspicuous place on the wall, outside and over or near the door of the premises specified in his licence, in letters publicly visible and legible at least one inch long, his name at full length (or where there are partners the name or style of the firm or partnership), and after such name or style the words "licensed dealers in gunpowder;" and in default of having such name or style and such words as aforesaid so painted as to be publicly visible and legible in manner aforesaid at any time during the continuance of such licence such person shall incur and be liable to a fine not exceeding ten pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding two months.

Notice to public of the licence.

14. And be it further enacted that every person who shall not have obtained any such licence to deal in gunpowder as aforesaid, and who shall paint on his premises or give any other notice importing that he is a dealer or is licensed to deal in gunpowder, shall for every such offence incur and be liable to the pains and penalties imposed on persons convicted of dealing in gunpowder without a licence.

Penalty for fixing notice without having licence.

15. And be it further enacted that a list of the names of all persons who shall take out such licences to deal in gunpowder as are hereinbefore mentioned shall from time to time as occasion may require be published in the

List of holders of licences to be published.

Government Gazette, and the commissioner and distributors of stamps respectively shall upon the taking out of every such licence forthwith transmit the name of the person taking out the same to the colonial secretary, who shall make publication thereof in the said Gazette, and give due information thereof to the respective storekeepers of every powder magazine within the colony.

Powder to be  
issued only to  
holders of  
licences.

16. And be it further enacted that if any such storekeeper of any such private magazine as aforesaid shall deliver out of such magazine any gunpowder to any person not being at the time of such delivery duly licensed to deal in gunpowder in manner aforesaid, or not having from some person so licensed as aforesaid an order to receive such gunpowder, he shall incur and be liable to a fine not exceeding fifty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding six months.

Powder not to  
be sold without  
a licence  
having ten  
pounds weight.

17. And be it further enacted that if any person who shall not have taken out such licence as aforesaid shall sell pure ase, or barter gunpowder in any quantity exceeding ten pounds in any one day except in such cases as are hereinafter excepted, he shall incur and be liable to pay a fine not exceeding one hundred pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding one year; and all gunpowder so sold, purchased, or bartered shall be forfeited to His Majesty: Provided, always, and be it enacted that nothing herein contained shall extend or be construed to extend to prevent any person who is the importer or consignee of gunpowder imported into this colony from selling and transferring the same in bond to any person whatever, or from selling and transferring the same in any quantity whether in bond or not to any such licensed dealer as aforesaid, without taking out the licence hereinbefore mentioned.

Exemption as  
to importer.

Extent of  
sales for per-  
sons holding  
licences.

18. And be it further enacted that from and after the passing of this ordinance it shall and may be lawful for any person who shall have taken out such licence as aforesaid, to sell gunpowder in any quantity to any other person licensed to deal in gunpowder in manner aforesaid, and in any quantity not exceeding ten pounds in any one day to any person who is not such licensed dealer as aforesaid: Provided, always, that if any such licensed dealer shall sell any

gunpowder to any person who is not such licensed dealer as aforesaid excepting on the premises specified in his licence or at some such private magazine as aforesaid, or shall sell any gunpowder in any quantity exceeding ten pounds in any one day to any person who is not such licensed dealer as aforesaid, or who is not a field-cornet, to whom he is hereby authorized to sell any quantity not exceeding twenty-five pounds, or who is not, as being the agent of any other person or persons, authorized under and by virtue of the provisions of the twenty-second section of this ordinance to purchase and receive any such quantity of gunpowder, he shall incur and be liable to a fine not exceeding one hundred pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding one year, and shall forfeit his licence.

19. And be it further enacted that if any person shall make information on oath before any resident magistrate, and show probable cause for suspecting that any person has sold, purchased, or bartered any gunpowder in contravention of any of the provisions of this ordinance, it shall and may be lawful for such magistrate within his jurisdiction to summon such suspected person before him, and also to summon any other persons to be examined and give evidence upon the charge against such suspected person; and if such persons so summoned as witnesses shall fail to appear in obedience to such summons or shall refuse to be examined on oath and give evidence as aforesaid, it shall and may be lawful for the said magistrate to commit every such person so failing or refusing as aforesaid to prison for a period not exceeding one month, or until such person shall no longer refuse to be examined and give evidence as aforesaid.

Proceeding for  
discovery of  
illegal sales of  
powder.

20. And be it further enacted that if any field-cornet shall store or have any quantity of gunpowder exceeding twenty-five pounds, and if any other person except as is hereinafter excepted shall store or have any quantity of gunpowder exceeding ten pounds in any building of what kind or description soever not being a public magazine or a private magazine approved of by the Governor in manner aforesaid, unless by special permission to that effect given by the Governor, he shall incur and be liable to a fine not exceeding fifty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding six months:

Storing of  
powder by  
unlicensed  
persons.

Storing of powder by licensed dealers.

Provided, always, that it shall and may be lawful for any licensed dealer in gunpowder to store in the premises specified in his licence any quantity of gunpowder not exceeding fifty pounds where such premises are situated in any of the towns or villages of this colony, and not exceeding one hundred pounds where such premises are situated elsewhere than in any such town or village: Provided, also, that every such dealer so storing in any such premises as aforesaid any quantity of gunpowder exceeding fifty pounds shall keep an exact and true account of all gunpowder received into and issued from the said premises, and which shall contain the quantities in which and the time when the same was so received and the quantities in which and the time when and the person to whom the same was issued; and shall on the first day of each month transmit to the resident magistrate of the district in which such premises shall be situated a true copy of such account as aforesaid of all the gunpowder by him received into or issued from the said premises, as also all such certificates hereinafter mentioned as shall have been delivered to him under and by virtue of the provisions of the twenty-third section of this ordinance during the preceding month; and every person hereinbefore required to keep and transmit such account and certificates as aforesaid who shall fail so to do in manner hereinbefore provided shall incur and be liable to a fine of twenty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding four months; and every person who shall make any false entry in any such account or who shall transmit to the resident magistrate any paper purporting to be a true copy of any such account kept by him which shall not be a true copy thereof shall incur and be liable to a fine of fifty pounds, or in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding six months.

Account of receipts and deliveries of powder.

Conveyance of powder by unlicensed persons.

21. And be it further enacted that if any field-cornet shall convey or cause to be conveyed any quantity of gunpowder exceeding twenty-five pounds, and if any other person shall convey or cause to be conveyed any quantity of gunpowder exceeding ten pounds, at one time in any one wagon, cart, vehicle, or other conveyance from any place to any other place, except in removing gunpowder from the place of



landing to some public magazine or to any such private magazine as aforesaid, or from any such public or private magazine to the premises specified in the licence of any such licensed dealer in gunpowder as aforesaid, or from any such last-mentioned premises to any such public or private magazine as aforesaid, or to the premises of any other such licensed dealer, and except where any such person so conveying or causing to be conveyed any quantity of gunpowder exceeding ten pounds shall as being the agent of any other person or persons be authorized under and by virtue of the provisions of the twenty-second section of this ordinance to convey any such quantity exceeding ten pounds at one time in one conveyance, then and in every such case every such offender shall incur and be liable to a fine not exceeding twenty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding four months; and all such gunpowder so illegally conveyed or caused or attempted to be conveyed, and the wagon, cart, vehicle, or other conveyance used in conveying the same being the property of any person conveying or knowingly causing or suffering such gunpowder to be so conveyed therein, shall be forfeited to His Majesty.

22. Provided, always, and be it further enacted that if any person who shall reside at a greater distance than can be traveled in an ox wagon at the rate of traveling usual in this colony in forty-eight hours from the premises of the nearest licensed dealer in gunpowder shall desire to procure gunpowder through the agency of any other person, it shall and may be lawful for every such first-mentioned person to apply for and obtain from the field-cornet of the field-cornetcy in which he resides, who is hereby authorized and required on such application to grant the same, a certificate in the form set forth in the schedule hereunto annexed, marked B, signed by such field-cornet, certifying the name and residence of such person and the distance of his residence from the premises of the nearest licensed dealer in gunpowder and the quantity of gunpowder required by him, and that no similar certificate has been granted to him within the last six months previous to the date of the certificate; and every such certificate shall authorize any person to whom the same shall be delivered to act as the agent of the person therein named in procuring gunpowder

Transmission  
of powder to  
purchasers  
living at a distance  
from  
licensed  
dealer's premises.

for him for a period not exceeding two months from the date thereof; and it shall and may be lawful for every such agent so authorized on production of such certificate or certificates to any licensed dealer in gunpowder to procure and receive from such dealer, by purchase, barter, or otherwise, any such quantity of gunpowder, not exceeding ten pounds on each certificate, as in addition to any gunpowder which such agent shall procure and receive on his own account shall not exceed in the whole the quantity of twenty-five pounds, and it shall and may be lawful for any such agent as aforesaid to remove, transport, convey, and store any such quantity of gunpowder so procured by him as aforesaid in like manner as he might lawfully remove, transport, convey, and store any quantity of gunpowder not exceeding ten pounds, and every such certificate shall be delivered to the dealer from whom any gunpowder is so procured, or when the same is issued from any private magazine to the storekeeper thereof, and such dealer or storekeeper shall give to such agent a permit in the form set forth in the schedule hereunto annexed marked C, specifying the amount of gunpowder so procured, and shall note on the certificate the quantity of gunpowder delivered by him in respect of such certificate, and shall transmit the same to the resident magistrate together with the copy of the account of gunpowder received and issued by him, which he shall next transmit to such magistrate. And if any field-cornet shall grant any such certificate to the same person oftener than once within the same period of six months, or if any person shall knowingly use or attempt to use for the purpose of procuring gunpowder or shall knowingly deliver any gunpowder in respect of more than one such certificate for the same person within the same period of six months, every field-cornet or other person so offending shall incur and be liable to a fine not exceeding five pounds.

No licence  
required for  
judicial sales.

23. And be it further enacted that nothing contained in this ordinance shall extend or be construed to extend to require any sheriff or other officer to take out any licence for the sale of any gunpowder made by such sheriff or other officer while acting under the authority of any court, judge, or magistrate.

Ordinance not  
to apply to  
military or  
government  
officers acting  
in discharge of  
public duty.

24. And be it further enacted that nothing in this ordinance contained shall extend or be construed to extend to any case in which any gunpowder shall within this colony

be landed, bought, sold, bartered, stored, issued from store, removed, transported, or conveyed by the order of the Governor or any officer belonging to His Majesty's naval or military service or by any officer in the service of the government of this colony while acting in the discharge of his duty, nor to any such officer nor any other person in respect of any thing done by such officer or by such other person under and by virtue of and in obedience to any lawful orders given by any such officer while acting in the discharge of his duty.

25. And be it further enacted that all offences committed in contravention of this ordinance may lawfully be prosecuted in the court of the resident magistrate for the district within which the same shall have been committed; and that it shall and may be lawful for the Governor of this colony in each particular case to determine, award, and direct what share if any of the amount of any fine or forfeiture imposed in respect of any conviction for any such offence as aforesaid shall be paid to any person who may have given information concerning the same.

Prosecutions  
under the  
ordinance.

Disposal of  
fines.

#### SCHEDULE A.

##### *Form of licence to deal in gunpowder.*

I, \_\_\_\_\_, commissioner (or distributor) of stamps in \_\_\_\_\_, (or in the district of \_\_\_\_\_), on this \_\_\_\_\_ day of \_\_\_\_\_, 18—, do hereby authorize and empower \_\_\_\_\_, residing at \_\_\_\_\_, to deal in gunpowder, and to sell or barter the same at any private magazine duly approved of by the Governor of this colony, and on his premises situate at \_\_\_\_\_, and not elsewhere, for one whole year from the \_\_\_\_\_ day of \_\_\_\_\_, 18 —, and no longer.

(Signed)

\_\_\_\_\_

*Certificate for <sup>1</sup>  
Pounds of gunpowder.*

#### SCHEDULE B.

##### *Form of certificate of field-cornet.*

No. <sup>2</sup>—

I, <sup>3</sup> \_\_\_\_\_, field-cornet of <sup>4</sup> \_\_\_\_\_, in the district of <sup>5</sup> \_\_\_\_\_, hereby certify, that <sup>6</sup> \_\_\_\_\_ resides at <sup>7</sup> \_\_\_\_\_, situate within the said field-cornetcy, and that the said place <sup>7</sup> \_\_\_\_\_ is at the distance of \_\_\_\_\_ hours' travelling by ox-wagon, from the nearest

licensed dealer in gunpowder, and that I have granted him no certificate of this kind within the last six months previous to the date hereof.

(Signed)  
(Dated)

- (1) Here insert quantity of gunpowder.
- (2) Here insert number of certificate.
- (3) Here insert the name of the field-cornet.
- (4) The name of the field-cornetcy.
- (5) The name of the district.
- (6) The christian name or names at full length and surname of the applicant.
- (7) Name of applicant's residence.

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SCHEDULE C.

*Form of permit of dealer or storekeeper.*

I, <sup>1</sup> \_\_\_\_\_, licensed dealer (or storekeeper, as the case may be), hereby certify that <sup>2</sup> \_\_\_\_\_ has received from me, <sup>3</sup> \_\_\_\_\_ lbs. of gunpowder, on account of the certificate No. <sup>4</sup> —, for <sup>5</sup> \_\_\_\_\_, of <sup>6</sup> \_\_\_\_\_

- (1) Here insert name of dealer or storekeeper.
- (2) Name of agent.
- (3) Quantity.
- (4) Number of certificate.
- (5) Person named in the certificate.
- (6) Residence of ditto.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 3rd December, 1834.

By command of His Excellency the Governor,

(Signed)

JOHN BELL,  
Secretary to Government.

By order of the Council,

(Signed)

RICH. P. NICHOLS,  
Acting Clerk of the Legislative Council.

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No. 8.—Sd. B. D'Urban.]

[10th Dec., 1834.

Ordinance to abolish the present Rates of Dues payable at the Public Wharfs at Cape Town and Simon's Town, and to substitute others in lieu thereof.

[Repealed by Ordinance No. 34, 1846, but that Ordinance not having been confirmed by the Home Government, Ordinance No. 8, 1834, revived until it was finally repealed by Ordinance No. 6, 1851.]

No. 9.—Sd. B. D'Urban.]

[10th Dec., 1834.

Ordinance for discontinuing the Tithe Duty and altering the Market Duties on Ordinary Wines brought into Cape Town and Simon's Town.

[All produce not passing through Markets relieved from any dues by Ordinance No. 20, 1847. As to Markets, *vide* Ordinance No. 9, 1836, and Ordinance No. 6, 1837, and for Cape Town, Ordinance No. 1, 1840.]

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No. 1.—Sd. B. D'Urban.]

[5th Jan., 1835.

Ordinance for giving due effect to the Provisions of an Act of Parliament, passed in the third and fourth Years of the reign of His Majesty King William the Fourth, entitled "An Act for the abolition of Slavery throughout the British Colonies, for promoting the Industry of the manumitted Slaves, and for compensating the Persons hitherto entitled to the services of such Slaves," and dated the 28th day of August, 1833.

[This Ordinance, which referred wholly to the treatment of apprenticed labourers manumitted by the Act for the Abolition of Slavery, ceased to be in operation after the 1st December, 1838, the date of final emancipation.]

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No. 1.—Sd. B. D'Urban.]

[26th May, 1836.

Ordinance for continuing and extending the Provisions of an Ordinance bearing date 14th day of February, 1833, entitled "An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Register."

[Lapsed—*vide* Ordinance 9, 1853, and Act No. 4, 1860.]

No. 2.—Sd. B. D'Urban.]

[26th May, 1836.

Ordinance for rendering valid and effectual, all such Acts, Transfers, Mortgage, and other Deeds as have been made and passed in the Register Office, between the 16th day of October, 1835, and the 31st day of March, 1836, and which have been certified and enregistered before and subscribed by Jan Godlieb Brink, Esq., and William John Mackrill, Esq., and to authorize and empower the Governor to appoint an Acting Registrar of Deeds.

Preamble.

WHEREAS the Hon'ble Joseph Harvey, Esq., the treasurer and accountant-general and registrar of deeds of this colony, obtained leave to absent himself from the duties of his office, and did on the 16th day of October, 1835, retire from the performance of his said duties, and the duties required to be done and performed by the registrar of deeds have from the said 16th day of October, 1835, until the 31st day of March, 1836, been done and performed by Jan Godlieb Brink, Esq., and William John Mackrill, Esq.: And whereas doubts have arisen as to the validity of all such acts and deeds as were certified and enregistered before and subscribed by the said Jan Godlieb Brink, Esq., and William John Mackrill, Esq., between the said 16th day of October, 1835, and the 31st day of March, 1836; and it is expedient to declare and establish the legality and validity of all such acts and deeds:

Deeds certified during absence of registrar of deeds validated.

1. Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all acts, transfers, mortgages, and other deeds which were certified and enregistered before and subscribed by the said Jan Godlieb Brink, Esq., and William John Mackrill, Esq., respectively, as performing the duties which ought to have been done and performed by the registrar of deeds between the 16th day of October, 1835, and the 31st day of March, 1836, shall from the respective times of their having been so certified, enregistered, and subscribed, be and be deemed and taken to be as legal, valid and effectual, to all intents and purposes as if the same had been certified and enregistered before and subscribed by the registrar of deeds for this colony.

Acting registrar may be appointed.

2. And be it further enacted that it shall be lawful for the Governor, when and so often as occasion shall require, in case of the absence, sickness, or other disability of the

registrar of deeds for the time being to appoint some other fit and proper person to act as and in lieu of the said registrar, which appointment shall be duly notified in the Government Gazette ; and all acts, transfers, mortgages, and other deeds which shall be certified and enregistered before and subscribed by such person during the subsistence of such his appointment shall be and be deemed and taken to be as legal valid, and effectual to all intents and purposes as if the same had been certified and enregistered before and subscribed by the registrar of deeds for this colony.

GOD SAVE THE KING !

Given at the Cape of Good Hope, 26th May, 1836.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

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No. 3.—Sd. B. D'Urban.]

[26th May, 1836.]

Ordinance for appointing and authorizing certain Persons to be Commissioners and to act as Guardians to Emigrants, being minors, sent to this Colony from the United Kingdom by a Society known as the Children's Friends Society.

[Lapsed by dissolution of the Society.]

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No. 4.—Sd. B. D'Urban.]

[26th May, 1836.]

Ordinance to indemnify the Special Justices and other persons in respect of acts done under and by virtue of certain Rules bearing date the 15th January, 1835, and a certain Proclamation bearing date the 1st May, 1835, made and published by the Provisional Government, and to make those acts valid.

[This Indemnity Ordinance, having reference to proceedings under the Acts for the Abolition of Slavery, has no further applicability.]

## No. 5.—Sd. B. D'Urban.]

Ordinance for defining the Limits of and securing from injury the Cape Flats and Downs. \*

Preamble.

WHEREAS the provisions of a publication bearing date the 29th September, 1803, for the preservation of the tract of country commonly called "the Cape Flats and Downs," have been found to be insufficient: And whereas many parts of the said lands are unlawfully used and occupied by various persons who by rooting up the bushes growing thereon have caused great damage and injury to the said lands, inasmuch as the drifting sands have so greatly accumulated as to threaten to lay waste great part of that country and the farms contiguous thereto, thus increasing the difficulties of land carriage and endangering the maintenance of the baiting or out-span places and watering dams established on the lines of public roads through those flats and downs: And whereas it is expedient to fix and define the limits of the said tract of country and to provide for its security from further damage and injury: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the 1st of July next the publication of the Governor J. W. JANSSENS in Council bearing date the 29th September, 1803, shall be and the same is hereby repealed save in so far as the same repealed the several laws and ordinances therein set forth.

Repeal of previous proclamation.

Cape Flats and Downs defined.

2. And be it further enacted that from and after the date of this ordinance all the lands situate to the eastward of the Salt and Swart Rivers to the Sand Valley near Muizenburg; thence along the shore of False Bay to the mouth of the Eerste River; thence ascending the right bank of the Eerste River to the place of Mr. Faure, at the lower drift of that river; thence to the place of Mr. Neethling, at the Kuils River; thence to Stickland; thence to Tyger Valley and the place the Grendel, at the foot of Tygerberg; and thence to the Compagnies Dam, under the Blueberg, to the sea, shall for the purposes of this ordinance be deemed and taken to be included in the general terms of the Cape Flats and Downs.

3. And be it further enacted that it shall not be lawful for any person to cut, root up, burn, or otherwise destroy

[\* *Vide* Ordinance No. 28. 1846.]



or carry away any tree, shrub, or bush growing upon any part of the crown lands, situate within the said Cape flats and downs (save as hereafter provided for); — and any person who shall cut, root up, burn, or otherwise destroy any such tree, shrub, or bush, or who shall employ any other person so to do, shall be liable upon conviction to a fine not exceeding five pounds.

4. And be it further enacted that any person or persons (except travellers and persons who may be duly licensed in manner hereafter mentioned to cut thatching reeds or rushes) who shall cut or break off any tree, shrub, or bush, as aforesaid, or who shall employ any other person so to do, shall be liable upon conviction to a fine not exceeding five pounds.

Cutting trees, &c., prohibited.

5. And be it further enacted that any person who shall drive or send or cause to be driven or sent any sheep, goats, or swine, to graze on the aforesaid crown lands, save and except such sheep, goats, or swine as may be going to or from a market, shall be liable upon conviction to a fine not exceeding five pounds.

Grazing of sheep, &c., prohibited.

6. And be it further enacted that it shall and may be lawful for the civil commissioners of the Cape and Stellenbosch districts respectively to grant to any person applying for the same a licence to graze horned cattle, horses, or mules for one whole year upon the aforesaid crown lands not being outspan-places; which licence shall commence and take effect from the first day of July of each year, and shall set forth the greatest number of cattle, horses, or mules allowed to graze under and by virtue of the same; and which licence shall be paid for at and after the rate of six pence sterling for every horse, mule, or head of horned cattle.

Licences for grazing cattle, &c.

7. And be it further enacted that it shall be lawful for the said civil commissioners respectively to grant to any person applying for the same a licence to cut and carry away from such crown lands, thatching reeds or rushes; which said licence shall set forth the quantity of bundles of reeds or rushes intended to be cut, and which licence shall be paid for at and after the rate of nine pence sterling for every one thousand bundles; and which licence shall have effect for the term or space of three calendar months and no more from the date of the said licence.

Licences for cutting reeds, &c.

8. And be it further enacted that any person who shall graze horned cattle, horses, or mules, or cut thatching reeds

Penalty for being without or abusing licences.

or rushes upon any part of the said crown lands without having taken out a licence as hereinbefore mentioned, or who shall graze a greater number of horned cattle, horses, or mules upon the aforesaid lands, or who shall cut or carry away therefrom a larger quantity of thatching reeds or rushes than is set forth in his said licence, or who shall make use of the said licence after the expiration of the term for which it shall have been granted, shall be liable upon conviction to a fine not exceeding five pounds for each offence.

Publication of licences.

9. And be it further enacted that the civil commissioners aforesaid shall as soon as may be after granting the said licences transmit to the secretary to government for publication in the Government Gazette a list of all persons having taken out licences for grazing and cutting thatching reeds; and the said civil commissioners shall transmit a like notice to the several field-cornets whose wards or any part thereof are situated within the Cape flats and downs; and the said field-cornets are hereby expressly enjoined and required to enforce to the utmost of their power the provisions of this ordinance, and to report to the respective clerks of the peace for immediate prosecution all persons who shall be found contravening or who shall have contravened the same.

Enforcement of licences.

Outspan-places to be defined.

10. And be it further enacted that the civil commissioners aforesaid shall fix the boundaries of the several outspan-places now existing in the said crown lands and situate within their respective districts, and shall cause the extent thereof to be marked and defined in such manner as to afford to all persons having lawful occasion to use the same the full benefit of such outspan-places.

Illegal use of outspan-places.

11. And be it further enacted that any person (*bona fide* travellers excepted) who shall graze any animals whatsoever upon those parts of the said crown lands which now are or may hereafter be appropriated as outspan-places, or who shall water such animals at any of the public watering dams attached or hereafter to be attached to such outspan-places, shall be liable upon conviction to a fine not exceeding five pounds; and it shall be lawful for any person whomsoever who shall find any such animals trespassing on the said outspan-places or watering dams to seize and drive them or cause them to be seized and driven to the nearest pound.

Enforcement of ordinance.

12. And be it further enacted that all offences under this ordinance shall be tried before the resident magistrate of the district within which the offence shall have been committed;

and in default of payment of any fine imposed it shall be lawful for the said magistrate to sentence the person adjudged and making default to pay such fine to imprisonment with or without hard labour as such magistrate shall direct for any period not exceeding three calendar months.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 1st June, 1836.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

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No. 6.—Sd. B. D'Urban.]

[27th June, 1836.

Ordinance for incorporating and establishing the South African Association for the Administration and Settlement of Estates.

[Repealed by Act No. 9, 1855.]

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No. 7.—Sd. B. D'Urban.]

Ordinance for explaining and extending the Powers of the Trustees appointed for the Management of a Mercantile Establishment at Port Beaufort.

WHEREAS several persons, being desirous of forming a mer- Preamble.  
cantile establishment at Port Beaufort situate at the mouth of the Breede River, have built by subscription at that place a store or warehouse: And whereas upon the thirty-first day of January, one thousand eight hundred and thirty-one, His Excellency General the Honourable Sir Galbraith Lowry Cole, then Governor of this colony, was pleased to grant in freehold unto Messrs. Ewan Christian, Joseph Barry, and Francis Collison, as trustees for the management of a mercantile warehouse for themselves and the subscribers thereto, a piece

of land situate at the mouth of the Breede River, for the purpose of maintaining thereupon a warehouse on the following conditions, to wit: That the right of access over this ground to Port Beaufort and to the subscription store, and to any public passage which is or may hereafter be established over the Breede River, as well as of unyoking cattle on such unoccupied land as shall be fixed upon for that purpose, shall be secured to the public; that the part adjoining the river in front of the said store shall neither be cultivated nor built upon; and with full powers and authority to them or to the trustees to be from time to time chosen by the subscribers to the said grant to possess said piece of land for the above purpose, and such further purposes as to a majority of a meeting of subscribers to be called for the purpose by public advertisement may appear to them most for the general interest; and for the greater security and convenience of the several shareholders, to authorize and direct the trustees to grant a certificate to each holder of a share, which certificate will be transferable by endorsement, and the property in the said land as also a share of the said buildings and the remaining unappropriated land thereby vested in the said endorsee, provided such endorsement be first registered in the office of the registrar of deeds, and that the usual duties of transfer be previously paid thereon, the land granted being further subject to such duties and regulations as are either already or may in future be established with regard to such land: And whereas doubts have arisen as to the nature and extent of the powers to be exercised by the said trustees under and by virtue of the said grant: And whereas the said trustees have made application that an ordinance be passed to explain more fully the objects of the said grant and to give further and more ample powers to the said trustees, and to provide for carrying the same into effect: Be it therefore enacted by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing of this ordinance it shall and may be lawful for the said subscribers, their heirs and assigns to become shareholders of the said mercantile establishment and land in the said grant contained, according to the number of shares for which such persons respectively shall have subscribed, and to make application to the trustees for that purpose: Provided, however, that if any such subscriber shall have failed to signify his desire to become such

Shares in ware-  
houses, &c.,  
legalized.

shareholder and shall have failed to pay his proportion, according to his number of shares, of the expenses which have been already incurred or which shall be incurred in obtaining the said grant, and in securing to such subscriber his share or shares therein at the expiration of one year after the passing of this ordinance, such subscriber shall forfeit all claim to become such shareholder.

2. And be it further enacted that it shall and may be lawful for the said trustees to dispose of such shares as shall after the expiration of one year after the passing of this ordinance not have been paid for by any subscriber to such persons as shall apply for the same, and on such terms as to the said trustees shall appear expedient; and the person so purchasing any shares shall in such case enjoy the same privileges under the said grant as the original subscribers.

Unpaid shares  
to be sold.

3. And be it further enacted that it shall and may be lawful for the trustees to mark off so much of the land in the said grant contained and in such direction as they shall deem fit and expedient for a road or roads from any part of the said land to any other part thereof; Provided that if such land so marked off shall form part of the erf of any shareholder in manner hereinafter provided to be allotted, such reasonable satisfaction shall be given for the damage which such shareholder shall thereby sustain as shall be agreed upon between the trustees and such shareholder; and if the said trustees and such shareholder cannot agree concerning the amount of such damages, then the same shall be finally assessed, determined, settled, and adjusted by arbitration in manner provided by the twentieth section of this ordinance.

Roads may be  
marked off.

4. And be it further enacted that as soon as conveniently may be after the passing of this ordinance a general meeting of the subscribers shall be holden at Cape Town, notice whereof shall be given by advertisement in one of the public newspapers of this colony twenty-one days at least before the said meeting is appointed to be holden, for the purpose of submitting to the subscribers for their ratification a plan for dividing so much of the said land as to the said trustees shall appear expedient into eighty-five erven to be allotted among the said subscribers according to the number of shares which each subscriber respectively shall have agreed to take, the same to be held by them in freehold; and in

Division of  
erven.

case the subscribers at such meeting by a majority of votes shall not ratify the said plan, it shall and may be lawful for the trustees to adjourn the said meeting to a future time, and from time to time and as often as shall be necessary to submit an amended plan and to obtain a vote of the majority of the subscribers present at such adjourned meeting ratifying such amended plan.

Allocation of  
erven.

5. And be it further enacted that at such meeting or adjourned meeting after such plan shall have been ratified, so many erven as there shall be subscribers who shall have signified their desire to become shareholders and who shall have paid each his proportion of the expenses then incurred shall be allotted among such subscribers, of each of which erven the choice shall be determined by ballot: Provided that the partners belonging to the firm of Robertson, Venning, and Moodie, and Joseph Barry shall respectively be entitled to select for their erven the land upon which they have respectively built stores; upon condition, however, that the said firm of Robertson, Venning, and Moodie, and Joseph Barry, in consideration of such preference, shall pay a fine the amount of which shall be fixed by the decision of two indifferent persons, one to be chosen by the said trustees and the other by the said Robertson, Venning, and Moodie, and the said Joseph Barry respectively.

Future share-  
holders.

6. And be it further enacted that it shall and may be lawful for any subscriber who shall after the said meeting or adjourned meeting and before the expiration of one year after the passing of this ordinance express his desire to the trustees to become a shareholder and pay his proportion of the expenses at such time incurred according to the priority of his application, to select such erf or erven as shall then have been unallotted.

Registry of erf  
and shareholders.

7. And be it further enacted that the said trustees shall keep a book wherein shall be entered the names of all the shareholders and the description of each erf, and every shareholder respectively shall sign his name in a column opposite to the said erf in acknowledgment of the truth thereof; and the said trustees shall deliver to every shareholder of every such erf a certificate thereof signed by the said trustees; which certificate the shareholder, his heirs, executors, administrators, or the holder, may transfer by endorsement, and the property in the said erf and his interest as a shareholder under the said grant shall be thereby vested in the said

Transfer of  
erven.

endorsee, provided such endorsement be registered in the book so kept by the trustees and in the office of the registrar of deeds, and provided the duties of transfer be paid thereon.

8. And be it further enacted that a general meeting of the shareholders shall be holden on the first Wednesday of August in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this colony twenty-one days at least before the same is to be holden ; and it shall and may be lawful for the trustees at any time to call a general meeting of the shareholders upon giving the like notice thereof ; and it shall and may be lawful for the said trustees and they are hereby required to call a general meeting, being thereunto required by any writing signed by ten of the shareholders and delivered to the said trustees, upon the like notice thereof being given by the said trustees.

Annual and other general meetings of shareholders.

9. And be it further enacted that the resolutions of the shareholders at any public meeting duly called carried by a majority of votes shall be binding upon the whole of the shareholders, in like manner as if each had been present and had consented to such resolution, and in every case in which the votes of any such meeting shall be equally divided the person who shall preside at such meeting shall have a casting vote.

Resolution of meetings, effect of.

10. And be it further enacted that the subscribers at the first general meeting and the shareholders at all subsequent public meetings of the shareholders shall have the right of voting in all matters relating to the objects of this ordinance according to the number of their respective shares, that is to say,—the holder of one share shall be entitled to one vote, the holder of three shares to two votes, the holder of ten shares to three votes, and the holder of eleven or more shares to five votes ; and it shall and may be lawful for any shareholder to empower any other shareholder by authority in writing to that effect given to vote in his absence ; but such shareholder so empowered shall be entitled to one vote and no more for every such shareholder being absent ; provided that no shareholder shall be entitled to vote for a greater number than ten such shareholders being absent.

Votes of shareholders.

Votes by proxy.

11. And be it further enacted that the trustees shall keep a book wherein they shall enter all money received and paid

Accounts of trustees.

by them under and by virtue of the provisions of this ordinance, which account shall be laid before the shareholders for their inspection at the general annual meetings.

Quorum of trustees.

12. And be it further enacted that two trustees shall be a quorum and shall be competent to do and perform all matters and things which may be done under and by virtue of this ordinance by the trustees, and that the vote of two trustees shall in all cases be deemed to be and shall have effect as the vote or resolution of the trustees: Provided, however, that in the event of the death, resignation, or removal from office of two of the said trustees it shall and may be lawful for the remaining trustee to call a public meeting of the shareholders upon giving the like notice thereof; and it shall and may be lawful for any ten of the shareholders to call a public meeting in the event of the death, resignation, or removal from office of all the trustees upon giving the like notice thereof as the trustees would have been required to give.

Calling of meetings.

Tenure of office by trustees.

13. And be it further enacted that the said trustees shall continue in office until the first Wednesday of August, one thousand eight hundred and thirty-seven, and that at the annual public meeting then to be holden three trustees shall be elected in their place and stead from the whole number of shareholders, and the trustees then to be elected and all others who shall afterwards be elected shall continue in office for the period of three years, and shall be succeeded by three trustees to be elected at the annual public meeting to be holden upon the first Wednesday of August in the year when such period expires: Provided, however, that nothing herein contained shall prevent the said trustees or any shareholder afterwards to be elected to such office from being elected or re-elected to the said office; and provided that in the event of the death, resignation, or removal from office of any trustee or trustees before the expiration of such period, it shall and may be lawful for the shareholders at a public meeting for that purpose called to elect a trustee or trustees in his or their place and stead, such trustee or trustees to continue in office until the expiration of the period for which such trustee or trustees so dying, resigning, or being removed had been elected, and no longer.

Vacancies in office of trustee.

Leases of unappropriated land

14. And be it further enacted that it shall and may be lawful for the trustees for the time being to let on lease for a period not exceeding nineteen years the whole or any part of the land in the said grant contained and not



appropriated for the purposes hereinbefore mentioned, and to authorize any person or persons to graze their cattle upon the said land, and also to dig for, work, and carry away any limestone or other stone for the purpose of building that may be found upon the said land ; and it shall and may be lawful for the said trustees, upon being duly authorized by the shareholders at a public meeting to be held for that purpose, to sell to any person or persons the whole or any part thereof and to deliver to such persons a certificate of such purchase, which certificate the purchaser, his heirs, executors, administrators, or the holder may transfer by endorsement, and the property therein shall be vested in the said endorsee, provided such endorsement be registered in a book to be kept by the trustees for that purpose and in the office of the registrar of deeds, and provided the duties of transfer be paid thereon.

Sales of unap-  
propriated land

15. And be it further enacted that it shall and may be lawful for the said trustees to repair, alter, or enlarge the said store or warehouse, and to let the same or any part thereof to any person for the purpose of receiving any goods or merchandize, and also to receive into the said store or warehouse the goods and merchandize of any person or persons, and to receive a reasonable sum for warehouse-room for the same.

Repairing and  
leasing of ware-  
house.

16. And be it further enacted that the trustees for the time being shall stand and be possessed of all sums of money received for any of the purposes aforesaid, upon trust, to pay and apply the same, in the first place, to pay thereout all expenses incurred or which shall be incurred in obtaining the said grant and in securing to each shareholder his respective share ; secondly, to keep in proper repair the said subscription store or warehouse ; thirdly, to pay such sums as they shall be authorized by the shareholders at any public meeting ; fourthly, to pay to each shareholder in an equal rate according to each share such dividends of profits or gains as may hereafter arise, after payment of all expenses incurred on account of and in discharge of their trust.

Trusts of mon-  
eys received.

17. And be it further enacted that it shall and may be lawful for the trustees as such, at all times when they shall see fit, to commence and maintain all such suits and actions in any competent court in this colony as they shall deem necessary in performance of their trust against any person whatsoever, and such suits and actions shall and may be

Actions by  
trustees.

brought by them in the name of the trustees without specifying the names of the said trustees, and no action shall abate by reason of the death or removal or going out of office of any trustee.

Actions against  
trustees or  
shareholders

18. And be it further enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement, or any other matter or thing made or entered into, done, or performed by the said trustees in the execution of the said trust, or shall arise or accrue to any person whatsoever against the said shareholders or purchasers or other persons claiming under the said grant or under any of the provisions of this ordinance jointly with the said shareholders, shall be brought by such person against the said trustees in manner and in the name aforesaid, and not against any individual trustee or trustees, shareholder or shareholders, or other persons as aforesaid; and in the event of such trustees having no funds to enable them to defray the expenses of such suits or actions they shall be authorized and empowered to call upon each shareholder to pay the same according to his respective number of shares, and to call upon each purchaser as aforesaid for a just proportion thereof.

Removal of  
trustees.

19. And be it further enacted that it shall and may be lawful for the shareholders at any public meeting duly called for that purpose to remove any trustee or trustees for insolvency or any misconduct in the discharge of his or their trust, or on account of absence from the colony for a period not less than three months.

Differences be-  
tween trustees  
and sharehold-  
ers.

20. And be it further enacted that in case any difference shall arise between and amongst the trustees or between the trustees and any of the shareholders or any other person claiming under any of the provisions of this ordinance, touching or concerning any matter or thing under and by virtue of any of the provisions thereof, the same shall be finally determined, settled, and adjusted by the award, determination, or arbitrament in writing of two indifferent persons, one to be chosen by each party in dispute; and in case the said arbitrators shall not make or deliver their award, determination, or arbitrament within such time as they shall be limited for doing thereof then the said parties shall abide by and perform such award, umpirage, and final determination in writing of such umpire as shall be chosen by the said arbitrators, made and delivered within such time as shall be

limited by the said arbitrators touching all such matters in difference between the said parties.

21. And be it further enacted that such provisions of the said grant as are at variance with or repugnant to the enactments of this ordinance shall be null and void, and the remainder of the said grant shall continue in full force and effect.

Repugnant provisions of grant to be void.

22. And be it further enacted that nothing herein contained shall extend or be construed to extend to interfere with or in any way affect the rights of our Sovereign Lord the King, his heirs and successors, or of any body politic or corporate, or of any other person or persons excepting those for whose especial benefit this ordinance is made, and all persons claiming by, from, through, and under them.

Saving rights of others.

GOD SAVE THE KING !

Given at the Cape of Good Hope, 27th June, 1836,

By Command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By Order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 8.—Sd. B. D'Urban.]

Ordinance for providing for the better and more effectual Management of the Public Library in Cape Town.

WHEREAS it is expedient to repeal the Ordinance No. 71, Preamble. dated 3d February, 1830, and entitled, "Ordinance of His Excellency the Governor in Council for abolishing the office of trustees of the Public Library in Cape Town and for vesting the management thereof in a committee of the subscribers to that institution," and to make better and more effectual provision for the management of the said library: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative

Ordinance 71,  
repealed.

Council thereof, that from and after the passing of this ordinance, the said ordinance, No. 71, shall be and the same is hereby repealed, except in so far as the said ordinance repealed the whole or any part of any former law or ordinance.

Management  
of library.

2. And whereas the said library has been formed, augmented, and supported partly by means of a tax formerly by law imposed on and paid by the community of this colony, but now abolished, and partly by voluntary periodical subscriptions of certain persons; and it is therefore fitting and expedient that the management of the said library, and the books, manuscripts, funds, and all other things now belonging and which may hereafter accrue to and belong to the said library should be vested, held, possessed, and administered in trust for and on behalf of the community of this colony and for and on behalf and subject to the control of such persons during the currency of the period of their subscriptions as shall by periodical subscription have contributed to the support of the library in and by a committee to be elected by and out of the said subscribers: Be it therefore enacted that the management of the said library and the books, manuscripts, funds, and all other things now belonging and which may hereafter accrue to and belong to the said library shall until a committee be elected under and by virtue of the provisions of this ordinance be vested, held, possessed, and administered in trust for the community of this colony, and for and on behalf and subject to the control of such subscribers as aforesaid during the currency of the period of their respective subscriptions in and by the committee of management for the public library of the colony of the Cape of Good Hope, elected under and by virtue of the provisions of the said ordinance No. 71, which shall be in office at the passing of this ordinance, and thereafter in and by such other committees as shall from time to time be elected under and by virtue of the provisions of this ordinance, and that the persons elected under and by virtue of the provisions of the ordinance 71 to be and who shall at the passing of this ordinance be in office as treasurer or auditors of the public library shall during the same period as aforesaid hold and perform the duties of such their offices under and by virtue of and subject to the provisions of this ordinance.

Election of  
office-bearers.

3. And be it further enacted that the election of persons to serve as members of the committee of the public library

shall take place at an annual general meeting of the subscribers to be holden in the month of April, 1837, and in the same month of each succeeding year, on public notice being given to that effect by the committee then in office at least ten days previous to the day appointed for the meeting; and the subscribers then present shall, except in the cases hereinafter mentioned, proceed to elect from amongst the whole number of subscribers nine persons to serve as members of the committee until the next ensuing annual meeting, and to elect one person from amongst the committee then chosen to serve the office of treasurer for the same period; and to elect one or more persons from amongst the subscribers, not being members of the committee, to serve the office of auditor for the same period: Provided, always, that no subscriber whose permanent residence is more than ten miles from Cape Town shall be eligible to serve as member of the committee, treasurer, or auditor. And in the event of the death, departure from the colony, or resignation of any member of the committee, or of his removing his permanent residence beyond the distance of ten miles from Cape Town, or of his ceasing to be a subscriber to the library, or of the election of any committee becoming null and void, or of any committee forfeiting their office under and by virtue of the fourth and eleventh sections of this ordinance, the committee, or in the event of the number of members of the committee having been reduced to less than a quorum or of the election of the committee having become null and void or of the committee having forfeited their office as aforesaid, then the librarian shall and the committee and librarian are hereby respectively directed and required to call forthwith a general meeting of the subscribers on seven days' notice, for the purpose of electing the necessary number of qualified persons to fill the vacant offices; and if any of the persons so elected being present at the meeting at which he shall be elected shall decline to serve any of the offices for which he shall have been chosen, then the meeting shall forthwith proceed to elect some qualified person to fill up the vacancy; but in case any person so elected not being present at the meeting at which he shall be elected shall not within one week after his election has been intimated to him by the librarian, who is hereby directed and required forthwith to make such intimation by letter, notify to the librarian his acceptance of office, then the librarian shall and he is hereby directed and

Vacancies in  
offices.

required to call a general meeting on seven days' public notice, for the purpose of electing the necessary number of qualified persons to fill up the vacant offices until the whole of such vacancies shall have been filled up; and that when any person elected to serve the office of treasurer or auditor shall decline to serve, or shall not notify his acceptance of any such office in manner hereinbefore provided, or shall vacate such office by ceasing or becoming disqualified to hold the same, then and in every such case proceedings shall be had for the election of some qualified person to fill up such vacant office in like manner as is hereinbefore provided for the election of qualified persons to fill the vacant offices of members of the committee: Provided, always, that it shall be competent to the subscribers at such general meeting to re-elect the whole or any of the members of the existing committee, the treasurer, or the auditor or auditors, to serve for the ensuing year or until the next ensuing annual election.

Annual  
accounts, pro-  
duction of.

4. And be it further enacted that in order to secure as far as may be the due and regular administration of the affairs of the library it shall not be lawful for the subscribers at any annual meeting to proceed to the election or re-election of office-bearers for the ensuing year until the committee in office shall have laid, as they are hereby directed and required to lay, before the meeting a statement of the receipts and expenditure of the library during the period which shall have intervened between the last previous audit and allowance of accounts and the day fixed for the said meeting, which statement and accounts must have undergone the previous examination and if necessary the correction of the auditor or auditors, and in case such annual meeting shall see fit to allow the said accounts then and in that case only shall the committee and auditor or auditors be relieved from their responsibility and the election shall proceed: Provided, always, that the committee then to be elected shall publish the said statement and accounts in the Government Gazette for general information within fourteen days after allowance of the same, otherwise their election is hereby declared to be null and void.

Inspectors of  
accounts.

5. And be it further enacted that in case any committee shall neglect or refuse to render an account of their administration in manner aforesaid, or shall render accounts which shall not have been certified by the auditor or auditors, or

which being so certified shall not be allowed by a majority of votes at the annual meeting, or in case the auditor or auditors shall neglect or refuse to examine such accounts it shall and may be lawful for the subscribers present at such annual meeting to elect, or when the committee shall not have appointed some day in the month of April for holding or shall not have called the annual general meeting of the subscribers in manner hereinbefore provided, then and in such case a general meeting of the subscribers shall be held on the seventh day of the succeeding month of May, or if the same be on Sunday or holiday on the next lawful day (of the holding of which meeting the librarian is hereby directed and required to give public notice), and the subscribers present at such general meeting shall then elect by ballot three subscribers to act as inspectors, whose duty it shall be to examine into the cause of such neglect or refusal, to call on the committee or auditors for all necessary information on the subject of their inquiry, and to make report thereon at a general meeting of the subscribers to be assembled on their requisition within seven days after their appointment as inspectors, which meeting shall thereupon take such steps as circumstances may require and may allow the accounts and proceed to the election, or direct proceedings against the committee, as they shall see fit: Provided, always, that in case of the non-allowance of the accounts at any general meeting the treasurer for the time being shall make no further disbursements until a new committee shall have been duly elected.

6. And be it further enacted that it shall and may be lawful for the committee for the time being to appoint a librarian and other officers at such rates of salary and under such orders as they shall see fit, and to suspend such librarian and to dismiss or suspend such other officers and to make and promulgate all necessary regulations for the management of the library and of its officers provided the same be not inconsistent with or contrary to the true intent and meaning of any of the enactments of this ordinance, and that all such proceedings and regulations shall be laid before the next general meeting of the subscribers, and shall be subject to their decision; and that no such regulation whereby any existing regulation which shall have been passed or approved of by any general meeting shall be repealed or altered shall take or be carried into effect; and that it shall not be lawful for

Librarian and other officers, appointment of.

Rules for library.

Obligations by committee.

Suspension of  
librarian.

Quorum of  
committee.

General meet-  
ing.

Subscribers  
may approve  
or alter pro-  
ceedings of

the committee to incur any obligations or engagements or do any act by which the capital belonging to the library may be encroached on unless a resolution to that effect shall have been entered on the minute-book of the committee, and until one month after a copy of any such regulation or resolution shall have been affixed in some conspicuous place within the hall of the library. And provided, further, that whenever the committee shall suspend the librarian or any other officer as aforesaid the committee shall forthwith call a general meeting of the subscribers, on ten days' previous public notice, for the purpose of confirming such suspension and dismissing such librarian or other officer or of rescinding such suspension. And provided, further, that for the dispatch of the ordinary business of the committee three shall be a quorum, but that no new regulations shall be made, nor any existing regulation be repealed or altered, nor any resolution passed for vesting the funds on mortgage or encroaching on the capital of the library at any meeting of the committee at which fewer than five members shall be present.

7. And be it further enacted that the committee for the time being shall and they are hereby directed and required to call, by public notice given for that purpose, a general meeting of the subscribers whenever they shall be required so to do by any requisition to that effect specifying the object and purpose of the meeting, and signed by not fewer than thirty subscribers on any lawful day specified in such requisition, not being less than four days subsequent to the date of the transmission of such requisition to the committee; and if no day shall be so specified then on any day not more than three weeks subsequent to the date of such transmission as to the committee shall seem fit. And when the committee or the librarian shall neglect or refuse to give any public notice or to call any meeting of the subscribers which such committee and librarian are by the provisions of this ordinance respectively directed and required to give or to call, then and in such case it shall and may be lawful for any five of the subscribers to give any such public notice and to call such meeting, to be holden on any lawful day not less than four days subsequent to the publication of the notice calling the same.

8. And be it further enacted that it shall and may be lawful for the subscribers present at the annual or any other general meeting of the subscribers to consider all proceedings



which may have been taken and all regulations which may have been made and promulgated by the committee during the period which shall have intervened since the last general meeting was holden, and by the votes of the majority of subscribers then present to approve, alter, and to annul the same as they shall see fit, as also to repeal or alter or amend any regulations which shall have been passed or approved by any former general meeting, and to make any new regulation for the management of the library or the administration of the property and affairs thereof as they shall see fit: Provided, always, that a notice that any such repeal, alteration or amendment of any such existing regulation as last mentioned or that any such new regulation as aforesaid is to be proposed at such meeting shall have been affixed to some conspicuous place within the hall of the library for at least seven days previous to such meeting.

Committee at  
general meet-  
ings.

9. And be it further enacted that the treasurer of the library for the time being shall immediately on entering upon the duties of his office and of receiving the balance of the library funds open an account with the discount bank, and pay over to the cashier thereof the said balance as well as all sums which he may hereafter receive on the library account as soon as possible after receipt thereof, and it shall not be lawful for the said treasurer to retain in his private possession any moneys the property of the library, under the penalty of thereby forfeiting his office and becoming liable to pay to the committee for the benefit of the funds of the library interest at the rate of ten per cent. for and during the period such money shall be illegally retained by him, or to draw any part of the funds thereof from the bank except in making disbursements which shall have been previously sanctioned by written resolution of the committee, of which it shall be the duty of the auditor to take due notice, and which disbursements shall be made by drawing cheques on the said bank, signed by the treasurer and countersigned by the chairman of the committee for the time being: Provided, always, that nothing herein contained shall be construed to prevent the committee from vesting such parts of the funds as may not be required for the immediate use of the library in mortgages on houses or landed property and at the legal rate of interest, a necessary condition of the mortgage bonds being when houses are so mortgaged that the said houses shall be duly insured against

Deposit of  
moneys in a  
bank.

Investment of  
moneys on  
mortgage.

accidents by fire; and provided, further, that no part of the funds of the library shall be applicable or be applied to defray the expenses of any litigation whatever, save and except in cases in which it may have been necessary or proper to have recourse to legal proceedings for the recovery of debts due to the library or in defence of its just rights, and in which the court before which such proceedings shall have been taken shall expressly adjudge that such expenses shall be defrayed out of the funds of the library.

Rights of  
access to and  
use of library.

10. And be it further enacted that the said library shall remain open to the public at least seven hours during each day in the summer months and six hours in the winter months, except on Sundays and holidays or at other times when it may be necessary to close the same for the purpose of alteration, repair, or other reasonable cause, and all respectable persons even although they be not subscribers shall have free access thereto at such hours, together with the use of the books, charts, or other publications of the library of reference, together with all other publications not required for immediate circulation: Provided, always, that no person who is not a subscriber shall have the right of demanding books or other works to be taken out of the library or of attending at the meetings of the subscribers, or of being a member or of interfering with the committee in their administration of the affairs of the library in any way whatever.

Books for  
reference only.

11. And whereas the public library already contains many valuable books and other works which it has been deemed expedient to preserve as a library of reference, and which have already been classed and distinguished from those which when required shall be circulated amongst the subscribers: Be it therefore enacted that the several books, maps, and other works which previously to the passing of this ordinance shall have been classed as belonging to and placed in such library of reference, together with such other books, maps, and works as may hereafter from time to time be added thereto in manner hereinafter mentioned, shall remain and be kept within the library in all time to come for the purpose aforesaid, and shall not be put in circulation by any committee under pain of *ipso facto* forfeiting their office, and that the committee for the time being shall have the power of placing any other books, maps, or works in the said library of reference provisionally until the next general

meeting of the subscribers, who shall at such meeting decide whether the same shall be finally placed in the library of reference or not; and that it shall not be lawful for any committee nor for the subscribers at any general meeting to remove from the library of reference and put in circulation any such books, maps, or other works as shall at the passing of this ordinance have been or shall hereafter in manner aforesaid finally be classed as belonging to and placed in the library of reference: Provided, nevertheless, that the committee shall have the power upon application in writing being made to them to lend out to any individual on special occasions under such conditions as they shall see fit any of the aforesaid works.

12. And whereas by the will of the late J. N. von Dessin, Dessinian collection. executed in the year 1761, a large and most valuable collection of books was bequeathed in trust to the consistory of the Dutch Reformed Church in Cape Town to serve as the nucleus of a public library, and a certain annual sum was likewise so bequeathed in trust for its preservation and maintenance; and whereas the said collection, known by the name of the "Dessinian Collection," was some years past removed from the immediate keeping of the said consistory and placed in a separate apartment of the building appropriated at that time for the reception of the public library established under the proclamation of the 20th March, 1818, and it is desirable that the Dessinian Collection should still remain attached to and form part of the public library, subject, however, to certain separate regulations for its management: Be it therefore enacted that the said Dessinian Collection shall continue to be in a proper and commodious part of the building which is now or may hereafter be appropriated for the reception of the public library and separate and apart from the books thereunto belonging, subject to the sole and entire management of a committee of the said consistory, who shall make as heretofore all such regulations for its management as they shall deem requisite, provided the same do not interfere with the general regulations for the management of the public library, and provided also that such regulations shall be notified to the committee of management at least ten days previous to their having force and effect; and the said consistory shall continue to expend from the funds under their separate trust and independently of the subscribers to the library or their office-

bearers all such sums of money as they shall see fit to appropriate for the maintenance and augmentation of the valuable collection committed to their charge, and shall have power to appoint at their own expense, if needful, a librarian to take the entire charge of the Dessinian Collection: Provided, always, that nothing herein contained shall be construed to authorize the said consistory or its committee to interfere officially in any way with the management of the said public library or the application of its funds.

Nomen juris of  
committee

13. And be it further enacted that in any action which shall or may be brought touching the matters aforesaid or any of them, or in anywise relating to the said public library, by or against the committee of the said public library for the time being, it shall and may be lawful for the said committee to sue or be sued by the style and description of "The Committee of Management for the Public Library of the Colony of the Cape of Good Hope."

GOD SAVE THE KING !

Given at the Cape of Good Hope, 25th July, 1836.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 9.—Sd. B. D'Urban.]

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. <sup>1</sup>

Requisition  
for municipal  
regulations.

WHEREAS it is expedient that due provision should be made for the better regulation of certain matters and things of a local nature within the several districts, towns, and villages

(<sup>1</sup>) Revived with Ordinance No. 2, 1844, by Ordinance No. 3, 1853, and made perpetual by Act No. 15, 1860.

in this colony, and that municipal boards should be constituted and established therein for that purpose: Be it therefore enacted by the Governor of the colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that from and after the first day of October next it shall and may be lawful for any resident magistrate or justice of the peace within the limits of his jurisdiction, and he is hereby required upon a requisition made to him in writing to that effect by any number of resident householders, not less than twenty-five, and severally paying taxes to an amount exceeding six shillings sterling per annum, and resident respectively within one mile of any one central place which shall be specified in the said requisition, to call a meeting of householders paying such amount of taxes as aforesaid and resident within the limits aforesaid to determine whether municipal regulations shall be adopted for the town, village, or place intended to be erected into a municipality.

2. And be it further enacted that three weeks' notice at the least of the time and place of holding such meeting shall be given by the resident magistrate or justice of the peace calling the same by a printed or written notice affixed to some conspicuous place or places of public resort within the limits aforesaid.

Notice for public meeting.

3. And be it further enacted that the chairman who shall preside at any meeting assembled as hereinbefore directed shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require such resident householders as aforesaid assembled thereat to determine by majority of votes whether municipal regulations shall or shall not be adopted and acted upon within the said intended municipality.

Majority of votes at meeting to decide.

4. And be it further enacted that if at any such meeting it shall be determined by a majority of votes that municipal regulations shall be adopted then and in such case any such resident magistrate or justice of the peace as aforesaid to whom such determination shall be notified by the chairman of such meeting shall forthwith call another meeting of such resident householders as aforesaid to be holden within seven days thereafter, in order to elect and appoint a committee of so many of such resident householders as aforesaid as the said meeting shall deem expedient to frame and draw up municipal regulations.

Meeting of householders for choosing committee.

Committees  
for framing  
regulations.

5. And be it further enacted that the committee so to be elected and appointed shall be chosen by such resident householders assembled at such meeting by majority of votes.

Preparation of  
regulations.

6. And be it further enacted that the committee so chosen as aforesaid shall forthwith proceed to frame and draw up such municipal regulations as they may deem expedient, and shall submit the same when prepared to a meeting of such resident householders as aforesaid to be called by the said committee upon seven days' notice to be given in manner aforesaid: Provided, always, that such committee shall submit such regulations to such meeting as aforesaid within one month from the date of their appointment, otherwise the said committee shall be *ipso facto* dissolved, and a new committee shall then and in every such case be chosen in manner and for the purpose aforesaid, at a meeting to be called by any such resident magistrate or justice of the peace as aforesaid to whom such dissolution of the committee shall have been notified.

What shall be  
embraced by  
the regulations.

7. And be it further enacted that in such regulations it shall be the duty of such committee to fix the limits of the municipality and to divide the municipality into wards if necessary, and to fix the number of commissioners and wardmasters for the municipality or the several wards thereof, and to make rules for the classification and valuation of the immovable property therein, and to frame all other regulations which shall be necessary to enable the said commissioners to carry into effect the provisions of this ordinance or such of them as the said committee shall think expedient and necessary for the municipality.

Chairman of  
meeting of  
householders.

8. And be it further enacted that at the meeting to which such regulations as aforesaid shall be submitted by such committee any resident magistrate or justice of the peace residing at or near such proposed municipality shall preside as chairman: Provided, however, that such magistrate or justice shall not be a member of the said committee; and when there shall not be any such resident magistrate or justice of the peace not being a member of such committee present, then and in every such case any such resident householder as aforesaid not being a member of such committee present at such meeting may be elected to preside as chairman at such meeting.

9. And be it further enacted that at such meeting the question shall be put by the chairman on each and every clause contained in the regulations submitted by the committee *seriatim*, and afterwards on the whole of the regulations jointly ; and a majority of votes shall decide whether such clause or the whole of the regulations jointly as the case may be shall or shall not be adopted.

How questions to be put to meeting.

10. And be it further enacted that the regulations adopted at such meeting shall forthwith be transmitted to the Governor of the colony for the time being, for the approval, amendment, or disallowance thereof of the said Governor by and with the advice of the Executive Council ; and in case such regulations shall be approved, notice of such approval shall be given by proclamation to be made in that behalf, and the said regulations shall be published in the Government Gazette, and shall thereupon become as legal, valid, and effectual as if the same had been inserted herein ; and in the event of the said regulations being amended by the said Governor by and with the advice of the Executive Council, the regulations so amended shall be forthwith transmitted to the chairman of such meeting as last aforesaid, and in his absence to any resident magistrate or justice of the peace residing in or near the said intended municipality, who shall forthwith upon a notice of not less than seven days call a meeting of such resident householders as aforesaid, and who shall by a majority of votes decide whether the said regulations so amended shall be adopted or not ; and if the regulations be adopted, the chairman of such meeting shall forthwith communicate such adoption to the said Governor, who shall forthwith give notice thereof by proclamation and cause the same to be published in the Government Gazette, and upon such publication the same shall become as legal, valid, and effectual as if the same had been inserted herein.

Approval of regulations by governor.

11. And be it further enacted that at any time within one month after the expiration of each and every year from the publication of any such regulations as aforesaid it shall be lawful for the commissioners of any municipality, and they are hereby required upon a requisition made to them in writing to that effect by any number of such resident householders as aforesaid not less than twenty-five to call a meeting of such resident householders as aforesaid upon seven days' notice to be given in manner aforesaid for the purpose of adding to, amending, or repealing the existing

Alteration of regulations from time to time.

regulations or any of them by a majority of persons present and entitled to vote at such meeting, and the said regulations after being so reformed shall be forthwith transmitted by the said commissioners to the Governor for the approval or disallowance thereof or of any part thereof of the said Governor by and with the advice of the Executive Council; and such of the said reformed regulations as shall be approved of shall be published in the Government Gazette forthwith, and proclamation of such approval shall be made, and the said reformed regulations so approved of as aforesaid shall thereupon become as legal, valid, and effectual as if the same had been inserted herein, and the former regulations shall become null and void: Provided, always, that nothing in any municipal regulations contained shall be repugnant to or inconsistent with the true intent and meaning of the provisions of this ordinance.

Election of  
commissioners.

12. And be it further enacted that so soon as such original regulations as aforesaid shall have appeared in the Government Gazette the resident magistrate of the district shall and he is hereby required, by a notice of not less than ten days in manner hereinbefore provided, to call a meeting of such resident householders as aforesaid residing within the limits of such municipality, to be holden for the election and choice of so many commissioners as shall have been specified in the said regulations to carry the same into effect; and the said commissioners for the municipality or the wards thereof respectively shall be elected by a majority of votes of such resident householders as aforesaid present at such meeting, and any such resident magistrate or justice of the peace shall preside as chairman at such meeting.

Qualification  
of commis-  
sioners.

13. And be it further enacted that any person residing within the municipality and being the proprietor of a house situate within the same and who shall pay annually a sum of not less than one pound sterling in taxes shall be eligible to be elected a commissioner for the purposes of this ordinance, and shall be proposed at the said meeting by some person duly qualified to vote thereat and shall be seconded by some other person in like manner qualified.

Triennial  
retirement of  
commissioners.

14. And be it further enacted that every person who shall be elected a commissioner in any municipality in manner aforesaid shall go out of office at the end of the third year from the said first election; and in place of such commissioners so going out of office a like number of other commissioners to



be elected as hereinafter provided shall come into office, and remain in office for three years; and at the expiration of such last-mentioned term of three years shall in like manner go out of office and be succeeded by other commissioners, who shall remain in office for a like term of three years, and so on for ever: Provided, always, that any of such out-going commissioners shall be re-eligible and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding.

15. And be it further enacted that on the Monday immediately preceding the day on which any such term of three years shall expire a meeting shall be holden at such hour and place as shall be duly notified by the said commissioners for the election of commissioners for the three years next succeeding, and such election shall proceed in such manner as is hereinbefore provided for the election of the first commissioners under this ordinance.

Election to supply triennial vacancies in commissioner-ship.

16. And be it further enacted that any commissioner who shall cease to possess any of the qualifications in the thirteenth section required for the eligibility of commissioners, or shall absent himself from the municipality for any period exceeding three months, or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease, shall *ipso facto* vacate his office; and that in case any person so elected a commissioner shall die, or become disqualified in manner aforesaid, or shall resign or refuse to accept the office of commissioner, or in case of any casual vacancy happening in any manner whatever in such office, notice shall be forthwith given by the acting commissioners to any such resident magistrate or justice of the peace as aforesaid, who shall forthwith in the manner hereinbefore directed by this ordinance call a meeting of such resident householders as aforesaid for the purpose of filling up such vacancy or vacancies.

Vacating of office by commissioners.

17. And be it further enacted that the said commissioners shall meet at such times as are specified in the municipal regulations respectively at some convenient place or office previously publicly notified; and at such meetings it shall be lawful for any person to appear there and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this ordinance or the municipal regulations.

Regular meeting of commissioners.

Occasional  
meeting of  
commissioners.

18. And be it further enacted that such commissioners shall meet at all other times and so often as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner when three commissioners only shall have been appointed, and in all other cases for any two commissioners, by writing under his or their hands to summon, upon at least forty-eight hours' notice, the commissioners for any special purpose therein named, and that at all meetings of such commissioners any number not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed then not less than two commissioners, shall constitute a quorum for transacting business.

Treasurer and  
other officers.

19. And be it further enacted that it shall be lawful for said commissioners elected in any municipality for the time being, acting in pursuance of any municipal regulations to that effect, and they are hereby authorized and required to appoint during pleasure such treasurer and other officers as shall be specified in any such regulations and to remove and displace the same.

Security by  
treasurer.

20. And be it further enacted that it shall be lawful for the said commissioners or any two or more of them and they are hereby required to take security from the treasurer to be appointed by virtue of this ordinance, before he enters on the duties of his office for the due execution of his office of treasurer, which security shall be to the full amount of the sum likely to be in the hands of said treasurer at any one time; and in case any such treasurer shall neglect or refuse for the space of one week next after his appointment to give such security to the satisfaction of the said commissioners, then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes, and the said commissioners shall within three weeks then next assemble and appoint some other fit and proper person to the office of treasurer, instead of the person so refusing or neglecting as aforesaid, and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid.

Account to  
be kept by  
treasurer.

21. And be it further enacted that every such treasurer and other officer appointed by virtue of this ordinance shall under his hand and at such time or times and in such manner as the said commissioners shall direct deliver to the

said commissioners or such person as they shall appoint true and perfect accounts in writing of all matters and things committed to his charge by virtue of this ordinance, and also of all moneys which shall have been by such officer received by virtue or for the purposes of this ordinance, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such moneys as shall remain due from him to the treasurer for the time being or to such person or persons as the said commissioners shall appoint to receive the same; and if any such treasurer, officer, or other person shall refuse or neglect to make and render such account, or refuse to deliver up the vouchers relating to the same or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said commissioners or to such person or persons as they shall appoint to receive the same within three days after being thereunto required by the said commissioners by notice in writing under the hands of any two or more of the said commissioners, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this ordinance, or to give satisfaction to the said commissioners or such other person or persons as aforesaid respecting the same, then and in every such case upon complaint made by the said commissioners or by such person or persons as they shall appoint for that purpose of any such refusal or wilful neglect as aforesaid to the resident magistrate of the district within which such treasurer or other officer resides, such resident magistrate may and he is hereby authorized and required to summon the officer so refusing or neglecting to appear before him; and if it shall appear to the said magistrate upon the hearing of the case that any moneys remain due from such officer, or if it shall appear to such magistrate that such officer had refused or wilfully neglected to render and give such account or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this ordinance remained in the hands or in the custody or power of such officer and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such magistrate shall and he is hereby required to commit such offender to the common gaol or house of correction for such

district, there to remain without bail until he shall have given a true and perfect account as aforesaid or until he shall have paid such moneys as aforesaid, and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof to the said commissioners or to such other person or persons as aforesaid; but no such offender shall be kept or detained in such common gaol or house of correction under such commitment as aforesaid for any longer space of time than three calendar months.

Imprisonment  
of treasurer,  
effect as to his  
sureties.

22. And be it further enacted that no prosecution or commitment under the provisions of this ordinance of any treasurer or other officer or person to be appointed under the powers of this ordinance shall acquit or discharge any surety or security that shall or may have been taken by or given to the commissioners for the due and faithful execution of his or their office, or the payment of the moneys received or to be received by him or them respectively.

Office of  
commissioner  
gratuitous

23. And be it further enacted that no person elected and appointed under and by virtue of this ordinance a commissioner for the purpose of carrying into effect the provisions thereof shall have or receive or be entitled to have or receive any salary, or shall exact, take, or accept any fee or reward whatsoever for or on account of anything done or to be done by him by virtue of this ordinance or on any account whatsoever relative to putting this ordinance into execution.

Actions by  
and against  
commissioners.

24. And be it further enacted that in any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this ordinance, or for or in respect of any property movable or immovable vested in the said commissioners, or for any other matter or thing relating to this ordinance by or against the said commissioners, it shall and may be lawful for the said commissioners to sue or be sued by the style or description of "the commissioners for the municipality of \_\_\_\_\_": Provided, always, that every such commissioner may and shall (if not otherwise interested or objectionable) be a good, examinable, and competent witness in every action or suit either for or against the said commissioners; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any such action, suit, or proceeding shall and may be lawfully made by any such commissioner; and provided, also, that the said commissioners shall always be

reimbursed and paid out of the moneys to arise by virtue of this ordinance all such costs, charges, and expenses as they shall be put to or become chargeable with by reason of bringing or defending such action or suit, and shall not be personally answerable or liable for the payment of the same or any part thereof, unless such action or suit shall arise in consequence of their or any of their own wilful neglect or default.

25. And be it further enacted that all acts, orders, and proceedings of the said commissioners at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by two of the commissioners then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *prima facie* evidence of all such acts, orders, and proceedings upon any appeal, or trial, or information, or any proceeding, civil or criminal, and in any court or courts of law or equity whatsoever.

Minute book of commissioners.

26. And be it further enacted that the said commissioners shall and they are hereby required from time to time to order and direct a book or books to be provided and kept, in which shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this ordinance and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of the said commissioners and of every such resident householder as aforesaid without fee or reward; and the said commissioners and other persons aforesaid or any of them shall or may take copies of or extracts from the said book or books without paying for the same; and in case the said commissioners shall refuse to permit or shall not permit the said persons aforesaid to inspect the same or take copies or extracts as aforesaid, such commissioner shall forfeit and pay any sum of money not exceeding five pounds for each default.

Books of account of commissioners.

27. And be it further enacted that in the month of September in every year a true account shall be made in writing of all moneys received and paid by virtue of this ordinance during the preceding year ending on the 31st day of August in every year, and a copy or duplicate of

Annual account on oath by commissioners.

such account, verified on oath before any justice of the peace by the said commissioners, or any two of them, shall be deposited with the said commissioners and shall be open to the inspection of all parties interested.

Meeting for  
assessing rates.

28. And be it further enacted that it shall and may be lawful for the said commissioners when they shall see fit, and they are hereby required upon a requisition made to them in writing to that effect by any number of such resident householders as aforesaid not less than twenty-five, to call a meeting of such resident householders as aforesaid, upon seven days' notice to be given in manner aforesaid, for the purpose of assessing any such rate or rates on the immovable property situate within the municipality, and to endure for such period not exceeding twelve months as the majority of persons present and entitled to vote at such meeting shall deem necessary for all or any of the purposes of this ordinance: 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.

Collection of  
rates.

29. And be it further enacted that after the rates to be levied by virtue of this ordinance shall have been assessed in manner aforesaid it shall and may be lawful for the said commissioners to appoint a collector for the purpose of collecting the amounts due and payable upon the property so assessed by the proprietors thereof; and the said collector is hereby authorized to demand and receive the amounts so to be collected: Provided, always, that the said collector shall be furnished with an order under the hands of the said commissioners or any two of them, directing the said collector to levy the amount mentioned in the said order; and provided also that the said order shall specify the rate in the pound at which the sum mentioned therein shall be computed.

Payments by  
collector to  
treasurer.

30. And be it further enacted that the said collector to whom any such order as aforesaid shall be issued shall pay over the amount collected under such order to the treasurer to be appointed in the said municipality under this ordinance within forty days from the delivery of such order to the said collector; and at the time of making any payment to the said treasurer the said collector shall deliver to him a note in writing signed by him, specifying the amount so paid, which note shall be kept by the treasurer as a voucher for

his receipt of that particular amount ; and the receipt of the said treasurer specifying the amount paid to him by the collector shall be a sufficient discharge to the collector for such amount, and shall be allowed as such in passing his account with his municipality.

31. And be it further enacted that the said commissioners, <sup>Police and watchmen.</sup> acting in pursuance of any such regulations as aforesaid are hereby empowered from time to time to appoint and employ such number of able-bodied watchhouse-keepers, serjeants of the night, watchmen, patrols, streetkeepers, and other persons as shall be sufficient for the proper protection of the inhabitants, houses and property, streets and other places within the limits of the municipality, by day and by night, and provide all such watchmen, watchhouse-keepers, serjeants of the night, patrols, and persons as aforesaid with such clothing, arms, ammunition, and weapons, and shall assign to them such beat and rounds and duties, and appoint such hours for them to be on duty, and also make such rules, orders, and regulations relative to such watchhouse-keepers, serjeants of the night, watchmen, patrol, street-keepers, and other persons, and their duties, as shall be deemed fit.

32. And be it further enacted that all watchmen, serjeants <sup>Powers of police.</sup> of the night, and patrols shall act as constables while in execution of the powers and authorities of this ordinance, and they are hereby invested with and shall have and enjoy the like powers and authorities, privileges and immunities, and shall be subject and liable to such and the like penalties and forfeitures as any constable or constables is or are invested with or shall or may have and enjoy, or is or are or shall be subject or liable to by law.

33. And be it further enacted that it shall be lawful for <sup>Fire-engines.</sup> the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to provide and keep up fire-engines, with pipes and other utensils proper for the same, for the use of the respective municipalities.

34. And be it further enacted that it shall be lawful for <sup>Lighting.</sup> the said commissioners acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to cause such lamp-irons or lamp-posts, or other posts, to be put or fixed upon or against the walls or palisadoes of any house, tenements, buildings, or inclosures (doing as little damage as may be practicable thereto), or

to be put up or erected in such other manner within all or any of the said roads, streets, and places within the limits of the respective municipalities as shall be deemed proper, and also to cause such number of lamps of such sizes and sorts to be provided and affixed and put upon such lamp-irons and lamp-posts as shall be necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with oil or otherwise during such hours as shall be necessary; and also to cause such a number of watch-houses or watch-boxes to be provided, erected, or affixed as shall be necessary for watching all or any of the streets, roads, and places within the limits of the municipality.

Supply of  
water.

35. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to provide and to carry and lay any pipe or pipes for the conveyance of water to which the inhabitants of the municipality shall at any time have or acquire a common right from any reservoir, river, or spring to any house, building, or other place within the limits of the municipality, ; and the said commissioners shall, acting in pursuance of any such regulations as aforesaid, and they are hereby authorized from time to time to make such regulations touching the quantity of water to be supplied to the inhabitants and the time or times at which such supply is to be received as shall be proper and necessary.

Drains, &c.

36. And be it further enacted that the said commissioners, acting in pursuance of any such regulations as aforesaid, shall and they are hereby empowered to cause to be made, provided, erected, and built such bridges; sluices, dams, reservoirs, watercourses, pumps, wells, fountains, drains, and ditches as shall be deemed necessary within the municipality, and shall cause the same to be kept at all times in good and sufficient repair.

Making and  
repairing of  
streets, &c.

37. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered to cause the public streets, roads, and places within the limits of the municipality to be at all times kept in good and sufficient repair, and as occasion shall require to cause such new streets and roads to be made within the limits aforesaid as may be legally made and shall be necessary for



the public use, and to be kept at all times in like good and sufficient repair.

38. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time as occasion may require to establish within the limits of the respective municipalities a market or markets for the sale of cattle, fish, poultry, vegetables, fruit, and the like, and to cause suitable houses or other buildings to be built and erected for the convenience of persons attending such market or markets and to cause the same to be kept in good and sufficient repair, and also to enforce such municipal regulations as shall be made and recover such fines as shall be imposed thereby for ensuring order and cleanliness on the part of the persons attending such market.

Markets,  
establishment  
of.

39. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to enforce all municipal regulations which shall be made for the due and proper care of the common pasture lands the property of any municipality, and which regulations shall specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands, and of what kinds; and also to recover fines which shall be imposed by the said regulations on any person contravening the same: Provided, always, that the said commissioners shall not be authorized or permitted to dispose of, alienate, build upon, inclose, or cultivate any such common pasture lands, nor suffer any other person to build upon, inclose, or cultivate the same; and any such alienation by sale, gift, or otherwise shall be and is hereby declared to be null and void.

Common pas-  
ture lands, pro-  
tection of.

40. And be it further enacted that it shall and may be lawful for the said commissioners and they are hereby authorized to enforce all such regulations as aforesaid which shall be framed relative to the assizing and examining of weights and measures, the time when and the places where cattle may be slaughtered or driven to be slaughtered, and the state and condition of the slaughter-houses, the registration, rates of charge, and conduct of coolies, the registration and improper driving or loading of carts and carriages, the undue obstruction of the streets by carriages, repairing of houses or otherwise, the confining or killing of dogs, and to recover

Miscellaneous  
regulations.

all fines imposed by the said regulations for contravening the same.

Municipal  
property, pro-  
tection of.

41. And be it further enacted that if any person shall wilfully break, throw down, spoil, or damage any watch-house or watch-box, or lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, or shall break, spoil, or damage any building the property in which is by the provisions of this ordinance vested in the said commissioners, or shall wilfully break or damage any public watercourse, bridge, sluice, dam, reservoir, pump well, fountain, drain, or ditch, or shall wilfully waste any public water within the limits of any municipality, it shall be lawful for any person or persons who shall see the offence committed to apprehend and also for any other person or persons to assist in apprehending the offender or offenders, and by the authority of this ordinance and without any warrant to deliver him, her, or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before the resident magistrate of the district within which any such offence shall have been committed or any justice of the peace having jurisdiction; and if the party accused shall be convicted of any such offence by such resident magistrate, he, she, or they shall forfeit severally any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby.

Nuisances, pro-  
tection against.

42. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby authorized to remove, put down, and abate all nuisances of a public nature within any such municipality as aforesaid and which may tend either to injure the health, destroy the comfort, or in any way affect the rights of the inhabitants at large, and if need be to proceed at law against any person or persons so committing any such nuisance for the abatement thereof and for damages; and further that the said commissioners shall and they are hereby required to cause all streets, watercourses, drains, roads, and places within any such municipality to be kept clean and free from dirt or rubbish; and any person convicted upon the complaint made by the said commissioners of throwing dirt or rubbish into any such street, road, watercourse, drain, or place as aforesaid shall forfeit and pay any

Streets, &c.,  
cleansing of.

sum of money not exceeding two pounds, and such forfeiture shall be paid into the colonial treasury.

43. And be it further enacted that it shall and may be lawful to and for the said commissioners, acting in pursuance of any such regulations as aforesaid, from time to time to enter into any contract with any person or company whatsoever for any work to be done and performed or for any materials to be furnished to and for the said commissioners for the purposes of this ordinance, which contract shall specify the work to be done and the price to be paid for the same and the time when the work shall be completed, and the penalty to be suffered in case of non-performance thereof, and shall be signed by two or more of the said commissioners and also by the person or persons contracting, which contract or a copy thereof shall be entered in a book to be kept for that purpose, but no contract above the value of ten pounds shall be entered into unless eight days' notice be previously given and fixed to some conspicuous place within the municipality expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the said commissioners at a certain time and place in such notice to be mentioned: Provided, always, that if the said commissioners shall be of opinion that it shall not be advantageous to contract with the person offering the lowest price it shall be lawful for the said commissioners to contract with such other person or persons as they shall think proper.

44. And be it further enacted that the said commissioners, acting in pursuance of any such regulations as aforesaid, may and they are hereby authorized and empowered to treat with the owner or owners and occupier or occupiers of any houses or buildings, lands and grounds for the purposes of this ordinance for such sum of money or yearly rent or for such time as to them shall appear reasonable.

45. And be it further enacted that the property of and in all lands, streets, roads, and buildings to which the inhabitants of any municipality shall at any time have or acquire a common right shall be vested in the commissioners of such municipality for the time being.

46. And be it further enacted that the property of and in all the lamps, lamp-irons, lamp-posts, watch-houses, watch-boxes, bridges, sluices, dams, pumps, wells, fountains, sewers,

drains, watercourses, market-houses, pipes, posts, chains, pales, and rails, in, about, or belonging to the said streets and places within the limits of the respective municipalities, and of and in all the iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto (except when the same shall be otherwise regulated by contract with the said commissioners) shall be vested in the said commissioners, and may be sold and disposed of by them from time to time as they shall be permitted or required to do in pursuance of any such regulations as aforesaid; and the said commissioners are hereby authorized and empowered to bring or cause to be brought any criminal action in manner as hereinbefore is provided against any person or persons who shall steal, break, or otherwise damage any of the buildings or other things the property in which is hereby vested in the said commissioners, subject, however, to the provisions of the Ordinances Nos. 40 and 73, or of any law or ordinance which may hereafter be created or then be in force in that behalf; and in all such actions it shall be and be deemed and taken to be sufficient to state generally that the article or thing for or on account of which such action shall be brought is the property of the commissioners, without particularly stating or specifying the name or names of all or any of the commissioners.

Criminal  
actions for  
protection of.

Offences, be-  
fore whom to  
be prosecuted.

Fines.

47. And be it further enacted that all offences committed in contravention of this ordinance or of any municipal regulation may lawfully be prosecuted in the court of the resident magistrate for the district within which the same shall have been committed, and if any person shall be duly convicted of any such offence and shall not pay or satisfy the amount of the fine imposed upon him it shall be lawful for the resident magistrate before whom the case was tried to sentence such offender to any period of imprisonment not exceeding three months; and the amount of all such fines then recovered shall be paid into the colonial treasury: Provided, always, that it shall be lawful for the Governor of this colony in each particular case to determine, award, and direct what share if any of the amount of any fine imposed in respect of any conviction for any such offence as aforesaid shall be paid to any person who may have given information concerning the same.

Householders,  
who to be con-  
sidered.

48. And be it further enacted that every person who is the occupier of any dwelling-house either as proprietor or renter

of the yearly value or rent of not less than ten pounds sterling shall be and be deemed and taken to be a resident householder within the meaning of this ordinance; and that at the several meetings of such resident householders as aforesaid hereinbefore appointed or authorized to be holden every such householder who shall be personally present shall have and be entitled to one vote and no more.

Votes of householders.

49. And be it further enacted that, unless where provision has been hereinbefore made to the contrary at any of the meetings hereinbefore mentioned and appointed or authorized to be holden, such person as may be elected by the majority of persons present entitled to vote shall preside as chairman and shall have and be entitled to a casting vote, and shall determine in the first instance upon the qualification or right of voting of any person claiming to vote and eligibility of any candidate proposed at any such meeting: Provided, always, that no person shall be deemed competent to vote at any meeting appointed or authorized to be held under the provisions of this ordinance who shall fail to produce (whenever required thereto by the chairman at any such meeting) proof of the payment of his or her taxes due and payable for the year last past.

Meeting of householders, chairman of.

Qualification for votes at.

50. And be it further enacted that nothing herein contained shall extend or be construed to extend to injure or impair the rights which any person or persons may have in, to, or in respect of any of the matters aforesaid; and in every case in which any such commissioners as aforesaid shall commit any act under and by virtue of this ordinance or of any municipal regulation by which the right of any person or persons is injured or impaired, such commissioners shall be liable to make compensation to such person or persons for the same: Provided, always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said commissioners personally or any of their goods and chattels (other than such as may be invested in them in pursuance of this ordinance) liable to the payment of any sum of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is hereby directed to be made by the said commissioners.

Saving of rights.

Liabilities of commissioners.

51. And be it further enacted that all the necessary costs, charges, and expenses attending the carrying the provisions of this ordinance into effect shall be paid out of the money

Expenses how to be provided.

authorized to be received by the commissioners under the provisions of this ordinance.

Witnesses,  
competency of  
householders  
to be.

52. And be it further enacted that no inhabitant of any municipality shall on that account be deemed an incompetent witness in any action, suit, or information, complaint appeal, prosecution, or proceedings to be had, made, prosecuted, or carried on under the authority of this ordinance.

Cape Town,  
ordinance not  
to extend to.

53. And be it further enacted that nothing herein contained shall extend or be construed to extend to Cape Town and the district thereof.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 15th August, 1836.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 10.—Sd. B. D'Urban.]

Ordinance to indemnify the Governor of the Colony and all Persons acting under his authority against certain acts done during the existence of Martial Law in certain parts of the Colony.

Preamble.

WHEREAS on or about the twenty-third day of December, one thousand eight hundred and thirty-four, an irruption was made into certain districts of this colony of numerous bodies of armed Kafirs, and by reason thereof the ordinary course of law was interrupted, and it became necessary for the Governor of the colony to proclaim martial law therein and in other districts of the colony as hereinafter mentioned: And whereas by a proclamation made by the said Governor bearing date the 3rd day of January, 1835, it was ordered and directed that from and after the promulgation of the said proclamation martial law should be in force within the districts of Albany, Somerset, Uitenhage, Graaff-Reinet, George, and

Beaufort, for all cases and in all matters connected with the assembling and conducting of the forces of the colony, and should continue to be in force until the expulsion of the tribes then invading the colony unless proclamation abolishing the same should be previously made: And whereas by a proclamation of the said Governor bearing date the 16th day of June, 1835, it was ordered and directed that martial law should continue and be in force until proclamation should be made to the contrary in and throughout the province of Queen Adelaide, theretofore and then forming a part of and being within this colony of the Cape of Good Hope: And whereas by a proclamation of the said Governor bearing date the 17th day of June, 1835, it was ordered and directed that from and after the promulgation of the said proclamation martial law shall cease and be no longer in force within the districts of Graaff-Reinet, George, and Beaufort, and within all that part of the district of Uitenhage lying west of the Sunday's River excepting the town and district of Port Elizabeth: And whereas by a proclamation of the said Governor bearing date the 9th day of July, 1836, martial law was ordered and directed to be no longer in force within the said town and district of Port Elizabeth, within all that part of the said district of Uitenhage lying east of the Sunday's River, and within the districts of Albany and Somerset: And whereas by a proclamation of the said governor bearing date the 18th day of August, 1836, it was ordered and declared that from and after the promulgation of the said proclamation martial law should wholly cease to be in or have force and effect within the said province of Queen Adelaide: And whereas during the time that the said martial law was in force in the said places respectively it was and became necessary for the Governor and other persons acting under his order to direct, authorize, do, and perform certain acts, matters, and things within the said places which were not justifiable by the strict rules and forms of law, but which were necessary for the public service: And whereas it is expedient that the Governor and all persons acting under his order, direction, and authority should be indemnified in respect of such orders, directions, acts, matters, and things: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that the said Governor and also all persons acting under his orders, direction, and

Governor and  
persons acting  
under him  
indemnified.

authority shall be and they are jointly and severally hereby indemnified, freed, and discharged from and against all actions, suits, prosecutions, and penalties whatsoever for or on account or in respect of all or any acts, matters, and things whatsoever done, ordered, directed, or authorized by the said Governor or by any person or persons acting under his order, direction, and authority, and within the said places or any of them during the existence therein of such martial law as aforesaid: so only and provided that such acts, matters, and things shall have been done, ordered, directed, or authorized *bona fide* in furtherance and in the execution of the objects for which martial law was proclaimed as aforesaid.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 29th August, 1836.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

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No. 11.—Sd. B. D'Urban.] [29th Sept., 1836.

Ordinance for rendering valid acts done and duties performed by persons appointed to act as and for certain Magistrates, and to empower the Governor to appoint Assistant Magistrates.

[Repealed by Act No. 20, 1856, except in as far as it enacts that certain acts done previously to its passing shall be legal, valid, and effectual.]

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No. 12.—Sd. B. D'Urban.] [15th Dec., 1836.

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

[This ordinance not having been confirmed by the Home Government within three years of its enactment ceased to have legal effect.—*Vide* Ordinance No. 82, p. 180.]



No. 13.—Sd. B. D'Urban.]

[15th Dec., 1836.

Ordinance for applying a sum not exceeding £128,628 15s. 5 $\frac{1}{2}$ d. to the service of the year 1837.

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No. 14.—Sd. B. D'Urban.]

Ordinance for abating the Nuisance occasioned by Dogs roaming at large in and about Cape Town.

WHEREAS the inhabitants of Cape Town suffer great annoyance by reason of the number of unowned dogs that roam at large in the streets and thoroughfares in and about Cape Town, and it is expedient to authorize measures to be taken for the abatement of the said nuisance: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the superintendent of police of Cape Town or his deputy acting in his stead, so often and at such times as he shall publicly announce by notice in the Government Gazette giving seven days' warning of his intention, to cause all dogs not actually with or known to belong to some person and found in any street, lane, road, or other public or uninclosed ground within the limits of Cape Town and the district thereof to be put to death by such means and by such persons as he shall see fit to appoint: Provided, always, that no dog with a metal collar or a leathern strap with a buckle on his neck shall be liable to be put to death for being so at large; and that no person employed on such occasions shall have any right to enter any private house, private passage, or private enclosed yard in search of dogs for the purpose of destroying them: And provided, also, that the means of destruction to be used be not such as to endanger the personal safety of the inhabitants; and that the carcasses be removed and buried.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 31st December, 1836.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 1.—Sd. B. D'Urban.]

[6th Feb., 1837.

Ordinance for erecting certain Resident Magistrates' Courts within the Eastern Division of this Colony, and for defining the Jurisdiction thereof.

[Repealed by Act No. 20, 1856.]

No. 2.—Sd. B. D'Urban.]

Ordinance for the more effectual prevention of Crimes against Life and Property within the Colony.

Death while enforcing arrest justifiable.

WHEREAS it is expedient to make further provision for the prevention of crimes against life and property in this colony: Be it therefore enacted and declared by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that where any officer of the law or private person who, by the provisions of the Ordinance No. 73, entitled "an Ordinance of His Excellency the Governor in Council for explaining, altering, and amending the Ordinance No. 40," and bearing date the fifteenth day of April, one thousand eight hundred and thirty, is authorized and required to arrest or assist in arresting any person who has committed or is on reasonable grounds suspected to have committed any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or in which a dangerous wound is given, arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep, or goat, or any other crime of equal degree of guilt with any of the crimes aforesaid, shall attempt to make such arrest and the person so attempted to be arrested shall fly or resist and cannot be apprehended and prevented from escaping by other means than by such officer or private person killing the person so flying or resisting, such homicide shall be deemed in law to be justifiable homicide.

Property, recovery of, beyond boundary.

2. And whereas certain treaties have been entered into between Andries Stockenstrom, Esquire, Lieutenant-Governor of the eastern division of the colony of the Cape of Good Hope, on the part of His Britannic Majesty, and the Kafir chiefs of the tribes of T'Slambie, the Kafir chiefs of the tribe of Gaika, the Kafir chiefs of the tribe of Congo, the Fingo chiefs Umklambiso and Iokwani, and the

Tambookie chief Mapassa, in which treaties certain regulations and provisions have been agreed upon and made as to the way and manner of recovering and as to the particular means to be adopted for the recovery within the territory occupied by any such chiefs or their tribes respectively of property which shall have been stolen and shall not have been retaken or recovered within the colony, and shall have been traced into any such territory: And whereas it is expedient to provide in the most effectual manner for the enforcement of such regulations and provisions: Be it enacted that any person who shall pass out of the colony over the boundary between the colony and any such territory as aforesaid for the purpose or with the intent of recovering any such property so stolen, and not retaken or recovered, and so traced as aforesaid, except in the manner and under and in strict conformity with the regulations, conditions, and restrictions agreed upon, prescribed, made, and declared in and by such treaties respectively shall on conviction be subject to the payment of a fine not exceeding fifty pounds or to imprisonment for any time not exceeding six months.

3. And be it further enacted that it shall not be lawful for any Kafir, Gonaqua, Tambookie, Griqua, Boschjesman, Bechuana, Mantatee, Namaqua, or other natives of Africa Native tribes not to enter the colony with arms. not being natives of the colony to cross from without to within the boundary line of the colony armed with any assegai, spear, battle-axe, fire-arms, or other weapon, or to be found in the colony so armed; and all justices of the peace, field-commandants, field-cornets, and military officers are hereby authorized and required to prevent any such person as aforesaid so armed as aforesaid from entering the colony, and to disarm or cause to be disarmed any such persons so found within the colony; and in case such persons shall resist when an attempt is made to disarm them it shall be lawful to kill or disable them if they cannot be disarmed by other means: Provided, always, that nothing herein contained shall be construed to prevent any such foreigner as aforesaid actually in the service or employment of any inhabitant of the colony from being armed in such manner as his employer may think proper.

4. And be it further enacted that if any such foreigner as aforesaid shall be found within the colony without a pass, Natives not to be without passes. or if under contract without a written authority from his

employer, on being required by any justice of the peace, field-commandant, field-cornet, constable, or landholder to show the same, or after receiving a pass for the purpose of procuring employment in the colony shall be discovered wandering without any certain occupation or honest means of livelihood having received his pass as aforesaid, or having been absent from his last employer for a longer period than fourteen days, then in any and in each of such cases it shall be lawful for any justice of the peace, field-commandant, or field-cornet immediately to apprehend such person and inquire summarily into the case, and for any constable or landholder immediately to apprehend and convey such person to the resident magistrate of the district or to any justice of the peace, field-commandant, or field-cornet within the district in which such person was so apprehended, who shall inquire summarily into the case, and if such foreigner be under contract of service shall forthwith direct him to be returned to the service of his employer, or shall place such person with his consent in the employment of some creditable inhabitant under contract of service for twelve calendar months in the manner directed by the Ordinance No. 49, or shall otherwise cause him to be removed beyond the limits of the colony, resuming any pass that may be found in his possession, and notifying or causing to be noted such removal in the registry of the district wherein the pass was originally granted; and if any such foreigner as aforesaid so removed beyond the limits of the colony shall return again and be found wandering within the same, such person shall on conviction thereof be sentenced to imprisonment with hard labour for any period not exceeding twelve calendar months.

Arrest of natives.

5. And be it further enacted that when any officer of the law or private person who in virtue of the provisions of this ordinance is authorized and required to arrest or remove or to assist in arresting or removing any such foreigner as aforesaid shall attempt to make such arrest or removal, and such foreigner so attempted to be arrested or removed shall resist, it shall be lawful for such officer or person if such arrest or removal cannot be effected by other means to kill or disable such foreigner so resisting as aforesaid.

Armed natives entering the colony in numbers to be enemies.

6. And be it further enacted, that if any body of such armed foreigners as aforesaid consisting of three or more shall enter the colony under any pretext whatever they shall

be deemed and taken to be enemies, and it shall be lawful for any person to repel them by force of arms.

7. And be it further enacted that every male inhabitant All persons to aid officers of law. between the ages of sixteen and sixty who shall be called upon by any officer of the law to assist in carrying into effect any of the provisions of this ordinance or of the said Ordinance No. 73 which it is the duty of any such officer to carry or cause to be carried into effect, and who shall without sufficient excuse refuse so to do, shall on conviction thereof be liable to a fine of not less than one pound nor exceeding twenty pounds or to imprisonment for any period not exceeding three months.

GOD SAVE THE KING !

Given at the Cape of Good Hope, 21st June, 1837.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 3.—Sd. B. D'Urban.]

Ordinance for altering the Ordinance No. 105, entitled "Ordinance of His Excellency the Governor in Council for providing for the due Administration and Management of the Estates and Property of Minors, Lunatics, and Persons absent from the Colony, and for the proper care of the Persons of Minors and Lunatics," and dated the 5th day of July, 1833.

WHEREAS by an Ordinance, No. 105, entitled "Ordinance of His Excellency the Governor in Council for providing for the Rate of interest on moneys of minors, &c. due Administration and Management of the Estates and Property of Minors, Lunatics, and Persons absent from the Colony, and for the proper care of the Persons of Minors and Lunatics," dated the 5th day of July, 1833, it is amongst other things enacted, "that for the purposes of the twenty-eighth section of the said Ordinance No. 105, the legal rate of interest current

within this colony shall be deemed and taken to be and shall be calculated at the rate of six per cent. per annum until some other rate of interest shall by any law hereafter to be made be declared and established for the purposes aforesaid :” And whereas it is expedient now to make further and other provision for the purposes aforesaid touching and concerning such rate of interest : Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that whenever and so often as it shall be necessary for the purposes of the provisions of the twenty-eighth section of the said Ordinance No. 105 to compute and calculate the rate of interest to be borne by and be due in respect of any sum placed to the credit of any person or estate in any account which has heretofore been or shall be opened in the ward books as in the said Ordinance No. 105 is provided, if such computation and calculation shall happen to be made on any day between the 1st of January and the 30th of June both inclusive in any year then such computation and calculation shall be made according to the average rate of interest which shall have been borne by and due in respect of the capital of the guardian’s fund standing out on loan at interest during the six months immediately preceding the 1st of January in such year ; and if such computation and calculation shall happen to be made on any day between the 1st of July and 31st of December both inclusive in any year then such computation and calculation shall be made according to such average rate of interest as shall have been borne by and due in respect of such capital as aforesaid during the six months immediately preceding the 1st of July in such year : Provided, always, that when in computing and calculating such average rate of interest as aforesaid there shall be found to result any fractional part less than one twentieth of one pound sterling per cent. such fractional part shall be computed and taken into calculation as if it had been and were one entire one-twentieth part of one pound sterling.

Rate of interest  
at which mo-  
neys of minors  
&c., to be lent.

And be it further enacted and declared that the master of the supreme court shall at all times lend or cause to be lent, at the highest legal rate of interest which can be obtained consistently with a due regard to the sufficiency of the security on which the same shall be lent, all such moneys as by the provisions of the thirty-second section of the said Ordinance No. 105 he is directed, authorized, and required to lend or cause to be lent ; and that all the provisions of

the said thirty-second section of the said Ordinance No. 105 shall extend and apply to the rate of interest as well as to the sufficiency of the security on which any such money as is therein specified shall by the master of the supreme court be lent or caused to be lent.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 28th June, 1837.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

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No. 4.—Sd. B. D'Urban.] [28th August, 1837.

Ordinance for the better observance of the Lord's Day in this Colony.

[Repealed by Ordinance No. 1, 1838.]

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No. 5.—Sd. B. D'Urban.]

Ordinance for appointing Assistant Field-cornets within the Colony.

WHEREAS within certain field-cornetries the duties of the field-cornets are very burthensome, and it is expedient that persons should be appointed to assist them in performing the duties of their office: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing of this ordinance it shall be lawful for the Governor and Lieutenant-Governor and they are hereby authorized to appoint within the western and eastern divisions of the

colony respectively, from time to time as occasion may require, such persons to be called assistant field-cornets as they may see fit, to aid and assist field-cornets in the execution of the duties of their office, and the said persons to remove from such office whenever they shall see cause.

2. And be it enacted that it shall be lawful for the said assistant field-cornets, acting in assistance of and subject to the directions of their respective field-cornets, and they are hereby required, to do and perform all such matters and things as their respective field-cornets might do and perform in the execution of the duties of their office; and the said assistant field-cornets shall so long as they continue in office be entitled to all such exemptions and immunities as are now enjoyed by field-cornets.

GOD SAVE THE KING !

Given at the Cape of Good Hope, 23d August, 1837.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 6.—Sd. B. D'Urban.]

Ordinance to authorize the Governor of the Colony, by and with the advice of the Executive Council, to establish Markets and provide Regulations for the same in Villages or other places not being Municipalities.

WHEREAS it is expedient to establish markets in certain villages and other places convenient for holding the same in which resident householders are not sufficiently numerous to form municipalities and to frame regulations for the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing of this ordinance it



shall be lawful for the Governor of the colony, by and with the advice of the Executive Council, by any proclamation to be published in the Government Gazette in that behalf from time to time as occasion may require to establish a market at any village or place not being a municipality as he shall deem expedient, and to provide all necessary regulations for the same, and such regulations to alter and the said markets to abolish when and so often as he shall deem expedient: Provided, always, that the tariff of dues to be taken at any such market shall not exceed the highest tariff of market dues taken in any municipality.

GOD SAVE THE KING!

Given at the Cape of Good Hope, 23d August, 1837.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

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No. 7.—Sd. B. D'Urban.]

Ordinance for declaring at what stage of the Procedure Criminal Actions and Suits shall be deemed to be pending in the Supreme Court and Circuit Courts of the Colony.

WHEREAS doubts may be entertained at what stage of the procedure criminal actions or suits brought in the supreme court or circuit courts of this colony shall in law be deemed and taken to be pending therein, and it is expedient to remove such doubts: Be it therefore enacted and declared by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that whenever and as soon as the indictment or information in any criminal action or suit which may and shall be brought in the supreme court or any circuit court of the colony shall have been duly

Preamble.

When action deemed to be pending.

filed with the registrar of such court such action or suit shall become and be deemed and taken to be pending in such court.

GOD SAVE THE KING !

Given at the Cape of Good Hope, 6th September, 1837.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 8.—Sd. B. D'Urban.]

[8th Nov., 1837.

Ordinance for releasing certain Property bequeathed to Esther Andrietta Constantia de Roos, from the entail of Fidei Commis.\*

No. 9.—Sd. B. D'Urban.]

[8th Nov., 1837.

Ordinance for altering and amending the Ordinance entitled “ An Ordinance for altering and amending the Ordinances entitled respectively ‘ Ordinance of His Honour the Lieutenant-Governor in Council, for the better Regulation of the Post Office in the Colony of the Cape of Good Hope,’ dated the 9th day of October, 1826,—an Ordinance of His Excellency the Governor in Council, for altering and amending the Ordinance No. 25, entitled ‘ An Ordinance for the better Regulation of the Post Office in the Colony of the Cape of Good Hope,’ dated the 9th day of February, 1829,” bearing date the 11th day June, 1834.

[Repealed in the repeal of Ordinances No. 25, No. 56, and No. 3, 1834, by Ordinance No. 1, 1846.]

\* This ordinance being wholly of a private nature does not require re-publication.

No. 10.—Sd. B. D'Urban.]

[29th Nov., 1837.

Ordinance for limiting the Duration of the Powers granted by the Ordinance No. 6, of 1836, entitled " Ordinance for incorporating and establishing the South African Association for the Administration and Settlement of Estates," and dated the 27th Day of June, 1836, to the said Association.

[Repealed by Act No. 9, 1855.]

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No. 11.—Sd. B. D'Urban.]

Ordinance for establishing, regulating, and providing for the South African College.\*

WHEREAS several persons did in or about the year of our Lord 1829 subscribe certain sums of money in shares of ten pounds sterling each for the purpose of establishing a college or institution for the instruction of young persons in this colony in certain branches of literature and science: And whereas the holders of the said shares have made application that an ordinance may be passed for carrying into effect such and other purposes and to make more efficient provision for the said institution: Be it therefore enacted by His Excellency the Governor of this colony, with the advice of the Legislative Council thereof, that it shall and may be lawful for the said persons who have subscribed the sums of money aforesaid or their representatives and such other person or persons as may hereafter in virtue of the provisions of this ordinance subscribe other sums of money to associate together and become joint stock-proprietors thereof and managers under the limitations and provisions of this ordinance of all additions which may so be hereafter made thereto by way of fees, contributions, endowments, donations, or otherwise, to be administered in manner hereinafter provided; and to be managers as aforesaid of an institution hereby established and designated the " South African College."

Establishment  
of co-partnership  
in college.

OF THE COUNCIL OF DIRECTORS.

2. And be it further enacted that the funds, property, revenue, and expenditure belonging to the said South African Council of directors.

\* Continued to December, 1861, by Act No. 19, 1858.

College shall be vested in and administered by a council of seventeen directors, who shall superintend and conduct the affairs of the said college subject to the limitations and provisions hereinafter contained and in manner hereinafter provided; and that Sir Andreas Truter, Knight, LL.D., His Honour Sir John Wylde, Knight, LL.D., chief justice of this colony, the Honourable Hamilton Ross, Esq., Daniel Denysen, LL.D., the Reverend Abraham Faure, B.D., Christoffel Josephus Brand, LL.D., Johannes Joachim Lodewyk Smuts, Johannes Hendrik Hofineyr, LL.D., Daniel Fredrik Berrangé, LL.D., Daniel Johannes Kuys, the Honourable Henry Cloete, Esq., LL.D., James Abrecrombie, Johannes de Wet, LL.D., Charles Louis William Liesching, M.D., William Ferdinand Bergh, the Reverend George Hough, A.M., and the Reverend James Adamson, D.D., shall be such directors and so shall continue until their office shall be filled up by an equal number of directors to be in manner hereinafter provided.

Two directors  
by appoint-  
ment.

3. And be it further enacted that the said George Hough, A.M., and James Adamson, D.D., shall remain in office as long as the Governor of this colony for the time being shall think proper; and it shall and may be lawful for such Governor at any time when he shall see fit to remove the said George Hough and James Adamson or either of them from the office of director, and in their or either of their place at any time to appoint another or other two directors; and at any time when the said directors or others so in future to be appointed in their stead shall die, resign, or be removed it shall and may be lawful for the Governor of this colony for the time being to fill up the vacancy or vacancies which shall thereby occur.

Fifteen direc-  
tors by election  
annually.

4. And be it further enacted that the remaining fifteen directors shall remain in office until the second Tuesday of January in the year of our Lord 1838, and thenceforth until some other directors shall be appointed in their stead; and at the general annual meeting which shall be held upon the said second Tuesday in the said month of January ten of the said directors, the same to be determined by lot, shall vacate their office, and the shareholders then present shall elect by ballot from among the shareholders ten directors by means of lists given in and signed by such shareholders respectively containing the names of ten persons for whom they shall vote to be so elected, instead of those other who shall then vacate

their office as aforesaid, and the five remaining as aforesaid shall be put at the bottom of the list for that year ; and at the general annual meeting which shall be held upon the second Tuesday in the month of January, 1839, the ten directors who shall stand lowest upon the list of directors for the preceding year shall vacate their office, and the shareholders then present shall in like manner elect ten directors from among the shareholders instead thereof, and the five remaining directors shall be put at the bottom of the list ; and in the same manner at each succeeding general annual meeting the ten directors standing at the bottom of the list shall vacate their office and the shareholders then present shall in like manner elect ten directors from among the shareholders instead thereof : Provided, however, that if at any general annual meeting the shareholders shall not elect ten directors aforesaid the directors who would otherwise have vacated their office shall remain therein until a general meeting of the shareholders shall be duly holden in manner directed by the twenty-fifth section of this ordinance, at which meeting such directors shall vacate their office and ten directors shall be elected as aforesaid : And provided, further, that the shareholders who shall in manner aforesaid have vacated their office shall be eligible for re-election : Provided, however, and be it further enacted that it shall not be lawful for the shareholders at any such meeting to elect any person being at the time a professor in the South African College to fill the office of a director.

5. And be it further enacted that in the event of the death, removal, or resignation of any director during the current college year it shall be at the option of the council of directors to determine whether the shareholder if any whose name stands next in rotation at the last preceding ballot shall succeed to the vacancy or whether they shall call a meeting of shareholders to fill up the vacancy which shall have occurred ; and the director or directors then succeeding or being elected at the said meeting when called and held to fill up such vacancy shall continue in office until the period for which the director so dying or resigning would otherwise have remained in office and no longer.

Vacancies  
between an-  
nual meetings.

6. And be it further enacted that the council of directors for the time being shall stand and be possessed of and be entitled to all the said sums of money heretofore subscribed for the purposes aforesaid, and of all property and claims

Funds of col-  
lege vested in  
council.

of which the shareholders may and shall have since become possessed or entitled to, and of all donations, subscriptions, and fees or other dues of which the shareholders shall become possessed or entitled to under the provisions of this ordinance in trust to pay to the professors, janitors, and other necessary college officers the salaries or dues to which they now are or shall hereafter become entitled; to purchase such books, prizes, apparatus for scientific or other purposes for which the college hath been established and to keep the same in repair; to purchase, erect, or hire such buildings as may be deemed necessary by the shareholders for the use of the said college in manner by the twenty-fifth section of this ordinance provided, and to keep the same in repair; to pay such sums of money for any such object as shall appear to promote the objects of the institution as they shall be or have been directed to do by any vote of the subscribers at any general meeting duly held for such purpose; and to pay to the shareholders respectively such amounts and the residue thereof if any in discharge of the shares advanced by such shareholders until the whole of the said loans shall be and have been paid off.

“Old Latin  
School Fund”  
vested in coun-  
cil.

7. And whereas several persons did in or about the year of our Lord 1790, and at divers times between that time and the year 1805, subscribe certain sums of money for the purpose of qualifying competent schoolmasters and for the improvement of school learning generally, and particularly for the establishment of a Latin and French school in the colony, and which said sums afterwards increased in amount by contributions and donations made by and through the Government of this colony now constitute the fund entitled “Old Latin School Fund,” at this time under the administration of certain persons appointed as and known by the name of the Bible and School Commission, and which said fund consists of bonds and cash and certain immovable property: And whereas the said South African College to be constituted and established under this ordinance will fully carry into effect the objects for the maintenance and accomplishment of which the said fund was raised and contributed, and it has become expedient therefore that the said fund should be made over to and administered by the standing council of the directors for the purposes aforesaid: Be it therefore enacted that the said fund so now under the administration of the said Bible and School Commission

with all thereunto appertaining and belonging or therefrom arising at, from, and since the 1st day of January, 1831, shall be paid over, transferred, and made over in full and the said immovable property be transferred and made over also to the standing council of directors in trust for the interest, rent, and proceeds which may and shall have been or shall be made, and shall and may have arisen or shall and may arise in the management of the said fund by the said council of directors, to be applied from the said 1st day of January, 1831, and from time to time towards the payment of the fixed salaries of the professors respectively of the said college.

8. And be it further enacted that the council of the directors shall meet on Tuesday next after the general annual meeting and on the first Tuesday in the months of April, July, and October respectively; and the said council shall meet at any time when required by a notice in writing signed by the chairman and delivered to each director not less than three days previous to the time thereby appointed; and the chairman shall and is hereby required to call a meeting of the directors in like manner at any time within seven days after being thereunto required by a requisition in writing, signed by not less than five of the directors, setting forth the purpose for which the same is to be held, whereupon a meeting of the directors shall be held for such purpose accordingly and for no other: Provided, however, that it shall not be competent for the council of directors at any meeting to pass any resolution whereby any resolution passed by the council of directors during the current year shall be repealed or altered.

Meetings of  
the council.

9. And be it further enacted that five directors shall form a quorum and shall be competent to perform all matters and things which may be done by the directors under the provisions of this ordinance, except in so far as relates to the matter provided by the thirteenth section of this ordinance.

Quorum of  
council.

10. And be it further enacted that the council of directors shall at their first meeting after the general annual meeting in each year elect from among themselves a chairman for the current college year, that is to say, until the next general annual meeting, who when present shall preside at the meetings of the said council: Provided that when such chairman shall be absent from any such meeting the said council shall elect another director to act as chairman of such meeting; and in case the votes of the said council

Chairman of  
council.

shall at any time be equally divided the chairman or director acting as chairman shall have a casting vote in addition to his own vote, but such chairman or director acting as chairman shall not while in the chair enter into the discussion of any question which shall be before the meeting.

Register of  
shareholders.

11. And be it further enacted that the council of directors shall keep a book wherein they shall enter the names and additions of each of the shareholders who shall have paid up the instalments due upon his share or shares or who shall have become entitled thereto by purchase, donation, or otherwise from the original holder of such share or shares, and of which entry a certificate signed by the chairman and treasurer shall be delivered to every such shareholder, and such certificate shall be at all times 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 or to the effect following:

Certificate of  
partnership.

No. *Form of Certificate.*

CERTIFICATE OF SHARE IN THE SOUTH AFRICAN COLLEGE.

We, the undersigned, chairman and treasurer of the South African College, do hereby certify that A. B., of \_\_\_\_\_ is the holder of the share No. \_\_\_\_\_ amounting to £10 sterling in the South African College, established under and by virtue of an ordinance of His Excellency the Governor of this colony of the Cape of Good Hope and the Legislative Council thereof, No. 11, 1837. Transferable with the approval of the council of directors.

Cape Town, the \_\_\_\_\_ day of \_\_\_\_\_ 183

C. D., Chairman of the Council.  
E. F., Treasurer of the College.

Loss of certi-  
ficate.

12. And be it further enacted that whenever it shall be made to appear to the council of directors that any certificate of share had been lost or destroyed, the said council shall upon the application of the shareholder entitled thereto and upon payment of the sum of ten shillings sterling, which shall go to the funds of the said college, grant a new certificate of such share, and which certificate shall set forth that the same hath been granted upon such application and that it has been made to appear that the original certificate had been lost or destroyed.



13. And be it further enacted that it shall and may be lawful for the council of directors to appoint professors duly qualified for the classes or departments now or which shall under any of the provisions of this ordinance be hereafter instituted, and if they shall see fit to do so to appoint assistant professors of such classes or departments; and such professors or assistant professors at any time to discharge for immoral or improper conduct or for non-fulfilment by such professor or assistant professor of his engagements with the council of directors: Provided, however, that no such professor or assistant professor shall be discharged as aforesaid until his case shall have been inquired into and reported upon by the senate hereinafter appointed and until twelve directors upon such report, at a meeting of the council duly called, shall have resolved by a majority of votes that such professor or assistant professor shall be so discharged.

Professors.  
appointment  
of.

14. And be it further enacted that it shall and may be lawful for the council of directors from time to time to establish professorships in theology and in such branches of literature and science as they shall see to be for the interest of the said South African College whenever the funds of the said college shall enable them so to do, such professorships to be subject to the provisions of this ordinance so far as the same be applicable thereto. And it shall and may be lawful for any person or persons or any body or bodies politic, corporate, or others to found such professorships, provided that the same shall be under the entire control of the said council of directors and shall be in like manner subject to the provisions of this ordinance.

Professorships,  
establishment  
of.

15. And be it further enacted that it shall and may be lawful for the council of directors to establish a schedule of fees to be charged by each professor respectively for each pupil who shall enter the class or classes under his charge, and which shall be chargeable accordingly, except as herein provided with regard to free pupils whom the Governor of this colony for the time being may appoint in virtue of the provisions of the forty-fifth section of this ordinance: Provided, however, that it shall and may be lawful for the said council with the consent of the senate to alter such schedule from time to time as circumstances may require, in such manner, however, that the same shall not interfere with any engagement which shall have been entered into by the council with any professor in the college unless such professor shall con-

Fees payable  
by students,  
regulation of.

sent thereto; and provided, further, that if any pupil shall apply to be entered in any particular class after the expiration of six calendar months from the commencement of the college session in any year he shall be chargeable only with a moiety of the fees chargeable as aforesaid.

Rules and by-laws.

16. And be it further enacted that it shall and may be lawful for the council of directors to make such rules, orders, regulations, and by-laws and take such steps for the management of the interests and affairs of the said college as shall seem to them expedient, provided the same be not repugnant to law and to the provisions of this ordinance, and provided the same be not repugnant to the power and authority hereinafter granted to and reposed in the senate of the said college.

Buildings, erection or purchase of

17. And be it further enacted that it shall and may be lawful for the council of directors by and in the name of the chairman for the time being, having previously obtained the consent of a majority of the shareholders at a general meeting convened in terms of the twenty-fifth section of this ordinance, to erect or purchase such buildings as shall be necessary for the said South African College; and it shall be lawful for the said council of directors to alter, pull down, or sell any such buildings, and to alienate such part of the joint-stock of the said college after having in like manner obtained the consent of a majority of the shareholders, but not otherwise.

Increase of capital.

18. And be it further enacted that it shall and may be lawful for the council of directors by and with the consent of a majority of the shareholders at any general meeting convened in manner provided by the twenty-fifth section of this ordinance to increase the capital of the said South African College by creating such number of additional shares of ten pounds each as they shall deem advisable; in taking which the persons then being shareholders shall be entitled to the preference before others, and such additional shares when taken and paid shall be subject to all the provisions of this ordinance, and shall entitle the holders thereof to the same benefits, rights, and privileges in respect thereof as if the same had been originally subscribed for at the establishment of the said college.

Minute-book of council.

19. And be it further enacted that the council of directors shall keep a book wherein shall be entered in the English language (whereof translations into Dutch if required shall be

made) all the proceedings and resolutions duly had and taken by them; which proceedings and resolutions shall be drawn up at the time when the same shall have been had and taken by their secretary: and marked with the initials of the chairman then presiding; and which shall be entered by the said secretary in the said book and signed by the chairman or acting chairman at the next meeting of the said council. And the said book shall be open for the inspection of the shareholders at the general annual meeting, for which purpose the same shall lie open at the said meeting and during three days previous thereto at the college between the hours of ten in the morning and four in the afternoon.

20. And be it further enacted that all actions and suits and all other proceedings at law to be commenced or instituted for and on behalf of the council of directors of the said college against any person or persons, bodies politic or corporate, or others, whether shareholders under this ordinance or otherwise, for recovering any debts or enforcing any claims or demands due to the said council of directors, or for any other matter relating to the concerns of the said college shall and lawfully may after the passing of this ordinance be commenced or instituted and prosecuted to a final judgment or sentence in the name of the treasurer of the South African College as the nominal plaintiff, applicant, or petitioner, for and on behalf of the council of directors, and shall and lawfully may, subject to the provisions of the Ordinances Nos. 40 and 73 or of any law or ordinance 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 council of directors or the shareholders aforesaid jointly; and that no action or other proceeding shall abate, discontinue, or be rendered ineffectual by reason of the death or resignation of such treasurer; but the treasurer for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such action, suit, or other proceeding 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 shareholders under this ordinance or otherwise, against the said council of directors or against the said shareholders jointly, shall and lawfully may be commenced, instituted, and prosecuted to a final judgment or sentence

Actions by and  
against coun-  
cil.

against the said treasurer of the South African College as the nominal defendant or respondent for and on behalf of the said council of directors or of the shareholders aforesaid, and not against the council of directors or any of them or against the shareholders or any of them.

**Treasurer.**

21. And be it further enacted that the council of directors shall at their first meeting held after the general annual meeting in each year elect by a majority of votes of directors present an honorary treasurer for the ensuing college year, who shall administer the funds of the said college in such a manner as the said council shall direct from time to time, and who shall give any and such security in respect of his office and shall execute the same under such regulations as the council shall and may from time to time make, declare, and publish: Provided, however, that whenever the funds of the said college shall permit, the shareholders shall at a general meeting to be held for that purpose elect a treasurer as the bursar with such salary as such meeting shall determine, who shall from thenceforth discharge the office of treasurer, instead of such honorary treasurer so to be elected by the council of directors as aforesaid.

**Disqualification of directors.**

22. And be it further enacted that any director who shall become insolvent or have been absent from the colony for three months or shall cease to be a shareholder, in any such case such director shall become disqualified and his office shall become vacant.

#### OF THE SHAREHOLDERS.

**Transfer of certificates.**

23. And be it further enacted that it shall and may be lawful for any shareholder to assign and transfer his share or shares by endorsement upon the certificate, specifying the person or persons to whom the same is or are transferred: Provided, however, that no such endorsement shall be valid to transfer any right or title thereto or advantage therefrom until such endorsement shall have been duly registered by the secretary of the directors, and three of the directors shall have certified on the back of the said certificate their consent to such transfer.

**Succession to certificates.**

24. And be it further enacted that the heirs or legatees of any shareholder who shall die shall thereupon and upon the production of his certificate of share be entitled to be registered as the holder thereof, whereupon the secretary of the directors shall certify upon the said certificate that

such person or persons have become by the death of such shareholder entitled to the same.

25. And be it further enacted that a general meeting of the shareholders shall be held at the South African College on the second Tuesday of the month of January in each year at one o'clock in the afternoon, at which the council of directors shall lay before the meeting a report of their proceedings and of the state of the affairs of the college during the preceding year, and at which it shall be competent for the shareholders then present, upon motion duly made and seconded, to consider, resolve, and determine on any matter relating to the said college under, by virtue, and in pursuance of the several provisions of this ordinance; and a general meeting of the shareholders shall be held at any time, provided the council of directors shall give notice thereof and of the purpose for which the same is to be held fourteen days at the least before the same shall take place in the Government Gazette of this colony; and the council of directors shall call a general meeting of the shareholders within seven days after having been thereto required by a requisition in writing delivered to the chairman and any two directors, setting forth the purpose for which the same is to be held, signed by not less than twelve of the shareholders, and of which meeting a like notice shall be published in the said Gazette not less than fourteen days and not more than twenty days before the same shall be held: Provided that it shall not be lawful for any general meeting, either annual or special, to pass any resolution whereby any of the provisions of this ordinance shall be virtually repealed, altered, or rendered ineffective, or whereby any resolution duly passed at any general meeting during the preceding twelve months shall be repealed, altered, or rendered ineffective, or which shall be inconsistent with any engagement duly entered into by the council of directors with any person or persons relative to any matter whatever: And provided that no business shall be transacted at any general meeting whether annual or special, unless there shall be then present not less than twelve shareholders duly entitled to vote.

26. And be it further enacted that in all matters submitted to the consideration of any general meeting of the shareholders each holder of one share shall be entitled to one vote, and each holder of two shares shall be entitled to two votes; and no shareholder shall be entitled to more

General  
meetings of  
shareholders.

Votes of and  
by sharehold-  
ers.

than two votes : Provided that no person shall be entitled to vote in respect of any share or shares until his name shall have been registered in the books of the said college for a period of three months as the proprietor thereof; and that no person shall be entitled to vote or interfere in the discussions of any such meeting unless he shall have been duly in such manner registered as the proprietor of a share or shares, and shall have paid all claims due by him to the council of directors, and unless he shall be present at such meeting.

Resolutions of meetings.

27. And be it further enacted that the resolutions of the shareholders duly passed at any public meeting called in conformity with the provisions of this ordinance, carried by a majority of votes, shall be binding upon the whole of the shareholders in like manner as if each had been present and had consented to such resolution.

Minutes of meetings.

28. And be it further enacted that all proceedings and resolutions of any general meeting of the shareholders shall be taken down, and shall previous to the dissolution of such meeting be signed by the chairman, and when so signed shall be entered by the secretary of the council of directors in the minute book of their proceedings.

Chairman of meetings.

29. And be it further enacted that the shareholders present at any general meeting, whether annual or special, shall before they proceed to business elect from among themselves a chairman to preside thereat, who in case the votes of the shareholders shall be equally divided upon any particular question shall be entitled to a casting vote; but such chairman while in the chair shall not be authorized to enter into the discussion of any question before the meeting.

List of shareholders.

30. And be it further enacted that an alphabetical list of the shareholders shall be made out from the shareholders' book, certified as correct by the secretary, and shall be laid upon the table previous to and remain during the proceedings of any general meeting of the shareholders.

#### OF THE PROFESSORS.

Professorships.

31. And be it further enacted that there shall be in the said college :

- 1st, A professor of English and classic literature ;
- 2nd, A professor of Dutch classic literature and of modern languages ;
- 3rd, A professor of physical sciences ; and
- 4th, A professor of mathematics.

32. And be it further enacted that each of the said professors, so long as his engagement with the South African College shall continue, shall be entitled to receive out of the funds of the said college a salary of one hundred pounds sterling per annum, to be paid by four instalments, to wit: Upon the 1st day of January, the 1st day of April, the 1st day of July, and the 1st day of October in each year. Salaries of professors.

33. And be it further enacted that no professors aforesaid shall be compelled to open any class in the said college until six pupils at the least chargeable with fees shall have offered themselves for the same and paid the fees chargeable as hereinbefore provided for and in respect of such class. Opening of classes.

34. And be it further enacted that it shall not be lawful for any professor to vacate his office in the said college until he shall have given twelve months' previous notice of such his intention to the said council; and that if he shall do so without such notice having been given as aforesaid he shall thereby incur and be liable to pay to the council of directors a penalty of fifty pounds sterling: Provided, however, that in the event of the council of directors failing to pay to such professor his salary as the same shall become due or within one calendar month thereafter it shall and may be lawful for such professor thereupon to vacate his office without having given such previous notice. Resignation by professors.

#### OF THE SENATE.

35. And be it further enacted that the superintendence and regulation of the discipline and instruction in the several departments and classes in the said college shall be intrusted to and reposed in a senate consisting of two directors elected annually by the council of directors, and who shall be so elected by a majority of votes of directors present at a meeting thereof within eight days after the general annual meeting in each year, and of the respective professors of the college for the time being: Provided, however, that should the council of directors at any time fail to elect such two directors or either of them to be members of the said senate it shall and may be competent for the professors aforesaid to perform such matters as the senate is by any of the provisions of this ordinance empowered to perform, in like manner as if such two directors or either of them had been duly elected by the said council and had acted as members of the said senate. Senate of superintendence.

Power of  
senate.

36. And be it further enacted that it shall and may be lawful for the senate to fix from time to time the hours and days when the classes respectively shall be open ; to appoint and determine what books shall be used or read and what subjects shall be taught in the said classes ; to divide the said college into such classes as they shall see to be necessary in order to carry into effect the objects of the institution ; to make arrangements for the due and regular matriculation of the pupils attending the said college ; to examine the respective classes in the said college at such times as they shall appoint and to grant to such pupils as they shall think deserving a certificate of the progress made by and the behaviour of such pupils respectively ; to take such measures and inflict such punishments as shall be found necessary by them for the maintenance of due order and discipline in the said college, and to dismiss any pupil when they shall see it to be necessary.

References by  
senate to coun-  
cil.

37. And be it further enacted that it shall and may be lawful for the senate by a majority of votes to refer any matter within their jurisdiction to the decision of the said council of directors, who shall thereupon consider and determine thereon, and the decision of the said council of directors upon such matter so referred to them shall be final.

Additional  
classes.

38. And be it further enacted that it shall and may be lawful for the senate at the commencement and also about the middle of every college session to determine what classes in addition to the regular establishment of the said college shall be opened therein.

Meetings of  
senate.

39. And be it further enacted that the senate shall meet within seven days after each general annual meeting, and on a certain day in each week at all times whilst the college classes shall be open, and at such other times as they shall see fit ; and they shall at their first meeting after such general annual meeting fix the particular day of the week on which they shall meet regularly during the current college year, and shall at such meeting elect one of their number to be the chairman, who shall preside at their meetings during such current college year unless he shall happen to be absent from any meeting, when the senate shall elect another member to preside at such meeting ; and in case of an equality of votes such chairman or member so presiding shall have an original and the casting vote.



40. And be it further enacted that three members of the senate shall be a quorum and shall be competent to perform all business which may be done by the senate under the provisions of this ordinance. Quorum of senate.

41. And be it further enacted that the senate shall enter in a book to be kept for that purpose a minute of all their proceedings in the English language (which minute they shall if they see proper translate into Dutch and enter such translation in the said minute book); and the minutes taken at any particular meeting shall previous to the dissolution thereof be signed by the chairman or member at the time presiding. Minutes of the senate.

42. And be it further enacted that the senate shall appoint their secretary, and shall also appoint a janitor who shall be in attendance at the college at all times when the classes shall be open; and the senate shall and may discharge such janitor at any time when they shall see fit, and the council of directors shall pay to such janitor while in office such salary as they shall fix, not less however than fifty pounds sterling per annum. Secretary and janitor.

43. And be it further enacted that the senate shall at each quarterly meeting of the council of directors lay before them the minutes of their proceedings kept by them from time to time; and it shall and may be lawful for the said council at any meeting thereof duly held to call upon the senate to produce such minutes, whereupon the said senate shall produce the same; and it shall and may be competent for the council at any such meeting, whenever it shall be made to appear to them that the said senate have committed any violation of the provisions of this ordinance or of any rules or regulations duly made under and by virtue thereof, to make such resolutions thereupon as they shall see to be necessary and to restrain the said senate from doing any act whereby the same would be violated. Report of proceedings by the senate to the council.

#### OF THE PUPILS.

44. And be it further enacted that no pupil shall be admitted into the said college under the age of ten years, and unless he shall have been found by the senate to have attained such a degree of scholarship as shall be approved by them, whereupon he shall receive from them a certificate of his fitness to be admitted as such pupil; whereupon, and upon payment to the treasurer of such sum as the council by any Matriculation of pupils.

regulation by them from time to time made shall fix, not however exceeding the sum of one pound annually, exclusive of the fees which shall be payable to the professor or professors in respect of the classes for which he may enter himself, to be applied in the purchase of books, stationery, and other articles as may be required for the institution, the treasurer shall grant to such pupil a certificate thereof, which shall be received as satisfactory proof that such pupil has been entered for such year upon the establishment of the college, and shall be entitled upon payment of the fees chargeable in respect thereof to be entered as a pupil of any class which shall be then open in the college.

Free pupils.

45. And be it further enacted that it shall and may be lawful for the Governor of this colony for the time being to enter in the said college such number of free pupils as he shall think proper, not however exceeding five in the whole at any time when there shall be not more than fifty pupils in the college chargeable with fees to the professors, and not exceeding ten in the whole at any time when there shall be more than fifty pupils chargeable with such fees; and every such free pupil being upwards of ten years of age, and having attained such degree of scholarship as shall be approved by the senate, shall upon payment of such fee annually as it is provided by the forty-fourth section of this ordinance to be paid by each pupil to the treasurer be authorized to enter any class which shall be open at the time in the college, without payment of any fee in respect of any class belonging to the regular establishment of the college: Provided, however, that such free pupil shall be required to pay to the teacher of writing, drawing, or other department not forming part of the regular establishment of the college such fee as shall be payable in respect thereof by the other pupils respectively attending the said college.

Opening of  
daily business.

46. And be it further enacted that the daily business in the college shall be commenced by worship of God, to consist of reading the Holy Scriptures and prayers, to be conducted as heretofore by members of the senate being professors in rotation; and that two members of the senate at the least shall be present at such worship.

Duration of  
ordinance.

47. And be it further enacted that this ordinance shall be and remain in full force, virtue, and effect for and until the expiration of twenty-one years and no longer, and shall be

deemed and taken to be a public ordinance, and shall judicially be taken notice of as such by all judges, magistrates, and others without being specially pleaded.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, 21st December, 1837.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 12.—Sd. B. D'Urban.] [21st Dec., 1837.

Ordinance for continuing the Toll at Kaayman's Gat, until the First Day of February, 1840.

[Expired.]

No. 13.—Sd. B. D'Urban.] [28th Dec., 1837.

Ordinance for applying a Sum not exceeding £144,038, 7s. 2d. to the Service of the Year 1838.

No. 1.—Sd. G. T. Napier.]

Ordinance for repealing the Ordinance entitled "An Ordinance for the better observance of the Lord's Day in this Colony," and dated the 23rd day of August, 1837, and for making other provisions instead thereof.

WHEREAS it is expedient to repeal the Ordinance No. 4, of 1837, entitled "An Ordinance for the better observance of the Lord's Day in this Colony," and dated the 23d day of August, 1837, and to make other provisions for the better

observance of the Lord's day in this colony instead thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council, that from and after the passing of this ordinance the said Ordinance No. 4, of 1837, shall be and the same is hereby repealed.

Dealings forbidden on the Lord's day.

2. And be it enacted that from and after the passing of this ordinance it shall not be lawful for any person to sell or offer for sale any goods, merchandize, cattle, or other live-stock, or to trade or deal or keep open any shop, store, or other place for the purpose of trade or dealing, or to cut or carry any fuel or to engage in field labour, except for the preservation of the fruits of the earth in cases of urgent necessity, or (except upon some lawful occasion) to discharge any gun or other fire-arm on the Lord's day; and any person who shall sell or offer for sale any goods, merchandize, cattle, or other live-stock, or shall trade or deal or keep open any shop, store, or other place for the purpose of trade or dealing, or shall cut or carry any fuel, or shall engage in any field labour except as aforesaid, or shall discharge any gun or other fire-arm except as aforesaid on the Lord's day, shall for each offence incur and be liable to a fine not exceeding three pounds nor less than five shillings, or to imprisonment for any period not exceeding fourteen days; and it shall be lawful for any constable or police officer to seize any such goods, merchandize, cattle, or live-stock, or any fuel or fire-arm as aforesaid, and the same shall on the conviction of the offender be and become forfeited to Her Majesty.

Dealings permitted on the Lord's day.

3. Provided always and be it enacted that it shall be lawful for any apothecary, chemist, or druggist to vend any medicines or drugs and to keep open his shop, store, or other place for the purpose of vending the same on any part of the Lord's day; and provided, also, that it shall be lawful for any licensed inn-keeper or eating-house-keeper to keep open any inn or eating-house and to supply any person who is a traveller or lodger at such inn or eating-house with the necessary provisions on any part of the Lord's day; and provided, also, that it shall be lawful for any butcher or baker respectively to vend meat and bread and to keep open any shop, store, or other place for the purpose of vending the same on the Lord's day at any time before nine o'clock in the morning; and for any dairyman or fishmonger respectively

to vend milk and fish and to keep open any shop, store, or other place for the purpose of vending the same on the Lord's day at any time before nine o'clock in the morning and after four o'clock in the afternoon.

4. And be it enacted that nothing herein contained shall extend to prevent any contractor from supplying on the Lord's day Her Majesty's naval or military forces with any article specified in his contract, nor to prevent any ship-chandler from supplying any ship with anchors, cables, or anything which they may stand in need of in cases of necessity.

Naval and  
military sup-  
plies.

Ship supplies.

5. And be it enacted that no market shall be held nor shall any goods, merchandize, cattle, or other live-stock be allowed to be sold or offered therein for sale on the Lord's day; and any market-master or other person in charge of any market who shall knowingly permit any market to be held or shall wilfully suffer any goods, merchandize, cattle, or other live-stock to be sold or offered for sale in any such market upon the Lord's day shall for each offence incur and be liable to a fine not exceeding three pounds nor less than five shillings, or to imprisonment for any period not exceeding fourteen days.

Markets on  
Lord's day  
prohibited.

6. And be it enacted that the owner or occupier of any public billiard-room, skittle-ground, or other public place of amusement who shall permit or suffer any one to play in his house or premises at any game on the Lord's day shall incur and be liable to a fine not exceeding ten pounds nor less than five shillings, or to imprisonment for any period not exceeding one month; and it shall be lawful for any resident magistrate, justice of the peace, field-cornet, or police officer to disperse all persons gathering together on the Lord's day in any public or open place for the purpose of gambling, fighting dogs or cocks, or playing at any game, and to take and seize any implements, instruments, or animals used therein, and to destroy or carry away the same; and all persons actually gambling, fighting dogs or cocks, or playing as aforesaid he shall arrest or cause to be arrested, and the said persons shall on conviction thereof be sentenced to a fine not exceeding three pounds nor less than five shillings, or to imprisonment with or without hard labour for any period not exceeding fourteen days.

Amusements  
prohibited on  
Lord's day.

7. And be it enacted that all offences against this ordinance shall be cognizable by the court of the resident magistrate of the district or place in which such offences

Offences before  
whom to be  
tried.

Fines, appli-  
cation of.

shall be committed, and by the resident justice of the peace of Simon's Town if committed within his jurisdiction; and that it shall and may be lawful for the said Governor in each particular case to determine, award, and direct what share if any of the amount of any fine or forfeiture recovered in respect of any conviction for any such offence as aforesaid shall be paid to any person who may have given information concerning the same.

Sections of po-  
lice ordinance  
repealed.

8. And be it enacted that the fourteenth, fifteenth, and sixteenth sections of the Ordinance No. 48, entitled "Ordinance of His Honour the Lieutenant-Governor in Council for establishing an executive police in Cape Town and the district thereof, and for consolidating and amending the laws and regulations relating thereto," and dated the third day of July, 1828, shall be and the same are hereby repealed.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, 22nd March, 1838.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 2.—Sd. George Napier.]

Ordinance for Regulating the Sale of Bread.

Bread to be  
sold by weight.

WHEREAS it is expedient that bread should be sold by weight within this colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the fifteenth day of October next it shall not be lawful for any baker or vender of bread to sell any bread other than French or fancy bread and rolls except by weight, any law or usage to the contrary notwithstanding.

Weight to be  
stamped on  
bread.

2. And be it enacted that all bread except French or fancy bread and rolls shall be stamped with figures denoting one or other of the following weights, to wit,— $\frac{1}{4}$  lb.,  $\frac{1}{2}$  lb.,

1 lb., 2 lbs., and 4 lbs., and which said weights shall respectively be of the standard Dutch weight of this colony; and if any baker or vender of bread shall sell any bread except as aforesaid which shall not weigh so much as the figures stamped thereon indicate he shall forfeit a sum not exceeding two pounds sterling for each offence.

3. And be it enacted that every baker or vender of bread shall cause to be fixed in some conspicuous part of his shop on or near the counter a beam and scales with standard Dutch weights or other sufficient balance, in order that all bread except as aforesaid there sold may from time to time be weighed in the presence of the purchasers thereof if they shall so require; and if any baker or vender of bread shall neglect to fix such beams and scales or other sufficient balance in manner aforesaid, or to provide and keep for use a proper beam and scales and proper weights or balance, or shall use any false weight, or shall not weigh bread sold in his shop when required so to do by a purchaser, he shall forfeit a sum not exceeding five pounds sterling for each offence.

Means of weighing to be provided.

4. And be it enacted that nothing herein contained shall extend or be construed to extend to the sale of bread supplied for the use of Her Majesty's naval or military service.

Ordinance not to apply to navy or army.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 26th September, 1838.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 3.—Sd. George Napier.]

[29th Sept., 1838.

Ordinance for fixing the Termination of certain Apprenticeships and for providing for the destitute Children of Apprenticed Labourers.

[Expired. As to destitute children, *vide* Act No. 15, 1856.]

No. 1.—Sd. George Napier.]

[23rd Jan., 1839.

Ordinance for erecting certain Resident Magistrates' Courts within the Western Division of this Colony and for defining the Jurisdiction thereof.

[Repealed by Act No. 20, 1856.]

No. 2.—Sd. George Napier.]

Ordinance for authorizing the appointment of a Vestry and Churchwardens for St. George's Church Graham's Town.

WHEREAS it is expedient that the inhabitants of Graham's Town and the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the church of Graham's Town commonly called St. George's Church, and that the said vestry and churchwardens after having been duly appointed should possess, certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of church committee as at present constituted should cease and determine:

Vestry, ap-  
pointment of.

1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Tuesday in March after the passing of this ordinance and annually afterwards on the same day a general meeting of the male inhabitants of Graham's Town aforesaid and of the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as by law established shall be holden in Graham's Town, notice whereof shall be given by the minister of the said church for the time being by advertisement in one of the public papers of this colony at least fourteen days before the said meeting is to be holden, for the purpose of electing a vestry; and it



shall and may be lawful for the inhabitants as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons not exceeding eight in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected to be auditors of the accounts of the said vestry. Auditors.

3. And be it further enacted that every male inhabitant householder being a member of and holding communion with the church aforesaid and resident in Graham's Town or within the parochial limits thereof shall be eligible to be a member of the said vestry. Qualification of vestrymen.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided then by the minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place. List of persons qualified.

5. And be it further enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the name of the persons for whom they vote to be elected as vestrymen and as auditors. Voting, mode of.

6. And be it further enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own. Chairman of vestry.

7. And be it enacted that five members of the said vestry or four members besides the chairman shall form a quorum and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this ordinance. Quorum of vestry.

8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted Powers of vestry as to rules, &c.

and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties, and for more effectually executing the provisions of this ordinance, and also to take such order for the management of the said church as shall to them seem expedient, provided that the said rules, orders, or by-laws contain nothing repugnant to law or the tenor of this ordinance or to the customs and usages of the United Church of England and Ireland as by law established.

Custody of  
papers, &c.

9. And be it enacted that the said church committee shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control, and the said church committee and the office and duties thereof shall thereupon cease and determine.

Powers of  
vestry as to  
church.

10. And be it enacted that the said vestry so from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise all the same powers, and rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as are now possessed and exercised by the church committee together with such other laws and rights and duties as are hereinafter specified.

Powers of  
vestry as to  
money and  
contracts.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order, and by virtue of any of the provisions of this ordinance and in their own names to make and enter into, perform and execute, or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Actions by  
vestry.

12. And be it enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent court in this colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever, and all such suits and actions shall and may be brought by them in the name of the vestry of St. George's Church at

Graham's Town, without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal or going out of office of any individual members thereof.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust, or shall arise or accrue to any person whatsoever against the said vestry, shall be brought by such person in manner and in name aforesaid, and not against any individual member of the said vestry.

Actions against vestry.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter money received and paid by them under and by virtue of the provisions of this ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid and published if requisite for general information.

Accounts of vestry.

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon after as conveniently may be choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof, and for providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the United Church of England and Ireland so far as the same may be applicable to this colony.

Churchwardens, appointment and duties of.

16. And be it further enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church and congregation; and the said churchwardens together with the officiating minister for the time being shall faithfully

Accounts of churchwardens.

administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same; and the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Tenure of office by churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be re-eligible in case they are continued as members of the vestry.

Vacancies in vestry.

18. And be it further enacted that in case any member of the vestry shall die, or desire to resign, or shall be removed, or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying, or desiring to resign, or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Free sittings.

19. And be it enacted that there shall be set apart in the said church and allotted to the chief civil and military authorities resident at Graham's Town and to the minister of the said church respectively a pew sufficient to contain eight persons, and likewise for the use of the officers of the garrison pews sufficient for sixteen persons; and there shall likewise be reserved in some convenient part of the church an adequate number of free sittings for the use of the troops and the accommodation of poor people.

Sittings to let.

20. And be it further enacted that all the pews and sittings in the said church, with the exception of those

allotted and reserved as aforesaid, shall and may be let by the vestry by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to them respectively by the vestry, and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hinderance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable: Provided, always, that nothing in this section shall be construed to interfere with any persons at present holding free sittings on the ground of office.

21. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive from recovering the amount of such rent in arrear by action in any competent court.

Non-payment  
of rent.

22. And be it further enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground unconsecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose.

Burial-places.

23. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto or vaults to be dug and made in the said burial-ground, upon payment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof.

Monuments  
and vaults,  
erection of.

Monuments  
and vaults,  
maintenance  
of.

24. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vault in the said burial-ground by and with such permission as aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglects to repair the same it shall and may be lawful after a general notice of such intention to remove the same.

Public ordi-  
nance.

25. And be it enacted that this ordinance shall be deemed and taken to be a public ordinance and shall be judicially taken notice of by all judges, magistrates, and others without being specially pleaded.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, 23rd January, 1839.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Council,

(Signed) CHARLES BELL,  
Acting Clerk of the Legislative Council.

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MARRIAGE ORDER IN COUNCIL IN FORCE IN THIS COLONY  
FROM THE 1ST FEBRUARY, 1839.\*

*At the Court at Windsor, the 7th Day of September, 1838.*

PRESENT:

The QUEEN's most Excellent Majesty.

The Lord Chancellor.		The Viscount Palmerston.
Earl of Albemarle.		Viscount Melbourne.
Viscount Falkland.		Lord Glenelg.

WHEREAS since the abolition of slavery throughout the British colonies, plantations, and possessions abroad the marriage laws of the said colonies, plantations, and possessions

\* Vide further, as to the Law of Marriage, Act No. 16 of 1860.

have been found inappropriate to the altered condition thereof and inadequate to the increased desire for lawful matrimony therein: And whereas it is expedient and necessary to amend the said marriage laws and to adapt the same to the altered state and condition of society in the said colonies, plantations, and possessions:

2. It is therefore hereby ordered by the Queen's Most Excellent Majesty, by and with the advice of her Privy Council, that from and after the taking effect of this Order it shall be lawful for any minister of the christian religion, ordained or otherwise set apart to the ministry of the christian religion according to the usage of the persuasion to which he may belong, to publish within the colonies of British Guiana, Trinidad, St. Lucia, the Cape of Good Hope, and Mauritius, or any of them, banns of marriage between persons desirous of being joined together in matrimony, and such publication shall be made in an audible manner some time during public divine service on a Sunday in the face of the congregation before whom such minister shall officiate in the parish in which both or one of the parties to be married shall dwell, and shall contain the christian and other name and surname and place of abode of each of the said parties, and shall be so published by some such minister for three Sundays preceding the solemnization of the marriage during the morning service if there be service in the morning, or if there shall be no morning service then during the evening service.

Banns publication of before marriages.

3. And if the parties to be married shall dwell in different parishes the banns shall be published in like manner in both such parishes; and if the said parties shall be of different persuasions the banns shall be published in like manner before each of the congregations to which the said parties may respectively belong, whether both the said congregations shall assemble in the same parish or not.

Publication of banns in different parishes and churches.

4. And where one or both of the parties shall dwell in any extra-parochial place then if there be a congregation of the persuasion to which any such party shall belong assembling for public divine worship as aforesaid in such extra-parochial place the banns of the party or parties dwelling in such extra-parochial place shall be published in manner aforesaid in such extra-parochial place.

Publication of banns in extra-parochial places.

5. And if there shall be no such congregation in such extra-parochial place then the banns of such of the parties to be married as shall dwell in such extra-parochial place shall be

Publication of banns in extra-parochial places, continued.

published in manner aforesaid in some parish next adjoining to such extra-parochial place.

Certificate of proclamation.

6. And in cases where the banns shall have been published in different places the officiating minister at either of the said places shall on the request of both or either of the parties whose banns shall have been published as aforesaid give to the party requiring the same a certificate of the banns having been duly published in the place of which he is an officiating minister, and on the production of such certificate to the officiating minister of the other place where the banns were published or of such certificates to any other such minister as aforesaid in the parish or extra-parochial place to which one of the parties shall belong it shall be lawful for such minister where the banns were published on receiving such certificate from such other minister where the banns were published, or for such minister as aforesaid to whom the certificates of such ministers of both places where the banns were published [shall be produced] on receipt of such certificate or certificates (as the case may be) to solemnize matrimony between the said parties according to such form and ceremony as shall be in use or be adopted by the persuasion to which the minister solemnizing such marriage shall belong.

Celebration of marriage.

Declaration by parties.

7. Provided that whenever the form and ceremony used shall be other than that of the United Church of England and Ireland each of the parties shall in some part of the ceremony make the following declaration :

“I do solemnly declare that I know not of any lawful impediment why I, A.B., may not be joined in matrimony to C. D., here present.”

And each of the parties shall say to the other :

“I call upon these persons here present to witness that I, A.B., do take C.D. to be my lawful wedded wife (or husband).”

Notice of names and abode of parties.

8. And it is hereby further ordered that no minister shall be obliged to publish banns between any persons whomsoever unless the persons to be married shall two days at least before the time required for the first publication of such banns respectively deliver or cause to be delivered to such minister a notice of their true christian and other names and surnames, and a description of their place or respective places of abode in such parish or extra-parochial place as aforesaid, and of the time during which they have dwelt in such place or places.



9. And that it shall not be lawful for any minister to solemnize any marriage after three calendar months from the last publication of banns of such marriage; and in all cases where three calendar months shall have elapsed without the marriage having been solemnized, the publication of such banns shall be void; and before the said parties can be married by banns it shall be necessary to republish the banns anew in manner and form aforesaid as if no banns had ever been published between them.

Marriage to be within three months of publication of banns.

10. And be it further enacted that no such minister as aforesaid who shall solemnize any marriage after due publication of banns as aforesaid between persons both or one of whom (not being a widow or widower) shall at the time of such marriage be under legal age, shall be answerable or responsible or liable to any pain, penalty, or proceeding for having solemnized such marriage without the consent of the parents or guardians or other person (if any) whose consent is required by law, unless such parents or guardians or other person or one of them shall forbid the marriage, and give notice thereof to such minister before he has solemnized the same; and in case such marriage shall be forbidden as aforesaid and such notice shall be given as aforesaid the publication of the banns for such marriage shall be absolutely void.

Marriage of minors.

11. And it is hereby further ordered that where by any law in force or which may hereafter be in force in any of the colonies to which this order applies by which licences for marriage without the publication of banns may be granted or issued in any such colony by the governor thereof or any other civil authority therein, it shall be lawful for the parties intending marriage or either of them to require that such licence shall authorize the solemnization of the marriage in respect of which such licence is applied for in any place where and by any minister by whom such marriage could have been solemnized by virtue of this act if banns thereof had been published as aforesaid.

Special licences.

12. And whereas it may happen that in some of the colonies to which this order applies or in some parts thereof respectively there may not be any such minister as aforesaid or not a sufficient number of such ministers to afford convenient facilities for marriage, and it is expedient to provide for such cases, it is therefore further ordered that in every such case and whenever the same shall happen in any of the said colonies it shall be lawful for the governor of such colony to appoint by writing under his hand and

Marriage officers. appointment of.

official seal one or more such fit and proper person or persons as he shall from time to time deem necessary or expedient, to be called the marriage officer, to solemnize marriages within such part or parts of the colony in which such appointment shall be made as the governor shall from time to time direct; and it shall be lawful for the governor at any time and from time to time to revoke and cancel any such appointment or appointments, and to alter, vary, enlarge, or contract the district or districts in which any person so appointed shall have power or jurisdiction to celebrate marriage for any cause which to him shall seem meet; and every such appointment shall specify the part or district within which the person thereby appointed shall have power and jurisdiction to celebrate marriage.

Marriage before marriage officer.

13. And until some law shall be made, passed, allowed, and promulgated for regulating marriages by persons so appointed, it shall be lawful for the governor and he is hereby, required to direct, declare, and promulgate the manner by which the intention of parties to marry before any such marriage officer shall be made public.

Marriage of minors before officer.

14. Provided, always, that it shall not be lawful for any such marriage officer to solemnize marriage between persons one or both of whom shall be under lawful age (unless in the case of a widow or widower) after such marriage shall be forbidden, and notice thereof given to him by any person having lawful authority to forbid the same.

Declaration by spouses before officer.

15. Provided, always, that in every marriage before any such marriage officer not celebrated according to the form of the United Church of England and Ireland the parties shall in some part of the ceremony respectively make the declarations hereinbefore set forth as in the case of marriage by any such minister as aforesaid.

Marriage officer co-ordinate with ministers.

16. Provided, also, that every such minister as aforesaid may nevertheless publish banns and celebrate marriage under and by virtue of this order in any part or district within which any such marriage officer shall have power or jurisdiction to celebrate marriage as fully as if no such marriage officer had ever been appointed.

When consent of parents, &c., cannot be had, judicial consent may be given.

17. And whereas it may happen that the parents or parent, guardians or guardian, of one or both of the parties to be married may be *non compos mentis* or absent from the colony or otherwise incapable in law or in fact of consenting or may be induced unreasonably and improperly to withhold his, her, or their consent to a proper marriage, or may be

dead, it is therefore hereby ordered that in case any such parent or guardian whose consent is necessary to a marriage shall be *non compos mentis* or absent from the colony or otherwise incapable as aforesaid of consenting or shall withhold his, her, or their consent to any marriage or in case there shall be no one capable of consenting, it shall be lawful for any person desirous of marriage, to whose marriage such consent is necessary but cannot be given or is withheld, to apply by petition to the chief civil judge or person officiating as such for the time being of the colony, who is hereby empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall upon examination appear to him to be proper the said chief civil judge or person officiating as such shall judicially declare by his order in writing that such marriage is proper and may be solemnized forthwith; and every marriage duly solemnized in pursuance or under the authority or direction of such order shall be as good, valid, and effectual to all intents and purposes whatsoever as if such consent as aforesaid had been duly given thereto.

18. And it is hereby further ordered that after the solemnization of any marriage under or by virtue of this act it shall not be necessary in support of such marriage or in any action, suit, or proceeding when the same may come into question, to give any proof of the actual dwelling of the parties married or of either of them before the marriage or that the banns were published or that the marriage was solemnized in the place and by a person where and by whom the same ought to have been published and solemnized respectively, nor shall any evidence be received to prove the contrary.

Matters not necessary to be proved in regard to a marriage duly solemnized.

19. And it is hereby further ordered that in no case whatsoever shall any suit or proceeding be had in any court or before any jurisdiction whatsoever to compel the celebration of any marriage by reason of any promise or marriage-contract entered into or by reason of seduction or of any cause whatsoever which shall arise after the taking effect of this order, any law or usage to the contrary notwithstanding.

Actions to compel marriage.

20. Provided, always, that nothing herein contained shall prevent any person aggrieved from suing for or recovering damages in any court or by any proceeding wherein and whereby damages may be lawfully recovered for breach of promise of marriage or for seduction or other cause as aforesaid.

Damages in default of marriage.

21. And in order to preserve evidence of marriages and to make the proof thereof certain and easy and for the direction

Hours for marriage.

Register of  
marriages.

of such ministers and marriage officers as aforesaid in the registration thereof, it is hereby further ordered that from and after the passing and taking effect of this order all marriages (except marriages by special licence to marry at any time and place where such special licences can be lawfully granted) shall be solemnized with open doors between the hours of eight in the forenoon and four in the afternoon, in the presence of two or more credible witnesses beside the minister or marriage officer who shall solemnize the same; and that immediately after the solemnization of every marriage an entry thereof shall be made in a marriage-register book to be kept for that purpose by some such minister or marriage officer as aforesaid, or in some safe custody for the place in which marriages may be solemnized, and in every such entry in every such register it shall be expressed that the marriage was had by banns or licence; and if both or either of the parties married by licence be under age and not a widow or widower, that it was had with the consent of the parents, or guardians, or other person or persons having lawful authority to withhold consent to the marriage, or after such order of the chief civil judge or other person officiating as such as aforesaid, and shall be signed by the minister or marriage officer as the case may be with his proper addition, and by the parties married, and shall be attested by such two witnesses; and every such entry shall be in the form or to the effect of the following specimen :

ORIGINAL REGISTER.

1838. Marriages solemnized at George Town, in the Parish  
of in the County of 1838.

No.	When married.	Names and Surnames.	Ages.	Condition.	Rank or Profession.	Residence at the time of marriage.	After Banns or Licence.	Consent, by whom given, or Judge's Order.
1	1st Aug. 1838.	John Williams. Lucy Chambers.	Full Age. Minor.	Bachelor. Spinster.	Car- penter.		After Banns.	Henry Chambers, Father.

Married in the Wesleyan chapel, at George Town aforesaid, after banns by me,

A. B., Wesleyan Minister.

This marriage was solemnized between  
us, { John Williams, } In the presence of us, { C. D.  
{ Lucy Chambers, } { E. F.

and of every such entry, at the same time, before the parties depart shall then and there be made in a separate piece of paper, parchment, or vellum a duplicate original register, in which the same matter shall be entered and signed, and attested by the same parties in manner or to the effect of the following specimen :

DUPLICATE ORIGINAL REGISTER.

1838. Marriages solemnized at George Town, in the Parish  
of in the County of 1838.

No.	When married.	Names and Surnames.	Ages.	Condition.	Rank or Profession.	Residence at the time of marriage.	After Banns or Licence.	Consent, by whom given, or Judge's Order.
1	1st Aug. 1838.	John Williams. Lucy Chambers.	Full Age. Minor.	Bachelor. Spinster.	Car-penter.		After Banns.	Henry Chambers, Father.

Married in the Wesleyan Chapel, at George Town aforesaid, after banns by me,

A. B., Wesleyan Minister.

This marriage was solemnized between  
us, { John Williams, } In the presence of us, } C. D.  
{ Lucy Chambers, } E. F.

Examined with the original register by me, and found to be correct. A. B.

Which said duplicate original register shall be left in the hands of the minister or marriage officer by whom the marriage was solemnized; and every such duplicate original register shall within one calendar month from the date thereof be transmitted to the colonial secretary of the colony if there be one, and all such duplicates shall be filed and safely preserved by him in his office; and every such original register and also every copy thereof, certified under the hand of the minister or marriage officer who for the time being shall have the lawful custody of the original to be a true copy, and every such duplicate original register and also every copy thereof, certified under the hand of such colonial secretary to be a true copy, shall respectively be good evidence of the facts therein recorded in pursuance of this order in and before all courts and proceedings whatsoever in which it shall be necessary to give evidence of the marriage to which the same shall relate.

Searches in  
register.

22. And it is hereby further ordered that it shall be lawful for all persons at all reasonable times in the day (except Sundays) to search the original register-book and also the file of duplicate original registers, in the presence of the person for the time being having the care of the same respectively or his deputy, and to have a true copy or true copies of any entries or entry therein or filed as aforesaid certified under the hand of the minister, marriage officer, or officer for the time being respectively having the custody of the original or duplicate original register as aforesaid (as the case may be), which true copies or copy such minister, marriage officer, or colonial secretary is hereby required to make and certify under his hand to be a true copy in the form of the duplicate original register, except that the same shall be headed "certified copy (or copies) of original (or duplicate original) marriage register" (as the case may be), and shall be dated on the day, month, and year when the same shall be delivered.

Fees payable.

23. And it is hereby further ordered that in order to meet the expense and as a remuneration for the trouble occasioned by the performance of any duty under this order the following fees shall be demandable and payable before the performance of the duty to which the same respectively relate that is to say :

For solemnizing and registering a marriage and transmitting the duplicate original to the colonial secretary, *four shillings*.

For every general search not directed to any particular entry, *four shillings*.

For every search for a particular entry, *two shillings*.

For every search for two or more particular entries, and not exceeding four entries, *one shilling* each.

For every search for any number of particular entries exceeding four, *four shillings*.

For every such certified copy as aforesaid, *two shillings*.

Customary fees  
of clergy.

24. Provided, always, that nothing herein contained shall prevent any clergyman of the established church of England and Ireland from receiving for any duty performed by him under this order such fees or payments as have heretofore been customarily paid to such clergyman according to the rules of the said church for the performance of such duties respectively.

Marriages by  
clergy to be  
according to  
rubric.

25. Provided, always, that nothing in this order contained shall authorize or require any clergyman of the established

church aforesaid to solemnize marriage in any other manner than is prescribed by the rubric.

26. Provided, also, that it shall be lawful for the governor to authorize such marriage officers as aforesaid to receive such further or other remuneration as he shall from time to time think the nature of their duties shall reasonably require.

Remuneration of marriage officers.

27. And it is hereby further ordered that if any person shall unlawfully and maliciously erase, obliterate, or destroy, or cause or procure to be erased, obliterated, or destroyed, any such original register or duplicate original register as aforesaid, such person shall be deemed guilty of a misdemeanour, and on being duly convicted thereof shall be liable to be imprisoned in the common gaol in the jurisdiction in which he shall be tried and convicted thereof for any term not less than three nor exceeding twelve calendar months.

Injury to marriage register.

28. And if any person shall unlawfully and wilfully forge or alter or falsely make or cause or procure or permit to be forged or altered or falsely made any such original register or duplicate original register or any certified copy thereof respectively, or shall knowingly and wilfully deliver, offer, alter, or put off any such forged, false, or altered copy, he shall be liable for such his offence on conviction thereof to be imprisoned in such gaol as aforesaid for any term not exceeding eighteen months nor less than six months.

Falsification of register or certificates.

29. And it is hereby further ordered that it shall and may be lawful for the respective local legislatures of the said colonies of British Guiana, Trinidad, St. Lucia, Cape of Good Hope, and Mauritius, by any ordinance to be by them for that purpose made, to provide for the better adaptation of this present order to the local circumstances of such colonies respectively: \* Provided that such ordinance be not in contradiction or repugnant to any of the provisions of this order, and that all such ordinances be made, confirmed, or disallowed as the case may be in the manner and according to the rules provided by law in reference to any other ordinances of the said respective local legislatures.

Legislation by colonies.

30. And whereas since the abolition of slavery in the British colonies, plantations, and possessions abroad doubts have arisen and exist as to the validity of certain marriages contracted and solemnized previous to the abolition of slavery in the said colonies, plantations, and possessions between slaves and between parties one of whom was a slave, and also in some cases between free persons of colour, and since

\* *Vide* Act No. 16, of 1860.

the abolition of slavery between apprentices and other persons of free condition by ministers of the christian religion other than clergymen of the United Church of England and Ireland, and it is expedient and necessary that all such doubts shall be removed and such marriages and reputed marriages should be ascertained and confirmed, and that all persons who may have solemnized any such marriages or reputed marriages or who have in any manner assisted thereat should be indemnified from and against all pains, penalties, forfeitures and proceedings to which such persons or any of them may be liable therefor :

Confirmation of marriages doubtful as to solemnization.

31. It is therefore further ordered that all marriages which at any time before the taking effect of this order shall have been solemnized in any of the colonies to which this order applies by or before any such ministers of the christian religion as aforesaid shall be and the same are hereby declared to be and to have been from the time of the solemnization thereof respectively good, valid, and effectual to all intents and purposes whatsoever, any law or usage to the contrary thereof in any wise notwithstanding ; and all pains, penalties, forfeitures, and proceedings of whatsoever kind or description which any such christian minister may have incurred or become liable to before the taking effect of this order by reason of his having solemnized or assisted at any marriage whatsoever or in any wise in relation thereto is and are hereby remitted, released, repealed, and made void.

Registers and certificates of such doubtful marriages.

32. And whereas in the colonies in which marriages have been celebrated as aforesaid registers thereof have been duly made and kept by such ministers as aforesaid who officiated thereat, it is therefore further ordered that all such registers and all copies thereof respectively certified under the hand of the person for the time being having the lawful care of the same to be true copies shall be and are hereby declared to be good evidence of such marriages as aforesaid respectively as fully as if such registers had been made and kept and such certified copies had been made respectively by persons appointed by law to make and keep the same, and shall be received in evidence in all courts and before all judges and magistrates.

Record of such registers.

33. And it is hereby further ordered that the better to preserve evidence of marriages so registered and to facilitate the proof thereof, every person in whose custody any register lawfully is or shall be at the time shall within six months



after the promulgation of this order, to which the same extends, respectively make or cause to be made a fair and correct copy of every such register and of every entry therein contained, and it shall be lawful for any such christian minister as aforesaid to examine, verify, and correct (if and where found incorrect) by the original any such copy of a register kept by the persuasion to which he belongs, and to take the same before any magistrate, and make and sign the following declaration, which any magistrate to whom the same shall be tendered is hereby authorized and required to receive and to certify, in manner following, that is to say:

I, A. B. (describe the persuasion to which he belongs), do hereby solemnly, sincerely, and truly declare that I have carefully examined this copy beginning the                    day of (month and year) and ending on the                    day of (month and year), and containing                    pages and                    entries of marriage, with the original register, and I believe the same to be throughout a true and faithful copy of the original register of which it purports to be a copy.

(Signed)                    A. B.

The said A. B. appeared this                    day of                    before me, C. D., one of Her Majesty's justices of the peace in and for                    and made and signed the above declaration in my presence.

(Signed)                    C. D.

Which declaration and magistrate's certificate thereof shall be entered and signed at the end of the copy to which it relates, and the copy shall be then securely sealed up and forthwith sent to the colonial secretary as aforesaid to be by him kept with the registers of marriages in his office, where the same may be searched, and every copy of any entry therein certified under his hand to be a true copy shall be of the same force and effect as any certified copy whatsoever made by him is or can be, and which certified copies he is hereby required to make and may receive payment for as in other cases.

34. And if any such minister as aforesaid shall wilfully make and sign any such declaration knowing the same to be false he shall be liable to the pains and penalties to which persons guilty of wilful and corrupt perjury are liable.

False declaration by minister as to such registers.

35. And whereas in consequence of imperfect instruction in the christian religion and from other causes many marriages *de facto* have taken place between persons one or both of whom were in the condition of slavery but which

Marrriages *de facto* without celebration.

marriages *de facto* have never been sanctioned by any public ceremony or formally registered, and in many such cases the parties have had offspring of such last-mentioned marriages, and it is expedient that provision should be forthwith made for enabling such persons to confer upon their children the benefit of children born in lawful wedlock :

36. It is therefore further ordered that it shall be lawful for all persons having contracted marriage as last aforesaid at any time within one year after the coming into operation of this order, duly to solemnize the marriage ceremony before any clergyman of the established church or in any other manner authorized by this order, and every person so recognizing a previous marriage *de facto* shall at the same time make and sign the following declaration, which shall also be attested by the witnesses present and signed by the minister or marriage officer before whom the ceremony is performed :

We, A. B. and C. D., do hereby severally solemnly, sincerely, and truly declare that on the        day of        in the year        or thereabout, at        we, the said A. B. and C. D., intermarried with each other, and that we have had issue of the said marriage        children and no more, namely: (here state the names and ages of the children, and if any be dead, state the fact).

(Signed)

A. B.  
C. D.

X. Y.

Relation back  
of ceremony  
as to *de facto*  
marriages.

37. And such marriage ceremony shall have relation back to the time of the marriage *de facto*, and all such children shall be deemed and taken to have been born in holy wedlock and shall possess and enjoy all the rights, privileges, and advantages of persons born in lawful wedlock; and to preserve evidence thereof a duplicate original declaration shall then and there, before the parties depart be made, signed, and attested in the same manner, and the original declaration shall be appended to and kept with the original register and the duplicate original declaration shall be appended to, sent, and kept with the duplicate original register, and shall for all purposes of evidence be deemed part thereof respectively: Provided, always, and it is hereby declared that such lastmentioned ceremony and declaration may be performed and made without the previous publication of banns or a licence.

Translation of  
this order  
where English  
language not  
used.

38. And it is hereby further ordered that where in any colony to which this order applies any other language than

English shall be commonly used the governor shall cause a true and faithful translation of this order, and particularly of the several forms and declarations herein contained, to be made, expressing the true intent and meaning thereof; and such translation when promulgated by the governor may be lawfully used by all persons speaking such language; and everything done under this order by means of such translation shall be as valid and effectual to all intents and purposes whatsoever as if the same had been done in the original language of this order, any law or custom to the contrary notwithstanding.

39. And it is hereby further ordered that the word "governor" in this order shall be taken to mean the governor or other officer lawfully administering the government of such colony; and the word "parish" in colonies divided into parishes shall be taken in its ordinary sense, and in colonies not divided into parishes shall be taken to mean such other districts or divisions as for civil purposes are equivalent to parishes; and the term "extra-parochial place" shall be taken to mean any place not included in any such parish, district, or division; and if in any case there be no such district or division, or if it be uncertain to what kind of district or division the word "parish" is hereby intended to apply the same shall be determined and officially declared by the governor.

Interpretation  
of terms used.

40. And it is further ordered that this order shall take effect and come into operation in the colony of Mauritius on the first day of February one thousand eight hundred and thirty-nine; in the colony of the Cape of Good Hope on the said first day of February one thousand eight hundred and thirty-nine, and in all other colonies to which it applies or extends on the first day of December one thousand eight hundred and thirty-eight.

First operation  
of order.

41. And it is further ordered and declared that within the meaning and for the purposes of this order all islands and territories dependent upon any of the colonies to which this order applies or extends and constituting parts of the same colonial government shall respectively be taken to be parts of such respective colonies.

Local opera-  
tion of order.

42. And the Right Honourable Lord Glenelg, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

C. GREVILLE.

## ORDER IN COUNCIL, FEBRUARY 20, 1839.

*Fees of clergy.* WHEREAS on the 7th day of September, 1838, an order was passed by Her Majesty with the advice of Her Privy Council for giving validity to certain marriages contracted within the colonies of British Guiana, Trinidad, Saint Lucia, the Cape of Good Hope, and Mauritius, and for regulating the celebration of marriages therein hereafter in certain cases: And whereas doubts have arisen whether according to the right construction of the said order the legal effect thereof is not to take away the right theretofore vested in the clergy or ministers of religion within the said colonies to the fees heretofore payable to them on the celebration of marriages therein: Now, therefore, for the removal of such doubts it is hereby declared and ordered by the Queen's Most Excellent Majesty, with the advice of Her Privy Council that nothing in the said recited order contained extends or shall be construed to extend to deprive any clergyman or any minister of religion in any of the said colonies hereafter celebrating any marriage therein of any fee, perquisite, or emolument on such celebration which would have been legally payable to him thereupon if the said recited order had not been made, or to take away from any such clergyman or minister any right of action or other remedy which could have been had by him for the recovery of any fee, perquisite, or emolument on any marriage hereafter to be celebrated by him if the said recited order had not been made, anything in the said recited order contained to the contrary notwithstanding.

And the Most Noble the Marquess of Normanby, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

C. GREVILLE.

No. 3.—Sd. George Napier.]

[12th Feb., 1839.

Ordinance for the creation of a Municipal Board for Cape Town and the Vicinity thereof.

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

No. 4.—Sd. George Napier.]

[12th Feb., 1839.

Ordinance for the creation of a Municipal Board for the Districts of Green Point and Sea Point.

[Expired.—*Vide* Act No. 14, 1859].

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No. 5.—Sd. George Napier.]

[20th Feb., 1839.

Ordinance for applying a Sum not exceeding £151,405 6s. 1d. to the Service of the Year 1839.

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No. 6.—Sd. George Napier.]

Ordinance for the more effectual Recovery of Fines and Penalties before Justices of the Peace and Resident Magistrates on conviction of Offenders in this Colony; and for the application of the same in certain cases.

WHEREAS in some of the laws and ordinances which are now in force in this colony whereby fines and penalties are imposed on persons for certain offences therein mentioned no adequate provision is made for the recovery of the said fines and penalties: And whereas it is expedient that all fines and penalties not exceeding forty pounds sterling which have been or shall be imposed on offenders by any law or ordinance in this colony for the recovery of which no provision has been or shall be expressly made in any such law or ordinance should be recovered before the resident magistrate of the district or place in which the respective offences shall be committed: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing and publication of this ordinance all fines and penalties not exceeding forty pounds sterling which have been or shall be imposed on persons for offences by any law or ordinance which now is or at any time hereafter shall be in force in this colony for the recovery of which no provision has been or shall be expressly made in such law or ordinance shall be recovered before the resident magistrate of the district or place in which the respective offences shall be committed, and shall in case of non-payment thereof

Fines and penalties not exceeding forty pounds, recovery of.

be levied by warrant of distress and sale of the goods and chattels of the offender or offenders or enforced at the discretion of such resident magistrate by such special commitment in execution as is hereinafter prescribed for and declared to be generally applicable to the recovery of fines and penalties inflicted by any of the laws of this colony.

Imprisonment substituted where *nulla bona* for payment of fine.

2. And whereas by several laws and ordinances which are now in force in this colony certain fines and penalties are inflicted on persons convicted of certain offences which are directed to be recovered before a justice of the peace or resident magistrate within their respective jurisdictions, who is authorized to issue forth his warrant for levying such fines and penalties by distress and sale of the goods and chattels of the offender or offenders, but no further remedy is provided in case no sufficient goods and chattels of such offender or offenders can be found whereon to levy such fines and penalties, for remedy whereof be it further enacted that from and after the passing and publication of this ordinance, whenever it shall appear to any such justice of the peace or resident magistrate by whom any fine or penalty shall be adjudged to be paid upon the return of any such warrant of distress that no sufficient goods and chattels of the offender or offenders can be found whereon to levy such fine or penalty within the jurisdiction of such justice of the peace or resident magistrate, it shall be lawful for such justice of the peace or resident magistrate to issue forth his warrant for committing such offender or offenders to the common gaol for any term not exceeding three calendar months, unless such fine or penalty shall be sooner paid; or in case it shall appear to the satisfaction of such justice of the peace or resident magistrate, either by the confession of the offender or offenders or otherwise, that he, she, or they hath not or have not sufficient goods or chattels within the jurisdiction of such justice of the peace or resident magistrate whereon to levy such fine or penalty, such justice of the peace or resident magistrate may at his discretion without issuing any warrant of distress proceed to the commitment of such offender or offenders in such and the like manner as if a warrant of distress had been issued and a return of *nulla bona* made thereon as aforesaid.

Release from imprisonment on payment of fine.

3. And be it further enacted that in case any offender or offenders committed to the common gaol for non-payment of any such fine or penalty shall at any time during the period

of his, her, or their imprisonment pay or cause to be paid to the keeper of such common gaol the full amount of such fine or penalty it shall be lawful for such keeper of such common gaol and he is hereby required forthwith to discharge such offender or offenders from his custody.

4. And be it further enacted that all fines and penalties <sup>Application of fines.</sup> recovered under any of the laws or ordinances of this colony shall unless it be otherwise expressly provided by such laws or ordinances respectively be paid and applied as follows, that is to say, a part not exceeding one half or less than one fourth thereof shall be paid to the informer and the remainder into the colonial treasury.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 14th day of August, 1839.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Council,

(Signed) CHARLES BELL,  
Acting Clerk of the Legislative Council.

No. 7.—Sd. George Napier.]

[11th Sept., 1839.

Ordinance for reviving certain sections of the Ordinance No. 48, entitled "Ordinance of His Honour the Lieutenant-Governor in Council for establishing an Executive Police in Cape Town and the district thereof, and for consolidating and amending the laws and regulations relating thereto," and continuing the same until the regulations of the Municipal Board for Cape Town and the vicinity thereof shall have been duly framed, adopted, approved, and carried into effect according to the provisions of the Ordinance No. 3, 1839, entitled "Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for the creation of a Municipal Board for Cape Town and the vicinity thereof."

[Repealed by Ordinance No. 2, 1840.]

No. 8.—Sd. George Napier.] [31st October, 1839.

Ordinance for enabling the Board of Executors to sue and be sued in the name of their Secretary.

[Expired.—*Vide* Act No. 17, 1859.]

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No. 9.—Sd. George Napier.] [27th Nov., 1839.

Ordinance for amending Ordinance No. 60, entitled “An Ordinance for preventing the Mischiefs arising from the printing and publishing Newspapers and Papers of a like nature by persons not known, and for regulating the printing and publication of such Papers in other respects, and also for restraining the abuses arising from the publication of blasphemous and seditious Libels.”

[Repealed inferentially by Act No. 8, 1859, which repeals Ordinance No. 60.]

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No. 10.—Sd George Napier.] [27th Nov., 1839.

Ordinance for opening and improving the River Kowie.  
[Expired.—*Vide* Ordinance No. 4, 1852.]

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No. 1.—Sd. George Napier.]

Ordinance for the better regulation of the Municipal Board for Cape Town and the vicinity thereof. \*

WHEREAS the Ordinance No. 3, 1839, entitled “An Ordinance for the creation of a Municipal Board for Cape Town and the vicinity thereof,” requires to be altered and amended: And whereas it is convenient that all the provisions respecting the said municipal board should be contained in one ordinance, and it is therefore expedient to repeal the said Ordinance No. 3, 1839, save so far as the same repeals previous ordinances or proclamations or parts thereof, and to re-enact the provisions of the said ordinance or such of them as it may be deemed right and proper to continue:

\* Amended by Ordinance No. 14, 1848.



Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said Ordinance No. 3, 1839, except in so far as the same repeals certain previous ordinances and proclamations or parts thereof respectively as the same are mentioned and set forth in the first section of the said ordinance, be repealed and the same is hereby repealed accordingly.

2. And be it further enacted that from and after the promulgation of this ordinance the municipality of Cape Town shall include the space of ground situate within the following limits, that is to say,—from the commencement of the military lines of Fort Knokke along the said lines to their termination at Zonnebloem; thence in a straight line to the summit of the Devil's Mountain; thence along the edge of the summit of Table Mountain to the point of the edge of the said mountain nearest the Lion's Head; thence in a straight line to the Government fountain in the kloof near the block-house; thence along the ravine through which the said fountain empties itself into the sea, from the point where the said fountain empties itself into the sea along low-water mark to where the western boundary line of the property now belonging to Mr. Frederik Liesching (called Botany Bay) prolonged northwards runs into the sea; thence along the last-mentioned boundary line to its southern extremity; thence by a line running in a straight direction to the Lion's Head; thence eastwards along the ridge and on the line which divides the waters flowing therefrom to the north and south to a point where the line of the west side of Strand-street prolonged northwards shall intersect the southern boundary line of the land now belonging to Mr. Smuts (being lot No. 1 of the Green Point lots) prolonged upward and westward; thence downward along the said boundary line, and by a prolongation of the said boundary line, in a straight direction downward and eastward across the Somerset or Green Point road to a point twenty yards to the eastward of the said road; thence by a line running parallel with and twenty yards to the eastward of the said road and of the cross road branching therefrom to Three-anchor Bay to low-water mark; thence along low-water mark to the point first mentioned; and shall be styled and called "The Municipality of Cape Town;" and that the same for the purposes of this ordinance shall be under the

administration of a municipal board consisting of twelve commissioners, to be elected in manner hereinafter provided.

Number of  
wards and  
wardmasters.

3. And be it further enacted that the said municipality shall be divided into forty-eight wards and that two wardmasters to be elected in manner hereinafter provided shall be appointed for each of the said wards respectively.

Resident  
householders  
and their votes.

4. And be it further enacted that 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 this ordinance, and that at the several meetings of such resident householders as aforesaid hereinafter appointed and authorized to be holden every such resident householder who shall be personally present shall have and be entitled to one vote and no more: Provided, always, that no female shall be deemed to be a resident householder within the meaning of this ordinance or to be competent to vote at any meeting or to be elected to any office.

Joint occupiers

5. And be it further enacted that where any premises as aforesaid 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 this 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.

Limits of wards  
to be fixed.

6. And be it further enacted that within eight days after the promulgation of this ordinance the resident magistrate of Cape Town or officer at the time acting as such shall call a meeting of resident householders residing within the said municipality to be holden within seven days thereafter at the town-house, in order to elect and appoint a committee of so many of such resident householders qualified in the manner hereinbefore provided as the said meeting shall deem expedient to fix the limits of each ward within the said municipality and to distinguish the same by numbers and to divide the whole number of wards into districts, each of the said districts to comprise and contain four contiguous wards and to cause the assigned limits of the said wards and of the said districts to be affixed in some conspicuous place at the town-house for public information, and to notify by advertisement

in the Government Gazette that the same have been so affixed as aforesaid.

7. And be it further enacted that the resident magistrate for Cape Town or other officer acting as such shall be the chairman of such meeting to be held for the purpose of electing the said committee, and if any question shall arise as to the right and qualification of any individual present at such meeting to speak or vote thereat as a resident householder under the terms of this ordinance the said chairman shall inquire into and finally determine the same, and his decision thereupon shall for the purpose of the said meeting but no farther be final and conclusive, and in case of an equality of votes upon any decision to be come to at the said meeting the said chairman shall be entitled to give a casting vote.

Chairman of meeting for appointment of wardmasters.

8. And be it further enacted that it shall be the duty of the committee so to be chosen as aforesaid, besides dividing the municipality into wards and districts as aforesaid, to frame and draw out an alphabetical list of all persons in the said municipality, who according to the qualification hereinafter provided are eligible to be chosen as commissioners for the different districts thereof respectively, and another list of all such persons as according to the qualification hereinbefore provided are qualified as resident householders of the different wards respectively, and the said lists shall respectively be signed by the said committee, and shall within fourteen days after the appointment of the said committee be by them delivered to the resident magistrate of Cape Town, who is hereby required to cause the same or a fair copy of the same to be affixed to some conspicuous place at the town-house in Cape Town, there to remain for a period of fourteen days at least, and to give public notice in the Government Gazette that the said lists have been so affixed. And it shall be lawful for any resident householder within the meaning of this ordinance at any time within fourteen days from the time of affixing the said lists as aforesaid to claim before the resident magistrate or officer for the time acting as such upon not less than twenty-four hours' notice given to the said committee or to any two or more members thereof that the name of any other resident householder qualified and eligible to be placed upon the lists aforesaid respectively shall be placed upon the same, or to claim that the name of any person placed upon either of the said lists respectively shall be erased therefrom; and the resident magistrate or

List of householders to be prepared.

officer at the time acting as such is hereby empowered to hear and determine any such claim and to administer an oath or oaths to any party whom he shall think fit to examine, and to alter and amend the said lists or either of them as he shall see occasion ; but such magistrate or other officer shall not erase the name of any person from either of the said lists until such person shall have received at least forty-eight hours' notice of the investigation into his qualification and shall be fully heard thereat should he so desire ; and at the expiration of the said period of fourteen days from the time of the affixing of the said lists as aforesaid the said magistrate or other officer shall make out and keep in safety an amended list of the persons eligible to be chosen commissioners for each respective district, and another amended list of the persons qualified to act as resident householders in each respective ward, and the fact that the name of any particular person is to be found upon either of the said amended lists respectively shall be final and conclusive evidence of the eligibility of such person to be elected a commissioner or to be elected as a wardmaster or to act as a resident householder as the case may be at any time until the new lists hereinafter mentioned and directed shall have been framed and completed in the manner hereinafter stated ; and no person whose name shall not be found upon the said amended lists shall be taken to be qualified either to be chosen a commissioner or wardmaster or to act as a resident householder as the case may be.

Commissioners,  
meeting for  
election of.

9. And be it further enacted that so soon as the lists in the last section mentioned shall have been affixed as therein provided for the space of fourteen days, the resident magistrate of Cape Town or other officer acting as such shall and he is hereby required by a public notice of not less than fourteen days to call separate meetings of all the resident householders of each of the said districts respectively, to be holden in the town-house or some other fit and convenient place or places, for the election of one commissioner for every such district.

Qualification of  
commissioners.

10. And be it further enacted that any resident householder of the said municipality being the proprietor of landed property situate within any district thereof of the value of not less than one thousand pounds sterling shall be eligible to be elected a commissioner for such district for the purposes of this ordinance.

11. And be it further enacted that at every meeting for the election of any commissioner or commissioners every candidate shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other such qualified person; and every vote which at any such election shall be given for any person who has not been so proposed and seconded shall not be taken into account in such election, but shall be wholly void and ineffectual; and that the votes shall be taken by ballot, and the person or persons having the greatest number of votes shall be elected commissioner or commissioners as the case may be: Provided, always, that when by reason of any two or more candidates having obtained an equal number of votes any ballot shall be indecisive as to them, such candidates shall forthwith be balloted for a second time, and he or they who shall obtain the greatest number of votes shall be elected commissioner or commissioners as the case may be; but if such second ballot shall also be rendered indecisive by reason of equality of votes the chairman of the meeting shall decide the election by his casting vote: Provided, always, that at every election of a commissioner for any particular district every resident householder of the said municipality who shall be found upon the list hereinbefore mentioned as possessing a qualification as such resident householder within any ward belonging to such district shall be competent to vote at such election, although such resident householder may be found upon the said list as qualified to vote in some other district or districts by virtue of some other property in some of the wards thereof situated, and may have exercised or may claim to exercise his right of voting therein.

12. And be it further enacted that the commissioners elected in manner aforesaid shall go out of office at the end of the second year from the said first general election, and in place of such commissioners so going out of office a like number of other commissioners to be elected as hereinafter provided shall come into office and remain in office during the next ensuing two years, and at the expiration of such last-mentioned term of two years shall in like manner go out of office and be succeeded by other commissioners for a like term of two years and so on for ever: Provided, always, that any of such out-going commissioners shall be re-eligible and may be re-elected, and in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding.

Biennial meeting for election of commissioners.

13. And be it further enacted that on the Monday immediately preceding the day on which any such term of two years shall expire a meeting shall be holden for the election of commissioners for the two years next succeeding, and such election shall proceed in such manner as is hereinbefore by the eleventh section of this ordinance provided for the election of the first commissioners under this ordinance.

Disqualification of commissioners.

14. And be it further enacted that any commissioner who shall cease to possess any of the qualifications in the tenth section required for the eligibility of commissioners or shall cease to possess his due property qualification within the district for which he was elected or shall absent himself therefrom for any period exceeding six months or shall become bankrupt or insolvent or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease or who shall accept any office of emolument under the appointment of the commissioners relating to the municipality, shall *ipso facto* vacate his office; and in case any person so elected a commissioner shall die or become disqualified in manner aforesaid or shall resign or refuse to accept the office of commissioner or shall become bankrupt or insolvent or in case of any casual vacancy happening in any manner whatever in such office notice shall be forthwith given by the acting commissioners to the resident magistrate for Cape Town or officer acting as such as aforesaid, who shall forthwith in the manner hereinbefore directed by this ordinance call a meeting of such resident householders as aforesaid resident within such district for the purpose of filling up such vacancy or vacancies, and the person then elected shall serve until the next general election of commissioners.

Supply of vacancy in office of commissioner.

First meeting of commissioners.

15. And be it further enacted that as soon as the whole number of commissioners shall have been elected as aforesaid the resident magistrate of Cape Town or officer for the time being acting as such shall issue summonses to the commissioners so elected, informing the said commissioners individually that the first meeting of the said commissioners will be held at the town-house in Cape Town at a certain day and hour to be named in said summonses, at which meeting shall be chosen by a majority of votes one commissioner to be called and styled the chairman of the board of commissioners, and one other commissioner to be called and styled the vice-chairman thereof, to hold their said offices

Chairman and vice-chairman of commissioners.

respectively until the next general election of commissioners as hereinbefore provided; and in case of the death, resignation, or other incapacity of such chairman or vice-chairman then a successor shall be forthwith chosen in manner aforesaid to serve till the then next general election as aforesaid.

16. And be it further enacted that such commissioners shall meet at other times and so often as at any previous meeting shall be determined upon; and it shall be at all times competent for the chairman or any three commissioners by writing under his or their hands to summon, upon at least forty-eight hours' notice, the commissioners for any special purpose therein named; and that at all meetings of such commissioners a number of commissioners not less than four shall constitute a quorum for transacting business; and whenever at any meeting of the said commissioners whether general or special the votes of the said commissioners are equally divided, the chairman, vice-chairman, or other commissioner presiding shall have a casting vote.

17. And be it further enacted that at all meetings whatsoever of the said commissioners, whether stated or special, the chairman so elected as aforesaid shall of right preside; and in case of the absence of the said chairman then the vice-chairman so elected as aforesaid, and in case both the chairman and the vice-chairman shall be absent then any commissioner thereto specially appointed and deputed in writing by the said chairman, and in case no commissioner shall be so deputed by the said chairman then any commissioner who shall be so deputed by the vice-chairman; and no meeting of the said commissioners shall as such have any power or authority to transact business except a meeting over which some one of the four persons in that behalf already mentioned in their order as aforesaid shall preside.

18. And be it further enacted that the board of commissioners so first chosen in manner aforesaid shall forthwith proceed to frame and agree upon such municipal regulations as the said commissioners may deem expedient for regulating the time and place of its own meetings and the order to be observed thereat, and also the duties to be performed by the wardmasters hereinafter mentioned, and for the classification and valuation of the immovable property within the said municipality, and for the supply and distribution of water, and for the erection and preservation of wells, watercourses, bridges, dams, or sluices, or other matters connected with the

Regulations to be submitted to wardmasters.

due supply of water, and for making, repairing, cleaning, and lighting the streets, and for regulating weights and measures and the assize of bread, and for preventing and abating public nuisances in the said municipality, and for all and every other purposes of general utility within the said municipality which shall appear to require such regulations, and shall without delay publish such regulations in the Government Gazette in the English and Dutch languages, and shall submit the same after the expiration of at least one week from the day of such publication to a meeting of the wardmasters hereinafter mentioned, to be called in the manner hereinafter provided upon a notice of at least seven days from the day of the first complete publication of the said regulations in the Government Gazette; and at such meeting of wardmasters the said commissioners shall have a right to speak but not to vote, and the question shall be put by the chairman chosen to preside over such meeting on each and every clause of the said regulations submitted by the said commissioners *seriatim*, and afterwards on the whole of the regulations jointly, and a majority of votes shall decide whether such clause or the whole of the regulations conjointly as the case may be shall or shall not be adopted: Provided, always, that the said meeting of wardmasters shall not be competent of themselves to alter or amend any of the said regulations, but the said meeting shall and may should it so think proper return the said regulations to the said commissioners, with such suggestions in writing as it may deem desirable; and if such commissioners shall not think it fitting and expedient to concur in all the said suggestions then the said commissioners shall upon public notice of not less than seven days from the transmission of the said suggestions by the said wardmasters to the said commissioners call a meeting of the resident householders of the municipality, to be held at the town-hall, to which meeting the said regulations shall be submitted, and the said meeting shall have full power and authority to determine upon the point or points of difference between the said commissioners and the said wardmasters in whatever way the said meeting shall by a majority of its members decide: Provided, however, that in case of a division at such meeting of householders, no commissioner or wardmaster shall be competent to vote thereat; and provided, also, that such meeting of householders shall not be entitled to add to or alter the said regulations,

Householders to determine in case of difference.



or to do more than determine the point or points in controversy between the commissioners and the wardmasters in favour of the one party or of the other party.

19. And be it further enacted that in case such regulations shall be adopted at any meeting of wardmasters as aforesaid or of householders as aforesaid, the same shall forthwith be transmitted by the said commissioners to the Governor of the colony for the time being for the approval, amendment, or disallowance thereof of the said Governor by and with the advice of the Executive Council, and in case such regulations shall be approved, notice of such approval shall be given by proclamation to be made in that behalf, and the said regulations shall be published in the Government Gazette, and shall thereupon become as legal, valid, and effectual as if the same had been inserted herein, and in the event of the said regulations being amended by the said Governor by and with the advice of the Executive Council, the regulations so amended shall forthwith be transmitted to the said commissioners, who shall forthwith upon a notice of not less than seven days call a meeting of the wardmasters of the municipality, who shall by a majority of votes decide whether the said regulations so amended shall be adopted or not, and if the regulations be adopted the said commissioners shall forthwith communicate such adoption to the said Governor, who shall forthwith give notice thereof by proclamation and cause the same to be published in the Government Gazette, and upon such publication the same shall become as legal, valid, and effectual as if the same had been inserted herein: Provided, always, that nothing contained in such regulations or in any of the regulations mentioned in the twentieth and twenty-second sections of this ordinance shall be repugnant to or inconsistent with the true intent and meaning of the provisions of this ordinance.

20. And be it further enacted that if the said regulations when submitted to the said Governor shall be disallowed by him by and with the advice of the Executive Council, or if such regulations after being amended by the Governor by and with the advice of the Executive Council shall not be adopted by the majority of votes at the meeting of the wardmasters of the municipality aforesaid, then and in every such case the commissioners shall again *de novo* frame other municipal regulations, and the like proceedings shall be taken for having the same submitted to and adopted by, and when

Governor to approve of regulations.

Publication of regulations.

Alterations by Governor.

Disallowance of regulations, or of alterations therein.

amended by the Governor decided upon by the wardmasters of the municipality, and submitted to and approved or amended by the said Governor by and with the advice of the Executive Council as by the provisions of the nineteenth section of this ordinance are prescribed to be taken as to the municipal regulations therein mentioned; and so on until such regulations as have been adopted by the wardmasters in manner aforesaid shall have been approved of by the said Governor in manner aforesaid, or when amended by him in such manner shall have been adopted by such wardmasters in manner aforesaid.

Complaints to  
commissioners.

21. And be it further enacted that the commissioners for the time being shall after the municipal regulations shall have been once duly approved and established as aforesaid meet at least once in every month, and at such other times if any as may be specified in the municipal regulations for the time being, and at every such meeting it shall be lawful for any person to appear and prefer any complaint which he may think proper to make concerning any matter or thing done by force or in pursuance or under pretence of the provisions of this ordinance, of the said municipal regulations, or concerning anything which shall have been left undone contrary to any of the said provisions.

Future altera-  
tion of regula-  
tions.

22. And be it further enacted that at any time within one month after the expiration of each and every term of ten months from the publication of any such regulations as aforesaid and at any other time when such commissioners shall have obtained the consent of the said Governor so to do, it shall be lawful for the said commissioners assembled at any duly constituted meeting of the same to add to, amend, or repeal the existing regulations or any of them or any part of any of them: Provided that the said additions, amendments, or repealing provisions as the case may be shall be published in the Government Gazette and submitted to a meeting of wardmasters, and in all respects dealt with and decided upon in the same manner as is hereinbefore directed and provided with respect to the original rules and regulations in the said sections referred to and provided for, precisely as if the provisions of the said sections were here again word for word repeated.

First business  
at meetings of  
commissioners.

23. And be it enacted that it shall be the duty of every first meeting of each successive board of commissioners to be elected biennially as aforesaid to commence their duties by

choosing in manner hereinbefore specified with respect to the first board of commissioners a chairman and vice-chairman to act as such for the term of two years then ensuing.

24. And whereas it is expedient to make provision for the election of wardmasters be it further enacted that so soon as the whole number of the commissioners for the said municipality shall have been chosen in manner aforesaid the resident magistrate of Cape Town or other officer acting as such shall and he is hereby required by a notice of not less than two weeks to call a meeting for each respective ward or such resident householders as aforesaid residing within each of the said wards respectively, to be holden for the election and choice of two wardmasters for each of the said wards respectively, and such wardmasters shall be elected in like manner as hereinbefore provided by the eleventh section for the election of commissioners, and the resident householders present at any such meeting shall choose their own chairman, and such chairman shall within twenty-four hours after such election make a return thereof to the said commissioners duly signed by him, and the said election shall be duly published by the said commissioners or by their order in the Government Gazette for general information.

Wardmasters,  
election of.

25. And be further enacted that any such resident householders as aforesaid residing within any of the said wards respectively shall be eligible to be elected a wardmaster for the ward within which he shall at the time reside, and shall be proposed at the meeting of resident householders for such wards called as aforesaid by some person duly qualified to vote thereat and shall be seconded by some other person in like manner qualified.

Qualification of  
wardmasters.

26. And be it further enacted that every person who shall be elected a wardmaster as aforesaid shall go out of office at the end of one year from the general election of wardmasters in case all the wardmasters of the different wards shall be elected in one day ; but in case all the said wardmasters shall not be elected in one day then at the end of one year from the day on which the two or more wardmasters last elected shall have been chosen, and in place of such wardmasters so going out of office a like number of other wardmasters for the said wards respectively, to be elected as hereinbefore provided, shall come into office and remain in office for the following year, and at the expiration thereof shall in like manner go out of office and be succeeded by other

Tenure of office  
by wardmas-  
ters.

wardmasters for a like term of one year, and so on for ever : Provided that any of such out-going wardmasters shall be re-eligible and may be re-elected for any such ward, and in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding.

Supply of vacancies in office of wardmaster.

27. And be it further enacted that on the Monday immediately preceding the day on which any such term of one year shall expire a meeting of resident householders of each respective ward shall be held for such ward for the election of two wardmasters for every such ward for the next succeeding year, and such elections shall proceed in such manner as hereinbefore by the twenty-fourth and twenty-fifth sections provided for the election of the first wardmasters under this ordinance.

Disqualification of wardmasters.

28. And be it further enacted that any wardmaster who shall cease to be such resident householder as aforesaid, or shall cease to reside within the ward for which he shall have been elected or shall absent himself therefrom for any period exceeding three months or shall become bankrupt or insolvent or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease or who shall accept any office of emolument under the appointment of commissioners relating to the municipality, shall *ipso facto* vacate his office; and that in case any person so elected a wardmaster shall die or become disqualified by bankruptcy or insolvency or shall cease to reside within the ward for which he shall have been elected or shall have absented himself therefrom in manner aforesaid or shall resign or refuse to accept the office of wardmaster or in case of any casual vacancy happening in any manner whatever in such office, notice shall be forthwith given by the acting wardmaster or by the commissioners to the resident magistrate of Cape Town or officer as such, who shall forthwith in the manner hereinbefore directed by this ordinance call a meeting of such resident householders as aforesaid resident within such ward for the purpose of filling up such vacancy or vacancies, and the person then elected shall serve until the next general election of wardmasters unless he shall become disqualified in manner aforesaid.

Failure in election of wardmasters.

29. And be it further enacted that 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 of a wardmaster or of wardmasters as the case may be

shall not be duly and regularly holden, or that at any such meeting the commissioner or the wardmaster or wardmasters 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 Cape Town or officer for the time being acting as such, shall as soon as any such event shall have been duly notified to him in writing by any three or more resident householders of any district or ward as the case may be in which such event shall have occurred, by a notice of not less than seven or more than fourteen days, call a meeting of the householders of such district or ward for the purpose of electing such commissioner or such wardmaster or wardmasters as the case may be, in the same manner as is hereinbefore directed with respect to the first election of commissioners and wardmasters under the provisions of this ordinance; and the commissioner or wardmaster or wardmasters who shall have been in office next before the time when such event shall have occurred shall remain and continue in office until his or their successor or successors shall in the manner herein provided have been duly elected, upon which the former shall, provided their regular term of service shall have expired, forthwith go out of office and be succeeded by the person or persons newly chosen.

30. And be it further enacted that it shall not be lawful for any person to hold the office of commissioner and of wardmaster at the same time: Provided, however, that should it happen at any time that any person being a wardmaster shall be elected to be a commissioner or being a commissioner shall be elected to be a wardmaster, such person shall within eight days thereafter give notice to the resident magistrate or officer at the time acting as such whether he will continue to discharge the office he shall at the time hold or whether he will resign the same and accept the office he shall have been in such manner last elected to, and not giving such notice he shall be taken *ipso facto* to have vacated the office to which he shall have been last elected; and the resident magistrate or officer at the time acting as such shall and he is hereby required upon the notice of any one commissioner to call a meeting of resident householders of the district or of the respective wards as the case may be and in the manner hereinbefore provided for the purpose of filling up such vacancy or vacancies.

Office of commissioner and wardmaster not tenable together.

Persons not to be commissioners or wardmasters.

31. And be it further enacted that no person being an officer in Her Majesty's army or navy in full pay or in active employment as such officer or being employed in the civil service of Her Majesty's government or persons in holy orders shall be eligible to be elected as a commissioner for the municipality or as a wardmaster for any ward; and any such person being a commissioner or wardmaster who shall be employed or accept any employment under Her Majesty's military, naval, or civil government shall be considered *ipso facto* to have vacated such appointment of commissioner or wardmaster; and the magistrate or officer at the time acting as such shall and he is hereby directed on notice thereof being given to him by the commissioners, and they or any one of them are hereby required to give such notice forthwith in the manner hereinbefore directed, to call a meeting of resident householders of the district or of such respective ward as the case may be for the purpose of filling up such vacancy.

Offices of commissioner and wardmaster gratuitous.

32. And be it further enacted that no person elected and appointed under and by virtue of this ordinance a commissioner or wardmaster for the purpose of carrying into effect the provisions thereof shall have or receive any salary or shall exact, take, or accept any fee or reward whatsoever for or on account of anything done or to be done by him by virtue of this ordinance or on any account whatsoever relative to this ordinance.

Triennial lists of persons eligible as commissioners and qualified to vote as householders.

33. And be it further enacted that the commissioners for the time being shall every second year three months previous to the next ensuing election of commissioners draw out a list of all such persons as they shall find to be eligible to be elected commissioners; and the said commissioners shall every year three months previous to the next ensuing election of wardmasters draw out a list of all such persons as they shall then find to be eligible and qualified to vote as resident householders under the provisions of this ordinance; which lists respectively having been signed by them shall within two months before such election as aforesaid be delivered to the resident magistrate for Cape Town, who is hereby empowered and required to act therein in like manner as he is required by the eighth section of this ordinance relative to the lists therein provided to be made by the committee therein mentioned; and the notice of twenty-four hours in the said eighth section specified and therein

directed to be given to the committee in the said section mentioned shall be given to the commissioners for the time being by whom the lists in the present section mentioned shall have been prepared and given in.

34. And be it further enacted that the lists hereinbefore in the eighth section to this ordinance particularly mentioned shall remain as aforesaid with the said magistrate until new lists as in the preceding section directed shall have been delivered in, posted as before mentioned at the town-hall, and if imperfect or inaccurate amended, after which such new lists shall supersede the former lists and become in turn the sole and conclusive evidence of municipal qualification until other lists shall again be framed, and so on for ever as long as this ordinance shall remain in force and operation: Provided, always, that at any time during which any of the amended lists aforesaid whether those first completed or any other shall in their finished and amended shape remain in the custody of the said magistrate, it shall be lawful for any person, whether a person having been before the completion of the same or a person first becoming after the completion of the same fit and eligible to be elected a commissioner or qualified as a resident householder as the case may be, upon giving forty-eight hours' notice of his intention to the commissioners to claim before the said magistrate that his name be put upon the commissioners' list or the householders' list as the case may be, and to claim upon the same notice to be given to any party whose qualification may be impeached that the name of such party may be expunged from either of the said lists respectively as having been or become disqualified; and the said magistrate shall in every such case hear and determine as in the eighth section specified; but no person whose name shall have been put upon either of the said lists after the same shall have been finished and completed in manner aforesaid shall be eligible to be elected a commissioner or wardmaster or to vote as a householder as the case may be within the space of one month from the period when his name shall under the circumstances aforesaid have been placed upon the one or the other of the said lists respectively.

Occasional additions to lists in 33rd section mentioned.

35. And be it further enacted that it shall be lawful for the said commissioners for the time being, acting in pursuance of any municipal regulations to that effect, and they are hereby authorized and required to appoint during

Officers, appointment of.

pleasure such treasurer and other officers as shall be specified in any such regulations, and to remove and displace the same, and to hold their office and meetings and transact their business in the town-house in Cape Town.

Meetings, place of.

Security by treasurer.

36. And be it further enacted that it shall be lawful for the said commissioners and they are hereby required to take security from the treasurer to be appointed by virtue of this ordinance for the due execution of his office of treasurer according to the true intent and meaning of this ordinance, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time; and in case any such treasurer shall neglect or refuse for the space of three weeks next after his appointment to give or offer such security to the satisfaction of the said commissioners then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes, and the said commissioners shall within three weeks then next ensuing assemble and appoint some other fit and proper person to the office of treasurer instead of the person so refusing or neglecting as aforesaid; and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid.

Accounts of officers.

37. And be it further enacted that every such treasurer and other officer appointed by virtue of this ordinance shall under his hand and at such time or times and in such manner as the said commissioners shall direct deliver to the said commissioners or such person as they shall appoint true and perfect accounts in writing of all matters and things committed to his charge by virtue of this ordinance, and also of all moneys which shall have been by such officer received by virtue or for the purposes of this ordinance, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such moneys as shall remain due from him to the treasurer for the time being or to such person or persons as the said commissioners shall appoint to receive the same; and if any such treasurer, officer, or other person shall refuse or neglect to make and render such account, or refuse to deliver up the vouchers relating to the same or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said commissioners or to such person or persons as they shall appoint to receive the same within three days after being



thereunto required by the said commissioners by notice in writing under their hands, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this ordinance or to give satisfaction to the said commissioners or such other person or persons as aforesaid respecting the same, then and in every such case upon complaint made by the said commissioners or by such person or persons as they shall appoint for that purpose of any such refusal or wilful neglect as aforesaid to the supreme court or any judge thereof, the said court or judge shall if they or he shall see fit summon the officer so refusing or neglecting to appear before him, and if it shall appear to the said court or judge upon hearing of the case that any moneys remain due from such officer such court or judge may by decree of the said court or warrant under the hand of the said judge cause such money to be levied by distress and sale of the goods and chattels of such officer, and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money and the charges of distraining and selling the said goods and chattels, or if it shall appear to such court or judge that such officer had refused or wilfully neglected to render and give such account or to produce the vouchers relating thereto or that any books, papers, or writings relating to the execution of this ordinance remained in the hands or in the custody or power of such officer and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case it shall be lawful for such court or judge to commit such offender to the common gaol or house of correction within the municipality, there to remain without bail until he shall have given a true and perfect account as aforesaid or until he shall have paid such moneys as aforesaid, and until he shall have delivered up such books, papers, and writings or given satisfaction in respect thereof to the said commissioners or to such other person or persons as aforesaid, or until such other or further time as the said court or judge shall direct: Provided that nothing herein contained shall prevent such treasurer, officer, or other person from being tried, and if found guilty convicted and sentenced according to law for any crime or offence which he may have committed relative to any matter or thing intrusted to him under the provisions of this ordinance; and provided, further, that nothing herein contained shall prevent the

commissioners for the said municipality from bringing their action for the recovery of any sum or sums due by such treasurer, officer, or other person to the said municipality.

Proceedings  
against trea-  
surer, &c., not  
to exonerate  
sureties.

38. And be it further enacted that no prosecution or commitment under the provisions of this ordinance of any treasurer or other officer or person to be appointed under the power of this ordinance shall acquit and discharge any surety or security that shall or may have been taken by or given to the commissioners for the due and faithful execution of his or their office or the payment of the moneys received or to be received by him or them respectively.

Minute-book of  
commissioners.

39. And be it further enacted that all acts, orders, and proceedings of the said commissioners at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by the chairman or person acting as such and two of the commissioners then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *prima facie* evidence of all such acts, orders, and proceedings upon any appeal or trial or information or any proceeding civil or criminal, and in any court or courts of law or equity whatever.

Books of ac-  
counts by  
commissioners.

40. And be it further enacted that the said commissioners shall and they are hereby required from time to time to order and direct a book or books to be provided and kept at the town-house in Cape Town, which shall not under any pretence whatever be taken from thence except by process of the supreme court or any judge thereof or other court, in which shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this ordinance, and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of the said commissioners and of every such resident householder as aforesaid without fee or reward; and the said commissioners and other persons aforesaid or any of them shall or may take copies of or extracts from the said book or books without paying for the same; and in case the said commissioners or any of them shall refuse to permit or shall not permit the said persons aforesaid to inspect the same or take copies or extracts as aforesaid, such commissioners or

commissioner shall each forfeit and pay any sum of money not exceeding five pounds for each default, to be levied and applied in manner hereinafter provided.

41. And be it further enacted that in the month of January in every year a true account shall be made in writing of all moneys received and paid by virtue of this ordinance during the preceding year ending on the thirty-first day of December, and the same shall be laid before a meeting of wardmasters to be called by the said commissioners as hereinafter authorized in the first week of February in each and every year, and a copy or duplicate of such account verified on oath before any justice of the peace by the said treasurer and certified by the chairman and two of the said commissioners shall be deposited with the said commissioners, and shall be open to the inspection of any resident householder or any party interested, and an abstract thereof published in the Government Gazette for general information before the first day of March following.

Annual account to be laid before wardmasters.

42. And be it further enacted that the said commissioners shall also in the month of January in every year draw out an estimate of the probable revenue and expenditure for the next ensuing year showing the several taxes or rates to be levied or assessed during the same, which estimate shall be signed by the treasurer and countersigned by the chairman and two commissioners, and an attested copy thereof deposited in their office at the town-house, and shall there be open to the inspection of any resident householder or any party interested, and an abstract thereof published in the Government Gazette for general information before the fifteenth day of the said month of January, and the said estimate shall be laid before a meeting of the wardmasters to be called by the said commissioners as hereinafter provided; and that part of the estimate which relates to the probable expenditure may be altered by the said wardmasters at such meeting, provided a majority of them not less than two thirds of the whole number of wardmasters shall concur in such alteration, but not otherwise.

Annual estimate of expenditure.

43. And be it further enacted that after the said abstracts in the two preceding sections of this ordinance mentioned shall have been published as therein directed during fourteen days the said commissioners shall directly after the expiration of the same call a meeting of wardmasters as hereafter provided upon seven days' notice to be given in manner

Annual meeting for assessment.

aforesaid, at which meeting the commissioners shall be entitled to sit, deliberate, and vote for the purpose of assessing any such rate or rates on the immovable property situate within the municipality and to endure for such period not exceeding twelve months as the majority of persons present and entitled to vote at such meeting shall deem necessary for all or any of the purposes of this ordinance: Provided that any person who feels himself aggrieved by any such assessment may cause the same to be brought before the supreme court, which shall review the said assessment and shall if necessary rectify the same so far as it regards the person bringing the same under review.

Minute-book to  
be in English.

44. And be it further enacted that all minutes of the proceedings of the boards of commissioners and wardmasters respectively for the time being, and all books, writings, accounts, and records thereof shall be made and kept in the English language.

Meeting of  
wardmasters  
may be called  
by commis-  
sioners.

45. And be it further enacted that the board of commissioners for the time being shall be empowered for the purposes in any of the preceding sections mentioned or for any other purpose which to the said commissioners shall seem a fit and proper one to call by a public notice of not less than forty-eight hours a meeting of the wardmasters of the municipality to be held in the town-hall, and to submit to such meeting of wardmasters all such questions, matters, and things as the said commissioners shall deem expedient.

Collector of  
rates.

46. And be it further enacted that after the rates to be levied by virtue of this ordinance shall have been assessed in manner aforesaid it shall and may be lawful for the said commissioners to appoint collectors for the purpose of collecting the amounts due and payable in manner aforesaid, and the said collectors are hereby authorized to demand and receive the amounts so to be collected, and the said collectors shall be furnished with an order under the hands of the said commissioners or any two of them directing the said collectors to demand and receive the amount mentioned in the said order; and such collectors shall give security to the said commissioners for the due execution of their office to such amount as they shall deem sufficient: Provided, however, that nothing herein contained shall disqualify any of the wardmasters from being appointed such collector within the limits of their respective wards.

47. And be it further enacted that if the amount of any rate which under the provisions of this ordinance shall have been assessed on any immovable property within the said municipality shall not on demand made by the person duly authorized to collect the same be paid by the occupier of such property or by the proprietor thereof, it shall be lawful for the said commissioners and they are hereby empowered to sue either the said occupier or the said proprietor separately or both of them in one and the same action each for the whole before any competent court, and to obtain the judgment and process of such court for the recovery of the same, reserving to such occupier and proprietor respectively such relief against each other as they may be lawfully entitled to: Provided, always, that no person shall as occupier of any such immovable property be liable to pay or to be sued for any rate which had been assessed on the same in respect of any period or which had become due and payable at any time before such person entered on the occupation of such property and that every person who as occupier of any such property shall at any time have become liable to pay any rate which may have been assessed thereon shall continue to be liable and may be sued in manner aforesaid for the same, notwithstanding that such person shall have ceased to occupy such property; and provided, also, that the payment of any rate assessed on and due in respect of any such immovable property as aforesaid by either the proprietor or occupier of the same shall free and discharge the other from all claim and demand for the payment of such rate as far as regards the municipality aforesaid.

Action for  
recovery of  
rates.

Liability for  
rates.

48. And be it further enacted that the said collectors to whom any such order as aforesaid shall be issued shall deposit in the government discount or other bank in Cape Town by the direction of the commissioners on account and in the name of the "treasurer of the municipality of Cape Town" all such sums as they shall have received during any day on the day the same shall have been received or on the next succeeding day on which the said bank shall be open for receiving deposits, provided such sums shall amount to or exceed five pounds; and in case such sums so received shall be under five pounds then the said collectors shall deposit the said sums on the day on which such sums together shall amount to the sum of five pounds, or at farthest on the next succeeding day on which the said bank shall be open as

Daily deposit  
of receipts by  
collector.

aforesaid, and at the end of every week shall render an account thereof to the treasurer with vouchers for the same; and in case any collector shall neglect or refuse to deposit any sum or sums so received by him as aforesaid within such time as aforesaid such collector shall forfeit all commission for collecting the same, and shall pay by way of penalty ten per cent. upon the amount he shall have so failed to deposit; and no such sum or sums of money shall be drawn out of such bank but upon cheques signed by the treasurer and countersigned by two commissioners: Provided, however, that nothing herein contained shall extend or be construed to extend to release the sureties for the said collectors from their liability as such sureties.

Auditors of accounts.

49. And be it further enacted that upon the first Monday in December in each and every year a meeting of wardmasters of the municipality shall be held in the town-hall for the purpose of electing either out of their own number or otherwise two householders not being commissioners to act as auditors of the municipal accounts, and it shall be the duty of the said auditors to examine the said accounts previously to their being laid before the meeting of wardmasters already mentioned and to vouch the accuracy of the same.

Proportion of expense of police to be borne by the municipality.

50. And whereas by a new organization of the police in Cape Town to be shortly arranged and established under the superintendence of the colonial government, the necessity for watchhouse-keepers, serjeants of the night, watchmen, and patrols to be provided by the municipality will be altogether superseded; and whereas it is fit and proper that the municipality should reimburse to the said colonial government a fair and reasonable proportion of the cost and charge of such police force: Be it therefore enacted that the commissioners for the time being shall annually pay and hand over to the treasurer and accountant-general of this colony or to the officer acting as such whatever sum shall from time to time be fixed and ascertained by the vote of the Legislative Council of this colony as a just and proper proportion of the whole expense of the said police force in Cape Town which the said municipality should pay over and make good.\*

Watch-houses.

51. And be it further enacted that all watch-houses now or lately used as such shall go to and become the property of the colonial government for the time being, to be employed

\* *Vide Act No. 22, 1858.*

for the reception of the said police force or for such other purpose or purposes as the said government shall from time to time determine and think fit.

52. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to keep up fire engines with pipes and other utensils proper for the same for the use of the municipality and to provide a proper place or places for the keeping of the said fire-engines, and to place the same under the care of some proper person or persons and to make him or them such allowance for his or their trouble as may be thought reasonable, and to make such further rules and regulations thereon as they shall think necessary. Fire engines.

53. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to cause such lamp-irons or lamp-posts or other posts to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or enclosures (doing as little damage as may be practicable thereto), or to be put up or erected in such other manner within all or any of the said roads, streets, and places within the limits of the said municipality as shall be deemed proper; and also to cause such number of lamps of such sizes and sorts to be provided and affixed and put upon such lamp-irons and lamp-posts as shall be necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with oil or otherwise during such hours as shall be necessary, and also from time to time to make such regulations thereon as they shall find necessary. Lamps and lamp-posts.

54. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to provide and to carry and lay any pipe or pipes for the conveyance of water to which the inhabitants of the municipality shall at any time have or acquire a common right from any reservoir, river, or spring to any house, building, or other place within the limits of the municipality, and also from time to time to make such regulations touching the same and the quantity of water to be supplied to the inhabitants and the time or times at which such supply is to be received as shall be proper and necessary; Water pipes.

and also touching the most expedient mode of preventing any waste of drink-water within the said municipality.

Supply of  
water to Green  
Point.

55. And be it further enacted and declared that the inhabitants of the municipality of Green Point shall have the right and shall be entitled to be furnished and provided from the waterworks now existing or which may hereafter be made, erected, or provided for supplying water to the inhabitants of Cape Town, in whomsoever the property, management, or administration of any such waterworks shall for the time being be vested, with a supply of water in the same proportions, on the same terms, at the same rate, and under the same regulations in, on, at, and under which the inhabitants of Cape Town shall for the time being have or be entitled to have water supplied to them, and that in consideration of such water-rates to be paid by the inhabitants of the municipality of Green Point as aforesaid the community or communities, person or persons, in whom the property, management, or administration of such waterworks as aforesaid shall for the time being be vested shall and they are hereby required to provide, keep in good order, and repair a main pipe extending from the said waterworks as far as the main pipe by which water is now supplied to the inhabitants of Green Point and Sea Point at present extends, and also the four fountains or pumps connected with the said main pipe now existing, or as many of them as from time to time shall be necessary for the due supply of water to the inhabitants of the municipality of Green Point.

Drains and  
watercourses,  
&c.

56. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered to cause to be made, provided, erected, and built, cover in, or remove such bridges, sluices, dams, reservoirs, watercourses, drains, and ditches as now are or shall be deemed necessary within the municipality, and shall cause the same to be kept at all times in good and sufficient repair; and from time to time to make such rules and regulations thereon as they shall find necessary.

Roads, &c.

57. And be it further enacted that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered and required to cause the public streets, roads, and places within the limits of the municipality to be at all times kept in good and sufficient repair; and they are hereby empowered as far



as the funds of the municipality shall permit to cause such new streets and roads to be made within the limits aforesaid as may be legally made and shall be necessary for the public use, and to be kept at all times in like good and sufficient repair, and from time to time to make such rules and regulations thereon as to them shall seem fit.

58. And be it further enacted that it shall be lawful for <sup>Markets.</sup> the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time as occasion may require to keep up and establish within the limits of the said municipality a market or markets for the sale of cattle, meat, fish, poultry, vegetables, fruit, and the like, and to cause suitable houses or buildings to be built and erected for the convenience of persons attending, holding, and superintending such market or markets, and to cause the same to be kept in good and sufficient repair, and also to frame and make such regulations and impose such fines as they shall think necessary for ensuring order and cleanliness within the said market or markets.

59. And be it further enacted that it shall be lawful for <sup>Assizing of weights and measures.</sup> the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time to make necessary rules for the due and proper care of weights, measures, and the quality and assize of bread and the quality of meat; and they are hereby empowered at all times to visit and enter into the shops or places where bread, meat, or fish is sold for the purpose of assizing the bread and examining the weights and measures, and also of taking proper care that the bread, meat, or fish therein sold is good and wholesome.

60. And be it further enacted that it shall be lawful for <sup>Common pasturage.</sup> the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time if necessary and expedient to make rules for the due and proper care of the common pasture lands of the municipality, and therein to specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands and of what kinds, and also to impose fines on any person contravening such regulations, and to establish and erect one or more pound or pounds within the said municipality and to appoint one or more poundmasters and to make all such pound regulations as shall be

necessary or expedient: Provided, always, that the said commissioners shall not be authorized or permitted to dispose of, alienate, build upon, inclose, or cultivate any such common pasture lands nor suffer any other person to build upon, inclose, or cultivate the same, and any such alienation by sale, gift, or otherwise except made in the manner and by the authority hereinafter in the sixty-sixth section mentioned shall be and is hereby declared to be null and void.

Wilful damage  
to property of  
municipality.

61. And be it further enacted that if any person shall wilfully break, throw down, spoil, or damage any lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any lamp, or shall break, spoil, or damage any building the property in which is by the provisions of this ordinance vested in the said commissioners, or shall wilfully break or damage any public water-course, drain, or ditch within the limits of the said municipality, it shall be lawful for any person who shall see the offence committed to apprehend and also for any other person or persons to assist in apprehending the offender or offenders and by the authority of this ordinance and without any warrant to deliver him, her, or them to any constable who is to keep him, her, or them in safe custody and with all reasonable dispatch to convey him, her, or them before the resident magistrate for Cape Town or any justice of the peace having jurisdiction; and if the party accused shall be convicted of any such offence by such resident magistrate, he, she, or they shall forfeit severally any sum not exceeding two pounds for every such offence and shall also make full satisfaction for the damage which shall have been done thereby, and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender and the other moiety shall be applied for the purposes of this ordinance; and in case any such offender shall not on conviction pay the said forfeiture and satisfaction such magistrate is hereby required to commit him, her, or them to the common gaol or house of correction, there to be kept to hard labour if such magistrate shall so order for any time not exceeding three calendar months unless such forfeiture and satisfaction shall be sooner paid: Provided that nothing herein contained shall prevent the commissioners from bringing any civil action for damages against such offender before the supreme court should they consider the amount of such damages to exceed the jurisdiction of the said magistrate.

62. And be it further enacted that if any person shall carelessly or accidentally do any such damage or injury as hereinbefore is mentioned and shall not upon demand make satisfaction to the said commissioners for the damage or injury so done, it shall and may be lawful for the said resident magistrate and he is hereby required upon the application or complaint of the commissioners or any two of them to summon the party complained of, and upon hearing the parties upon both sides or on the non-appearance of the party complained of to examine the matter of complaint, and award such sum of money by way of satisfaction to the said commissioners for such damage as such resident magistrate shall think reasonable; and in case of neglect or refusal forthwith to pay such money then the same and all expenses attending the recovery thereof may be levied and recovered as any penalty or forfeiture is by this ordinance directed to be levied and recovered in other cases: Provided, however, that nothing herein contained shall prevent the commissioners from bringing any civil action for damages against such offender before the supreme court should they consider the amount of such damages to exceed the jurisdiction of the said magistrate.

Accidental  
damage to pro-  
perty of muni-  
cipality.

63. And be it further enacted that it shall be lawful for the said commissioners and they are hereby authorized and required to remove, put down, and abate all nuisances of a public nature within the said municipality or which may tend either to injure the health or in any way affect the safety or the rights of the inhabitants at large, and if need be to proceed at law before the resident magistrate or supreme court against any person or persons so committing any such nuisance as for the abatement thereof and aforesaid damages; and further that the said commissioners shall and they are hereby required to cause all streets, watercourses, drains, roads, and places within the said municipality to be kept clean and free from dirt, filth, or rubbish; and any person convicted upon the complaint made by the commissioners to the resident magistrate of throwing dirt, filth, or rubbish into any such street, road, watercourse, drain, or place as aforesaid shall forfeit and pay any sum of money not exceeding five pounds; and in case of neglect or refusal forthwith to pay such money then the same and any expenses attending the recovery thereof may be levied and recovered as any other penalty or forfeiture is by this ordinance directed to be levied and recovered in other cases.

Public  
nuisances.

## Contracts.

64. And be it further enacted that it shall and may be lawful for the said commissioners from time to time to enter into any contract with any person or company whatsoever, for any work to be done and performed, or for any materials to be furnished to and for the said commissioners by virtue and for the purposes of this ordinance, which contract shall specify the work to be done and the price to be paid for the same and the time when the work shall be completed and the penalty to be suffered in case of non-performance thereof, and shall be signed by the chairman and by two or more of the said commissioners and also by the person or persons contracting, which contract or a copy thereof shall be entered in a book to be kept for that purpose; but no contract above the value of fifty pounds shall be entered into unless fourteen days' notice be previously given in one or more of the public newspapers published in this colony expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the said commissioners at a certain time and place in such notice to be mentioned: Provided, always, that if the said commissioners shall be of opinion that it will not be advantageous to contract with the person offering the lowest price it shall be lawful for the said commissioners to contract with such other person or persons as they shall think proper; and such person or company so contracting shall give security for the due performance thereof to the satisfaction of the commissioners: Provided, however, that no commissioner shall be allowed either directly or indirectly to become a contractor or to tender for any contract either in his name or in the name of or jointly with any other person on pain of forfeiture of all his share and interest in such contract for the benefit of the municipality, and shall also be considered to have vacated his office of commissioner, *ipso facto*, and be ineligible to be elected at any future period to serve as a commissioner.

Buying or  
leasing pre-  
mises.

65. And be it further enacted that the said commissioners may and they are hereby authorized and empowered to treat with the owner or owners and occupier or occupiers of any houses or buildings, lands, and grounds for the purposes of this ordinance as to the purchase or hire of the same for such sum of money or rent as to them shall appear reasonable, and which purchase money or rent shall be respectively paid out of the moneys to arise by virtue of this ordinance: Provided, always, that the said commissioners shall neither

purchase nor rent any such premises as aforesaid without the consent first obtained of a meeting of wardmasters to be called by the said commissioners in manner aforesaid.

66. And be it further enacted that the property hereafter mentioned and situate within the municipality, to wit, the town-house, the town-market, the butchers' shambles, the granary buildings, the fish-market, the waterworks and the buildings belonging thereto, together with all the waste ground or land situate within the municipality, together with all the stone quarries therein situate, and all right, title, and interest in the same, and which was before the first day of January, 1828, vested in or committed to the administration of the late burgher senate, and which by Ordinance No. 34 was afterwards vested in trustees, shall be and the same are hereby vested in the said commissioners, to be administered and the revenue thereof employed and made use of for the benefit of the municipality and for the purpose of this ordinance: Provided that the said commissioners shall not be authorized or permitted to sell or otherwise alienate the said buildings or lands without having first obtained the consent of the governor for the time being to such sale or alienation, and without having after obtaining such consent published such resolution to sell during three successive weeks in the Government Gazette: Provided, also, that nothing herein contained shall affect or be construed to affect any right or title which Her Majesty's board of ordinance has or may have in the immovable property hereinbefore mentioned or any part thereof; and provided, also, that the said granary shall remain in the occupation of the government until some other suitable building be provided and made applicable to the purposes to which the said granary is now applied.

67. And be it further enacted that the property of and in all the lamps, lamp-irons, lamp-posts, bridges, sluices, dams, market-houses, pipes, posts, chains, pales, and rails in, about, or belonging to the said streets and places within the limits of the said municipality, and of and in all iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto (except when the same shall be otherwise regulated by the contract with the said commissioners), also all the movable property, carts, horses, and things which now are under the administration of the superintendent of police and of the superintendent of water-

Public buildings vested in commissioners.

With restraint as to alienation.

Other property vested in the commissioners.

works, and respectively employed by them for the use of Cape Town and its vicinity, inventories whereof shall be made and delivered by the said superintendent of police and the superintendent of waterworks to the commissioners within three weeks after their election, shall be, and the same is hereby vested in the said commissioners, and may be used, sold, and disposed of by them from time to time as they shall deem necessary, and the money arising from such sale shall be applied towards the purposes of this ordinance; and the said commissioners are hereby authorized and empowered to bring or cause to be brought any civil or criminal action in manner as hereinbefore is provided against any person or persons who shall steal, break, or otherwise damage any of the buildings or other things the property which is hereby vested in the said commissioners, subject, however, to the provisions of the Ordinances Nos. 40 and 73, or of any law or ordinance which may hereafter be created or then be in force in that behalf; and in all such actions it shall be and be deemed and taken to be sufficient to state generally that the article or thing for or on account of which such action shall be brought is the property of the commissioners, without particularly stating or specifying the name or names of all or any of the commissioners.

Offences before  
whom to be  
tried.

68. And be it further enacted that all offences committed in contravention of this ordinance or of any municipal regulation may lawfully be prosecuted in the court of the resident magistrate for Cape Town; and if any person shall be duly convicted of any such offence and shall not pay or satisfy the amount of fine imposed upon him it shall be lawful for the said resident magistrate to sentence such offender to any period of imprisonment not exceeding three months; and the amount of all such fines when recovered shall be paid to the treasurer of the municipality for the time being for the purposes of this ordinance.

Saving of the  
rights of third  
parties.

69. And be it further enacted that nothing herein contained shall extend or be construed to extend to injure or impair the rights or property which any person or persons may have in, to, or in respect of any of the matters aforesaid; and in every case in which any such commissioners as aforesaid shall commit any act under and by virtue of this ordinance or of any municipal regulation by which the right of property of any person or persons is injured or impaired, such commissioners shall be liable to make compensation to

such person or persons for the same : Provided, always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said commissioners personally or any of their goods and chattels (other than such as may be invested in them in pursuance of this ordinance) liable to the payment of any sum of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is hereby directed to be made by the said commissioners.

Personal liability of commissioners.

70. And be it further enacted that in any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this ordinance or for or in respect of any other matter or thing relating to this ordinance by or against the said commissioners, it shall and may be lawful for the said commissioners to sue or be sued by the style or description of "the commissioners for the municipality of Cape Town : " Provided, always, that every such commissioner may and shall (if not otherwise interested or objectionable) be a good, examinable, and competent witness in every action or suit either for or against the said commissioners, and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any such action, suit, or proceeding shall and may be lawfully made by any such commissioner ; and provided, also, that the said commissioners shall always be reimbursed and paid out of the moneys to arise by virtue of this ordinance all such costs, charges, and expenses as they shall be put to or become chargeable with by reason of bringing or defending such action or suit, and shall not be personally answerable or liable for the payment of the same or any part thereof unless such action or suit shall arise in consequence of their or any of their own wilful neglect or default.

Action by and against commissioners.

71. And be it further enacted that all the necessary costs, charges, and expenses attending the carrying the provisions of this ordinance and of the municipal regulations into effect shall be paid out of the money authorized to be received by the commissioners under the provisions of this ordinance.

Expenses how provided for.

72. And be it further enacted that no inhabitant of the said municipality shall on that account be deemed an incompetent witness in any action, suit, or information, complaint, appeal, prosecution, or proceedings to be had, made, prosecuted, or carried on under the authority of this ordinance or the municipal regulations of the said municipality.

Inhabitants competent witnesses for or against municipality.

Endurance of ordinance.

73. And be it further enacted that this ordinance shall continue in force until the first day of January, one thousand eight hundred and sixty-one.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 3d day of March, 1840.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) CHARLES BELL,  
Acting Clerk of the Legislative Council.

No. 2.—Sd. George Napier.]

Ordinance for improving the Executive Police of Cape Town and the District thereof, for defining the Powers and Duties of the said Police in certain cases, and for promoting the Peace and Good Order of the said Town.\*

Ordinances No. 7, of 1839, and No. 48 repealed.

WHEREAS the systems of police and nightly watch heretofore existing in Cape Town and the district thereof have from the want of due connection and co-operation with each other and from other causes proved insufficient for the purposes for which they were intended : And whereas it is expedient to substitute for the said systems of police and nightly watch one united body of police for day and night under a new and more effective organization : And whereas it is also expedient that certain matters and things connected with the powers and duties of the said last-mentioned body of police and the peace and good order of the town aforesaid should be herein provided for or declared : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the taking effect of this Ordinance the Ordinance No. 7, 1839, entitled "An Ordinance for reviving certain sections of the Ordinance No. 48, entitled 'An Ordinance of his Honour the Lieutenant-Governor in Council for establishing an Executive Police in Cape Town and the District

*Vide* Ordinance No. 1, 1844, Act No. 22, 1858, and Act No. 11, 1860.



thereof, and for consolidating and amending the Laws and Regulations relating thereto," and continuing the same until the regulations for the municipal board for Cape Town and the vicinity thereof shall have been duly framed, adopted, approved, and carried into effect according to the provisions of the Ordinance No. 3, 1839, entitled "An Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for the creation of a Municipal Board for Cape Town and the vicinity thereof," shall be repealed, together with the said Ordinance No. 48, save and except so far as the forty-seventh section of the said Ordinance No. 48 repeals any former laws, rules, orders, or regulations, and both the said ordinances are hereby declared to be from and after the time aforesaid repealed accordingly.

2. And be it enacted that it shall and may be lawful for the Governor of this colony for the time being to nominate and appoint from time to time as occasion may require some fit and proper person to be the head of the police for Cape Town and the district thereof and the port of Table Bay, who shall be called and styled "judge and superintendent of the police of Cape Town," and also to nominate and appoint some other fit and proper person to rank next to and assist the said judge and superintendent as such head of the police, which other person so to be appointed shall be called and styled the "deputy superintendent of the police of Cape Town," which said persons shall before entering upon the duties of their respective offices take the oath of allegiance and also the oath of office following:

Judge and  
superintendent  
of police, ap-  
pointment of.

OATH TO BE TAKEN BY THOSE OFFICERS.

"I, A. B., do solemnly swear that I will truly and faithfully to the best of my skill and ability perform the duties belonging to the office of judge and superintendent (or deputy superintendent as the case may be) of police without fear, favour, or affection. So help me God!"

3. And be it enacted that the said judge and superintendent of police of Cape Town shall discharge all the duties and possess all the powers and jurisdiction imposed or conferred by any law or ordinance now in force in this colony (save and except the aforesaid Ordinances No. 48 and No. 7, 1839) upon the functionary called in any such law or ordinance the judge and superintendent of police of Cape Town

Powers and  
jurisdiction of  
judge and su-  
perintendent.

or the superintendent of police for Cape Town and the district thereof and the port of Table Bay.

**Powers of deputy superintendent.**

4. And be it enacted that the said deputy superintendent of police of Cape Town shall discharge all the duties and possess all the powers imposed or conferred by any law or ordinance now in force in this colony (save and except the aforesaid Ordinances No. 48 and No. 7, 1839) upon the officer called in any such law or ordinance the deputy superintendent of police or the deputy superintendent of police of Cape Town, or the deputy superintendent of police of Cape Town and the district thereof and the port of Table Bay, and shall also discharge such duties as shall by the rules and regulations hereinafter mentioned be allotted and appointed for such deputy superintendent to perform.

**Inspector of police, appointment of.**

5. And be it enacted that it shall and may be lawful for the Governor of this colony from time to time as a vacancy may occur or occasion may require to nominate and appoint some fit and proper person who shall be called and styled the inspector of police of Cape Town, to be under the control and command of the judge and superintendent of police aforesaid for the time being and to discharge such duties as shall in the rules and regulations hereafter mentioned be allotted and appointed for such inspector to perform.

**Constables, appointment of.**

6. And be it enacted that it shall and may be lawful for the said judge and superintendent for the time being subject to the approval of the Governor of this colony for the time being to nominate and appoint from time to time a sufficient number of fit and able men, who shall be sworn in by the said judge and superintendent to act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders when crimes have been committed, and the men so sworn shall within the Cape district have all such powers, authorities, privileges, and advantages, and perform all such duties and incur all such responsibilities as any constable duly appointed now has or hereafter may have within his constablewick or assigned district by virtue of any law or ordinance existing or to exist in this colony, and shall obey all such lawful commands touching the manner in which they shall conduct themselves in the execution of their office as they may from time to time receive from their lawful superiors as the latter shall be constituted, named, and specified in the rules and regulations to be hereafter framed; but the stated and ordinary duties of the members

**Powers, &c., of constables.**

of the said police force shall be confined within the limits of the municipality of Cape Town, and they shall only proceed and act beyond the said limits when engaged in the pursuit of an offender flying from justice or when the exigency of some particular occasion shall induce the chief officer of police for the time being to order one or more members of the said force to repair to and perform duty at some place other than the said municipality within the said district.

Limits of powers of constables.

7. And be it enacted that the said judge and superintendent for the time being, subject to the approval of the Governor of this colony for the time being, shall and may from time to time frame such rules and regulations as the said judge and superintendent shall deem expedient relative to the general government and management of the men so as aforesaid to be appointed members of the police force under this ordinance, the classification, rank, and particular duty of the several members, their distribution and inspection, the description of arms, accoutrements, and other necessaries to be furnished to them, and which of them shall be provided with horses for the performance of their duty, the peculiar books and forms to be respectively kept and used at the police station, and all such other rules and regulations relative to the said police force as the said judge and superintendent shall from time to time deem expedient for preventing neglect of duty or abuse of authority, and for rendering such force as efficient as possible for the performance of its duties; and the said judge and superintendent may at any time suspend or dismiss from his employment any man belonging to the said police force (except the deputy superintendent and the inspector of police, who may be suspended or dismissed only by the Governor of this colony for the time being) whom he shall think negligent or remiss in the discharge of his duty or otherwise unfit for the same; and when any man shall be dismissed or cease to belong to the said police force all powers vested in him as a constable by virtue of this ordinance shall immediately cease and determine.

Rules and regulations for police.

8. And be it enacted that any constable belonging to the said force save and except the inspector (who is not either here or elsewhere in this ordinance comprehended under the term constable) who shall be guilty of any neglect or violation of duty in his office of constable, as the same shall be defined by the rules and regulations to be hereafter framed, shall be

Penalty on constables for neglect, &c., of duty.

liable to a penalty not exceeding ten pounds, which penalty may be deducted from any salary then due to such offender, or such offender may in the discretion of the judge and superintendent of police, who is hereby authorized and empowered to enforce in a summary manner all penalties to be incurred under this section as well as sections nine and ten next succeeding, be imprisoned for any term not exceeding one month; but no such penalty or punishment shall be held or taken to exempt such constable from any other penalty or punishment which may by any other law be affixed to any illegal act or acts of which he may be guilty.

Resignation of constables.

9. And be it enacted that no constable belonging to the said police force shall be at liberty to resign his situation or withdraw himself from the duties thereof unless expressly permitted so to do by the judge and superintendent of police in writing, or unless he shall give to such judge and superintendent two full months' notice of his intention; and every constable who shall so resign or withdraw himself without such leave or notice shall be liable to forfeit all arrears of pay then due to him or to a penalty not exceeding ten pounds or to imprisonment for any term not exceeding one month, as to the said judge and superintendent shall seem best and most expedient.

Delivery up of clothing, &c., by constables.

10. And be it enacted that every constable belonging to the said police force who shall be dismissed from or shall cease to hold and exercise his office and who shall not forthwith deliver over to the said judge and superintendent all the clothing, accoutrements, appointments, and other necessaries which may have been supplied to him for the execution of his duty, or who shall wilfully or maliciously injure any of the said articles so as to render the same valueless or of less value before delivering the same over, shall be liable to imprisonment for any time not exceeding two months; and it shall be lawful for the said judge and superintendent to issue his warrant to search for and seize for the use of the said police force all the clothing, accoutrements, appointments, and other necessaries which shall not be so delivered over wherever the same may be found.

Possession of clothing, &c., of constables by third parties.

11. And be it enacted that every person not being a member of the said police force who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to such member and who shall not be able satisfactorily to account for his possession

thereof shall be liable to a penalty not exceeding ten pounds, or in the discretion of the magistrate before whom he shall be convicted to imprisonment for any term not exceeding one month.

12. And be it enacted that if any owner or keeper of any house, shop, store, or other place for the sale of any liquors whether spirituous or otherwise shall harbour or entertain any constable belonging to the said police force or permit such constable to remain in his house, shop, store, or other place as aforesaid for any part of the time during which to his knowledge such constable should be on duty, every such owner or keeper as aforesaid shall for every such offence be liable to forfeit and pay any sum not exceeding ten pounds, and in default of payment thereof shall be liable to imprisonment for any term not exceeding one month.

Harbouring of constables.

13. And be it enacted that every person who shall assault or resist any person belonging to the police force in the execution of his duty, or who shall aid or incite any person so to assault or resist, shall for every such offence be liable to a penalty not exceeding ten pounds, or the offender may in the discretion of the magistrate before whom he shall be convicted be imprisoned for any term not exceeding one month.

Assault or resistance of police.

14. And be it enacted that the said judge and superintendent and the police under his command shall as much as in them lies suppress all tumults, riots, affrays, or breaches of the peace within the limits of the said municipality and enforce every law or ordinance made or to be made for the due observance of the Lord's day, for the regular and decent conduct of houses licensed to retail wines or other liquors, for preventing the opening of such houses on improper days and at improper hours, for the punishment of drunkenness, and generally for every purpose connected with the good order and tranquillity of the municipality of Cape Town.

Duties of police.

15. And be it enacted that the judge and superintendent, deputy superintendent, and inspector of police, and any constable who shall by the said judge and superintendent be specially nominated and appointed for the purpose, but not any other constable, shall and may from time to time and at all times as often as they shall have reasonable and probable ground for suspecting that any retail dealer licensed under the Ordinances Nos. 93 and 94 or either of them is selling at unlawful or prohibited days or hours any of the liquors in the

Entry to and examination of licensed public houses, &c.

said ordinances mentioned demand admittance into the premises of such dealer for the purpose of examining the same; and if such dealer shall wilfully and intentionally refuse to admit such judge and superintendent, deputy superintendent, inspector, or constable, such judge and superintendent, deputy superintendent, inspector, or constable declaring his official character, or if such dealer shall wilfully and intentionally make any unnecessary delay in admitting the said parties, such dealer shall be liable for such offence to any penalty not exceeding five pounds, or in default of payment thereof shall be liable to imprisonment for any term not exceeding one month.

Entry to and examination of lodging and other houses not licensed.

16. And be it enacted that it shall be lawful for any of the persons in the last section mentioned and empowered for the purpose therein stated to require admittance into any lodging or other house or into any apartments in any house within the said municipality not being a licensed house in case there shall appear either from the fact that seamen or others are seen coming out therefrom in a state of intoxication or from any other fact of a like nature or from private information given just and reasonable ground for believing that spirituous or other liquors are being sold therein, for the purpose of examining the same; and if the occupier of any such house or apartment shall wilfully and intentionally refuse to admit such person as aforesaid (such person as aforesaid duly declaring his official character), or if such occupier shall wilfully and intentionally make any unnecessary delay in admitting such person as aforesaid such occupier shall be liable for such offence to any penalty not exceeding five pounds sterling or in default of payment thereof shall be liable to imprisonment for any period not exceeding one month.

Suppression of nuisances, &c.

17. And whereas under and by virtue of the Ordinance No. 1, 1840, entitled "An Ordinance for the better regulation of the Municipal Board of Cape Town and the vicinity thereof," certain municipal regulations have been or will be duly framed, approved of, and established in which will be specified amongst other things certain acts and omissions which when done or made in the streets, thoroughfares, or public places of the said municipality shall be deemed and taken to be public nuisances or offences, and shall be punished as such; and whereas a list or catalogue of all such acts and omissions so being such nuisances or offences shall from time to time be duly furnished by the municipal commissioners who are hereby required to furnish the same to

the judge and superintendent of police for the information of the force under his command: Be it enacted that it shall and may be lawful for the members of the said police force to prevent, abate, and suppress all such nuisances and offences, and they are hereby empowered to arrest without warrant any person whom they shall see in the actual commission of any nuisance or who shall be charged by any street-keeper or other officer of the said municipality or any other credible person with having recently committed any nuisance: Provided there shall exist reasonable ground for apprehending that except by arresting the party so offending within view of the said constable or so charged as aforesaid with having offended when not within such view such party could not be found or made answerable to justice without delay, trouble, or expense.

18. And be it enacted that it shall be lawful for the judge and superintendent, deputy superintendent, inspector, or any constable belonging to the said police force to take into custody without warrant any person who shall in any thoroughfare or public place use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace or from which a breach of the peace may be justly apprehended; and every such person so offending 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 a course seem necessary to find sufficient sureties to keep the peace.

Breaches of the peace, prevention of.

19. And be it enacted that it shall and may be lawful for any member belonging to the said police force to stop any person or persons whom such member shall find at any time between sunset and sunrise carrying or transporting any bundle or parcel or generally any goods of any sort or description whatsoever within the said municipality, and to interrogate such person or persons, and if he or they shall not account satisfactorily for the possession of the goods or articles so being carried or transported, or if there shall be reasonable grounds for suspecting that such goods or articles have been criminally procured, then it shall be further lawful for such member of the said police force to conduct the said goods and articles and the person or persons so carrying or transporting the same to the police station, and to detain such person or persons in custody until the then next sitting of the judge and superintendent of police, who

Examination of parcels carried at night.

shall inquire into the circumstances and make such determination as shall to him seem fit and proper.

Diseased and  
destitute persons,  
removal  
of from streets,  
&c.

20. And be it enacted that it shall and may be lawful for any member of the said police force to remove any outcast or destitute person found in any of the streets or public places of the said municipality labouring or supposed to labour under any infectious or contagious disease, and to conduct such person to such hospital as the judge and superintendent shall direct, and such person may be lawfully detained in hospital until the medical officer in charge thereof shall see fit to order his or her discharge.

Gambling in  
streets, &c.

21. And be it enacted that any person or persons who shall within any of the streets, thoroughfares, or public places of the said municipality play at cards or with dice or with any table or instrument of gaming or who shall be found betting or engaged in any real or pretended game of chance may be arrested by any member of the said police force who shall be a witness of the same, and shall upon conviction forfeit any sum not exceeding twenty shillings and in default of payment thereof shall be committed to prison for any period not exceeding fourteen days; and in the case of boys apparently under the age of eighteen years, may be ordered to receive any number of lashes not exceeding twelve.

Ships' stores,  
&c., receiving  
of.

22. And be it enacted that every person who shall within the municipality of Cape Town knowingly purchase or take in exchange from any seaman or other person not being the owner or master of any vessel anything belonging to any vessel lying in the port of Table Bay or any part of the cargo of any such vessel or any stores or articles belonging to the same shall be deemed to be guilty of an offence and shall be liable to a penalty not exceeding ten pounds, or in the discretion of the court before which he shall be convicted to imprisonment for any term not exceeding one month.

Boats, removal  
of.

23. And be it enacted that if any seaman belonging to any vessel lying in the said port or if any other person shall take away or remove from any such vessel any boat attached or belonging to the same without having obtained permission so to do from the master or other officer in charge of the said vessel such seaman or other person shall, although such taking or removal may not have been with a theftuous intent, be deemed and taken to be guilty of an offence and shall be liable to imprisonment for any term not exceeding one month.



24. And be it enacted that every person who by committing any offence herein or in the list and catalogue hereinbefore mentioned made punishable or forbidden shall have caused any hurt or damage to any person or property and who shall not upon demand make amends for such hurt or damage to the satisfaction of the person aggrieved shall upon conviction pay such sum not exceeding ten pounds as shall appear to the court before which he shall be convicted to be reasonable amends to the person aggrieved, besides any penalty to which the party offending may be liable for the offence: Provided, always, that if the person aggrieved shall be the only witness who gives proof of the offence the sum ordered as amends instead of being paid to such person shall be paid and applied in the same manner as the penalty: Provided that nothing in this section contained shall be construed to alter the sixty-first, sixty-second, or sixty-third sections of Ordinance No. 1, 1840, entitled "An Ordinance for the better regulation of the Municipal Board for Cape Town and the vicinity thereof," or any of the said sections.

Damage to person or property.

25. And be it enacted that all fines, penalties, and forfeitures to be levied for or on account of offences specified herein shall be paid and handed over to the treasurer of this colony for the time being and shall be by him duly entered in a separate account under the head of "Moneys received under Ordinance No. 2, 1840."

Fines, &c., appropriation of.

26. And be it enacted that such portion of the moneys in the last section mentioned as shall arise from the whole of the fines, forfeitures, or penalties imposed for misconduct upon the members of the said police force by the rules and regulations hereinbefore mentioned, and all the moneys to arise from fines imposed for drunkenness and for assaults committed upon police constables, and all moneys to arise from the sale of worn or cast clothing supplied to the police, shall together with all interest from time to time arising from or accumulating upon the same form and constitute a perpetual fund, to be termed the police fund, and shall be applied from time to time by the Governor of this colony for the time being in the payment of rewards to such members of the said police force as shall by extraordinary services appear to have merited the same, and in the payment also of such superannuation or retiring allowances and allowances to the widows and children of deceased constables as under the special circumstances of each case the said Governor shall

Police fund.

think proper to confer: Provided, however, that nothing herein contained shall be construed to entitle any member of the said police force to claim absolutely any superannuation or retiring allowance whatsoever or prevent him from being unconditionally dismissed.

Account of  
fines to be laid  
before Legis-  
lative Council.

27. And be it enacted that an account of all the fines, penalties, and forfeitures received as aforesaid by the treasurer of this colony, distinguishing those hereinbefore devoted to the formation of the police fund from the others, shall be annually laid before the Legislative Council of this colony at the same time with the annual estimates, for the information of the said council; and such disposition and appropriation of the moneys which shall appear by such account to have been received by the said treasurer other than the moneys forming and constituting the police fund shall be made and determined upon as the said council shall think fit: Provided, however, that nothing herein contained shall be construed so as to deprive any person whether a constable or not of any share in any of the fines, penalties, and forfeitures aforesaid to which by any other law or ordinance, should such other law or ordinance exist, such person might as informer or otherwise rightfully and legally lay claim, except such person being a constable shall have consented and agreed that the same may be applied to the augmentation of the said police fund.

Before what  
courts offences  
to be tried.

28. And be it enacted that all persons charged with any of the offences mentioned in this ordinance or in the list or catalogue of nuisances or offences hereinbefore mentioned may be proceeded against either in the court of the resident magistrate for Cape Town or in the police court of Cape Town as the case may be, reference being had, however, to the extent of the fine, penalty, forfeiture, or punishment sought to be imposed and to the extent of the jurisdiction of the said courts respectively in all cases in which the latter of the said courts is not specially empowered and directed by this ordinance to impose some given fine or punishment exceeding its ordinary jurisdiction, anything contained in the sixth section of the Ordinance No. 1, 1840, in anywise to the contrary notwithstanding.

Disposal of  
persons appre-  
hended while  
courts shut.

29. And be it enacted that whenever any person charged with any offence not being of a grave or serious character shall be without warrant in the custody of any constable of the said police force during any time when the courts of the

resident magistrate and the judge and superintendent of police are respectively shut, it shall be lawful for the chief officer in charge of the police station if he shall deem it prudent to discharge such person from actual custody, taking however, but without fee or reward, the bond, obligation, or recognizance of such person with or without sureties, conditioned for the appearance of the person thereby bound before the said resident magistrate or the said judge and superintendent as may be thought expedient at his next sitting, the time and place of which shall be specified in the said recognizance; and the said chief officer shall enter in a book to be kept for the purpose the name, residence, and occupation of the party and of his surety or sureties if any entering into such recognizance, together with the condition thereof and the sum thereby acknowledged, and shall return every such recognizance to the court at which the party was bound to appear at the next ensuing sitting of the same.

30. And be it enacted that every person desirous of plying for hire as a coolie shall upon being approved of by the judge and superintendent of police register his name and place of abode at the police office, and shall thereupon receive a badge which he shall wear firmly sewed to his coat or jacket on the left breast; and any person who shall so ply without such registration or without a badge so sewed as aforesaid shall forfeit the sum of ten shillings sterling for every offence; and for such registration and badge each coolie shall pay the sum of two shillings, and every coolie on application at the police office shall receive a printed card of the rates of hire signed by the judge and superintendent of police, which he shall at all times carry with him and show on demand to any person employing him; and if he shall refuse so to do he shall forfeit the sum of ten shillings sterling, and for every such card required each coolie shall pay six pence.

Coolies to be licensed.

31. And be it enacted that any person not being duly registered as aforesaid who shall wear a badge or represent himself to be a coolie duly registered shall forfeit a sum not exceeding twenty shillings for every offence; and any coolie who shall be duly convicted of lending his badge to be worn by any other person shall forfeit a sum not exceeding twenty shillings for every offence.

Badge of coolie, wearing of by unlicensed persons.

32. And be it enacted that the judge and superintendent of police shall have the power of depriving of his badge any

Deprivation of coolie licence.

coolie who shall be found guilty of dishonest or improper conduct upon complaint laid before the judge and superintendent of police.

Rates of coolie-hire.

33. And be it enacted that it shall be lawful for the Governor of this colony for the time being to nominate and appoint such a number of fit and proper persons as he shall deem expedient, of whom the judge and superintendent of police shall be always one, to fix a table of rates for coolie-hire, and a scale of the weights to be carried for the same, and to publish the same in the Government Gazette and to cause the same to be posted at the town-house of the municipality of Cape Town and at such other places as may appear desirable; and it shall be further lawful for the persons so nominated and appointed or for such other persons as may be appointed from time to time by the said Governor in their room and stead when and so often as such persons shall think it right and fitting to revise the said table of rates, and to make such alterations therein either by raising or lowering the rates of hire therein mentioned as they shall deem expedient, and every change and alteration so made shall be forthwith published and posted in the manner herein directed with respect to the first table to be framed under the provisions of this section.

Refusal of duty or extortion by coolies.

34. And be it enacted that any coolie plying for hire who shall refuse his services at the rates fixed by the table for the time being or who shall demand more than according to such table he is entitled to require or who shall refuse to carry his appointed burthen shall forfeit for every such offence any sum not exceeding two pounds, and in default of payment thereof may be imprisoned for any period not exceeding fourteen days.

Refusal to pay coolie-hire.

35. And be it enacted that in case of complaint made by any coolie to the judge and superintendent of police that any person by whom he was employed as such coolie has refused to pay him his just and legal hire according to the tariff of rates to be by him produced, it shall be lawful for the said judge and superintendent to summon the person so refusing to pay the same to appear before him, and whether the said person shall duly appear according to the exigency of the summons or not to inquire into the case, and if it should be made apparent to his satisfaction that payment has been refused or delayed without any just or proper reason he is hereby empowered to order in a summary manner the pay-

ment of whatever sum he shall think right and just ; and if the said person so unjustly withholding such sum shall not pay the same when demanded by the messenger or other officer of the police court, then the said judge and superintendent shall issue his warrant for the apprehension of the person so as aforesaid refusing to obey the said order of the said judge and superintendent and shall commit such person to prison for any term not exceeding one week : Provided, however, that if such person shall sooner obey the said order of the said judge and superintendent he shall be forthwith entitled to his discharge.

36. And be it enacted that the judge and superintendent for the time being shall make all such contracts and disbursements as shall be necessary for purchasing or renting any land or building or for erecting, fitting up, furnishing, or repairing any building for a police station or any other purposes connected with this ordinance in such manner as the Governor of this colony for the time being shall approve of or direct ; and of all lands and buildings so to be purchased or rented and of the fixtures or furniture thereof, and of all goods and chattels whatsoever to be from time to time held or purchased for the purposes of this act, the property and lawful possession shall be deemed and taken to be vested in the said judge and superintendent, whom in all legal proceedings whatsoever regarding his public character and office it shall be sufficient to style "the judge and superintendent of police," without any other or more particular description, and in which judge and superintendent also shall be vested the property and lawful possession of all watchhouses and watchboxes mentioned in the Ordinance No. 1, 1840, and thereby vested in and made over to the Governor of this colony, and in all the arms, accoutrements, and other necessaries furnished or to be furnished to the members of the said police force, and the said judge and superintendent for the time being may by the direction of the Governor for the time being sell, assign, or dispose of the whole or any part of any such property as aforesaid.

37. And be it further enacted that in the construction of this ordinance, unless there be something in the context repugnant thereto, any word denoting the singular number or the male sex shall be taken to extend to any number of persons or things and to both sexes ; that the word "month" wherever the same occurs shall be taken to mean a calendar

Police contracts, &c.

Vesting of police property.

Interpretation of words.

Imprisonment  
with or without  
hard labour.

month; and that any imprisonment by this ordinance contemplated and authorized may be either with or without hard labour as the functionary directing such imprisonment shall adjudge and declare.

38. And be it enacted that this ordinance shall commence and take effect from the first day of May now next ensuing.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 6th day of April, 1840.

By command of His Excellency the Governor,

(Signed) JOHN BELL,  
Secretary to Government.

By order of the Legislative Council,

(Signed) CHARLES BELL,  
Acting Clerk of the Legislative Council.

No. 3.—Sd. George Napier.]

[9th June, 1840.

Ordinance for applying a sum not exceeding £156,174 12s. 11d. for the service of the year 1840.

No. 1.—Sd. George Napier.]

[22nd March, 1841.

Ordinance for the better Collection, as regards the Town of Cape Town, of certain Taxes and Duties due and in arrear.

[Proceedings under this Ordinance were limited to six months after its enactment.]

No. 2.—Sd. George Napier.]

[27th April, 1841.

Ordinance for applying a sum not exceeding £157,944 8s. 6d. for the service of the year 1841.

No. 3.—Sd. George Napier.] [26th June, 1841.

Ordinance for re-establishing the Toll at Kaayman's Gat, until the first day of February, 1855.

[Lapsed.]

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No. 4.—Sd. George Napier.] [13th October, 1841.

Ordinance for applying a sum not exceeding £155,879 6s. 7d. for the service of the year 1842.

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No. 1.—Sd. George Napier.]

Ordinance for authorizing the appointment of a Vestry and Churchwardens for St. Mary's Church at Port Elizabeth.

WHEREAS it appears expedient that the inhabitants of Port Elizabeth and the parochial limits thereof being members of the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the church at Port Elizabeth commonly called St. Mary's Church, and that the said vestry and churchwardens should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it appears expedient that the control over the affairs of the said church which has been hitherto exercised by the original church committee and since the dissolution of that body by the officiating minister and churchwardens or warden should cease and determine:

1. Now therefore be it enacted by the Governor of the Cape of Good Hope, by the advice and consent of the Legislative Council thereof, that on the Easter Monday ensuing next after the passing of this ordinance and on each succeeding Easter Monday a general meeting of the male inhabitants

First election  
of a vestry.

of Port Elizabeth and the parochial limits thereof being of the age of twenty years or upwards who shall be holders of sittings in St Mary's Church aforesaid or who shall be entitled *ex officio* to occupy seats in the pews already set apart for the accommodation of the churchwardens and strangers, the officers of the garrison, and the chief civil magistrate of the district, such *ex officio* holders of seats being members of the aforesaid United Church of England and Ireland, shall be holden in the vestry of St. Mary's Church in Port Elizabeth, fourteen days' notice whereof shall be given during divine service by the minister for the time being and by notice posted on the church-doors for the purpose of electing a vestry; and it shall and may be lawful for the inhabitants aforesaid or a majority of them at such meeting assembled to elect from among themselves any number of persons not exceeding eight in the manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereafter specified.

Auditors of  
accounts.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid as auditors of the accounts of the said vestry.

Qualification of  
voters and of  
vestrymen.

3. And be it enacted that no male inhabitant shall be competent to vote at any such meeting for the election of a vestry who shall have allowed the rent of his pew or sitting to continue in arrear and unpaid for twenty-eight days after the same shall have become due and payable and shall have been legally demanded; nor shall any male inhabitant be qualified to be elected as a member of the vestry unless he be a resident householder in the town of Port Elizabeth or within the parochial limits thereof and unless he be a member of the United Church of England and Ireland.

List of voters.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing sections shall be prepared by the officiating minister so long as there are no churchwardens appointed under the provisions of this ordinance, and when churchwardens shall have been so appointed as is hereinafter provided then by the minister and churchwardens conjointly, which list shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.



5. And be it enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen or as auditors. Election of vestry by lists.

6. And be it enacted that the officiating minister for the time being shall preside as chairman at all meetings of the said vestry, provided that in case of his being absent from any such meeting one of the other members shall be elected to act as chairman, and in case of the votes of the said vestry being equally divided the chairman or acting chairman shall have a casting vote in addition to his own. Chairman of vestry.

7. And be it enacted that five members of the said vestry or four members in addition to the chairman or acting chairman shall form a quorum which shall be competent to perform all matters and things which may be done by the entire vestry under and by virtue of any of the provisions of this ordinance. Quorum of vestry.

8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, amend, alter, or rescind any rules, orders, or by-laws which may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this ordinance, and also to take such order for the management of the said church as they shall deem expedient: Provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this ordinance or to the customs and usages of the United Church of England and Ireland as there by law established. Rules, &c., for vestry.

9. And be it enacted that the officiating minister and churchwardens or warden officiating at the time of the election of the first vestry under this ordinance shall upon the appointment of the said vestry deliver or cause to be delivered over to the said vestry all deeds, accounts, documents, and papers relating to the church which shall be at the time in their custody or power, or authentic copies of the same, and all sums of money in their possession or subject to their control, and that their management of the affairs of the said church which since the dissolution of the church committee devolved upon them shall thereupon cease and determine. Deeds, &c., to be handed over to vestry.

Vestry to take up powers of church committee.

10. And be it enacted that the said vestry so from time to time constituted and appointed by such competent electors as hereinbefore specified shall and may have and exercise all the same powers, privileges, rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as were originally possessed by the church committee and are at present possessed by the officiating minister and churchwardens or warden, together with such other powers, privileges, rights, and duties as are hereinafter specified.

Election and powers, &c., of churchwardens.

11. And be it enacted that the said vestry shall forthwith on their appointment choose out of their own number two persons as churchwardens who shall perform and execute or cause to be performed and executed all lawful acts, matters, and things for the good order and decency of behaviour to be observed in the said church by the congregation thereof, and for providing the said church (by order and at the charge of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for furnishing the officiating minister with robes suited to his rank or degree in any university or college of the United Kingdom, and for preserving to all persons their rights in the pews and sittings in the said church, and for keeping the burial-ground appertaining to the said church in decent order, and for discharging all other duties which usually devolve on churchwardens of the United Church of England and Ireland so far as the same may be applicable to this colony.

Accounts of churchwardens.

12. And be it enacted that the said churchwardens shall keep an account wherein they shall enter or cause to be entered all sums of money received or paid by them for and on account of the aforesaid church and under and by virtue of the provisions of this ordinance, which account shall be opened for the inspection of one or both of the auditors at all reasonable times between the hours of nine o'clock in the fore and five o'clock in the afternoon, and the said account or a copy thereof together with any report of the auditor or auditors thereupon shall be laid before the annual meeting which shall be holden in conformity with the provisions specified in the first clause of this ordinance, and published for general information in case of such publicity being

deemed requisite by the persons assembled at such meeting or a majority of them.

13. And be it enacted that it shall and may be lawful for the said churchwardens for the time being to call in and compel or enforce payment of all sums of money which are or shall be at any time hereafter due and payable on account of the said church and by virtue of any of the provisions of this ordinance, and in their own names for and on behalf of the said vestry to make and enter into, perform and execute or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem beneficial to the church aforesaid.

Churchwardens to collect money and make contracts.

14. And be it enacted that it shall and may be lawful for the said churchwardens for the time being acting as such to commence and maintain from time to time any suit or action which they may deem necessary in conformity with the trust reposed in them against any person or persons whatsoever; and all such suits or actions shall and may be brought by them in the name of the churchwardens acting for and on behalf of the vestry of St. Mary's Church at Port Elizabeth, and no action shall abate by reason of the death, removal, retirement, or resignation of any individual churchwarden or vestryman.

Churchwardens to sue actions.

15. And be it further enacted that all suits or actions which shall arise or accrue to any person or persons whatsoever from or by reason of any contract or other matter or thing made or entered into by the said churchwardens in execution of the trust reposed in them shall be brought by such person or persons in manner and in name aforesaid and not against any individual churchwarden or member of the said vestry: Provided, always, that no such suit or action shall hold or be maintainable against the said churchwardens as such for or on account of any thing done or of any debt contracted by the original church committee and since the dissolution of that body by the officiating minister and churchwardens or warden acting as such previously to the taking effect of this ordinance.

Actions against churchwardens.

16. And be it enacted that the said churchwardens shall keep or cause to be kept an exact account of all collections of money made from time to time in the said church for or on account of any charitable or religious purposes connected with the said church and congregation thereof, and of all disbursements made from the same; and the said

Accounts of charitable collections.

churchwardens together with the officiating minister for the time being shall faithfully administer the same or cause the same to be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same; and the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations and opened for like inspection as the accounts of the general church fund.

Tenure of office  
by churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until the next general annual election of the vestry shall be completed, when they shall deliver up or cause to be delivered up to the said vestry all accounts relating to the general church fund and to such charities as aforesaid together with all vouchers, sums of money, or securities held by them in virtue of their office, and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they shall be continued as members of the said vestry.

Occasional  
vacancies in  
vestry.

18. And be it enacted that in case any member or members of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his or their office a special general meeting of the surviving or other members of the said vestry shall be called for the purpose of filling up any and all such vacancies as may arise from death, resignation, or removal.

Occasional  
vacancies in  
churchwarden-  
ship.

19. And be it enacted that if either of the said churchwardens shall die or resign or be removed by the said vestry or shall from any other lawful cause vacate his office the meeting of vestry in the last preceding section mentioned which shall be called for the purpose of filling up the vacancy thereby created in the said vestry shall also proceed to choose out of the number of the said vestry in the room of the churchwarden who shall have ceased to hold the office a new churchwarden, who shall continue in office until the time herein fixed for the annual election, and shall in the meantime possess all the powers and perform all the duties appertaining to the said office.

Free sittings.

20. And be it enacted that the four pews already set apart and appropriated to the use of the officers of the garrison, the

chief civil authority of the district, the minister and the churchwardens all for the time being shall still continue so set apart and appropriated; and that there shall likewise be reserved in some convenient part of the church an adequate number of free sittings for the accommodation of the troops and of poor people; and further that strangers visiting Port Elizabeth shall be considered as entitled to reasonable accommodation in the pew set apart and appropriated to the churchwardens.

21. And be it enacted that all the pews and sittings in the said church excepting those appropriated and reserved as aforesaid shall and may be let by the said churchwardens by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to them respectively by the vestry and payable at such times and in such manner as shall be appointed by the vestry; and the holder of such pew or sitting so rented shall and may possess and occupy the same by himself, herself, or by his or her assigns without hinderance or disturbance by any person whatsoever until the end of the said term: Provided that the holder of such pew or sitting shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable; and provided, always, that nothing in this section shall be construed to interfere with any persons who do at present or who may hereafter hold free pews or sittings on the ground of office.

22. And be it enacted that it shall and may be lawful for the churchwardens whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same shall have become due and payable, and shall have been legally demanded, to give notice to the possessor of such pew or sitting forthwith to quit and give up possession of the same; and thereupon it shall and may be lawful for the said churchwardens acting as aforesaid to re-enter into possession of the said pew or sitting for the purposes of this ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive the said churchwardens of the right to recover the amount of such rent so in arrear by action as aforesaid in any competent court.

23. And be it enacted that the said churchwardens acting as aforesaid shall keep a book to be called the "Pew-book," wherein they shall enter or cause to be entered the name of every person applying for either a pew, sitting, or sittings in

Sittings to be let.

Remedy where pew-rents in arrear.

Order in which pews to be let.

the said church together with the date of such application, and that on any pew, sitting, or sittings becoming vacant either by death, resignation, removal, or in any other way or in case of the erection of any new pew or pews or seats in any part of the said church the churchwardens for the time being shall forthwith apprise the applicant whose name shall stand first on the pew-book of the vacancy so caused or of the new pew, pews, or seats so erected, and shall offer the said pew, seat, or seats to such applicant on condition that he or she shall covenant and engage to pay the rent of the same affixed and made payable as hereinbefore mentioned, and that the said pew, sitting, or sittings so becoming vacant, or the said pew or pews, seat or seats so newly erected shall not be offered to any person whatsoever whose application for the same or any portion of the same shall bear a later date, until it shall have been declined by every applicant preceding such person on the pew-book.

Burials to be  
after rites of  
Church of  
England.

24. And be it further enacted that no burial shall take place in the burial-ground at present unconsecrated and allotted or which may hereafter be consecrated and allotted as burying-ground to the said church unless the said burial be performed after the rites and ceremonies of the United Church of England and Ireland, and that no burial shall take place in or under the said church.

Monuments  
and vaults,  
erection of.

25. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument or inscription to be erected or placed in such convenient parts of the said church or of the ground which may be enclosed about the same or in the burial-ground belonging thereunto or vaults to be dug and made in the said burial-ground upon payment to the funds of the said church for such permission such a sum as shall be affixed by the said vestry for such permission according to the terms thereof.

Monuments  
and vaults,  
maintenance  
of.

26. And be it enacted that it shall and may be lawful for any person or persons erecting or placing any monument or inscription in the said church or within the ground which may be inclosed about the same or in the burial-ground belonging thereunto, or digging or making any vault in the said burial-ground by and by virtue of such permission as aforesaid, to have, maintain, and keep up such monument, inscription, or vault according to the terms of such permission to and for the sole and separate use of the said person

or persons, and his or their heirs for ever : Provided, always, that in case any such monument, inscription, or vault as aforesaid be suffered to fall into decay or to become effaced or neglected, and the person or persons at whose cost and charges the said monument, inscription, or vault was erected, placed, or constructed shall decline to repair and keep the same in proper order, it shall and may be lawful for the officiating minister and churchwardens for the time being after a general notice of their intention to remove and efface the same.

27. And be it enacted that this ordinance shall be deemed and taken to be a public ordinance, and as such shall be judicially taken notice of by all judges, magistrates, and others without being specially pleaded. <sup>Public ordi-  
nance.</sup>

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 3rd day of March, 1842.

By command of His Excellency the Governor,

(Signed) J. MOORE CRAIG,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

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No. 2.—Sd. George Napier.]

Ordinance for authorizing the appointment of a Vestry and Churchwardens for Sidbury Church.

WHEREAS it is expedient that the inhabitants of Sidbury and the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the episcopal church at Sidbury recently erected ; and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed

and exercised by such officers according to the customs and usages of the said United Church of England and Ireland : And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of trustees as at present constituted should cease and determine :

Election of vestry.

1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Tuesday in Easter week after the passing of this ordinance, and annually afterwards on the same day, a general meeting of the male inhabitants of Sidbury aforesaid and of the parochial limits thereof being of the age of twenty-one years or upwards and members of and holding communion with the United Church of England and Ireland as there by law established shall be holden at Sidbury, fourteen days' notice whereof shall be given by the minister of the said church for the time being by promulgation during divine service and by notice posted on the doors of the church or by advertisement in one of the public papers of this colony, for the purpose of electing a vestry ; and it shall and may be lawful for the inhabitants as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons, not exceeding eight, in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Auditors of vestry accounts.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid to be auditors of the accounts of the said vestry.

Qualification for vestryship.

3. And be it further enacted that every male inhabitant householder being of the age of twenty-one years or upwards and a member of and holding communion with the church aforesaid and residing at Sidbury or within the parochial limits thereof shall be eligible to be a member of the said vestry : Provided, always, that no person shall be entitled to vote at such election or be eligible to be chosen a member of the vestry or an auditor of accounts thereof so long as (legal demand having previously been made) any just claim had upon him by the said vestry as such shall remain unsatisfied.

Lists of vestrymen.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no



churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided then by the minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

5. And be it further enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and as auditors. Election to be by lists.

6. And be it further enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own. Chairman of vestry.

7. And be it further enacted that five members of the said vestry or four members besides the chairman shall form a quorum, and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this ordinance. Quorum of vestry.

8. And be it further enacted that shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this ordinance, and also to take such order for the management of the said church as shall to them seem expedient: Provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this ordinance or to the customs and usages of the United Church of England and Ireland as there by law established. Rules, &c., for vestry.

9. And be it enacted that the said trustees shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control; and the office and duties of the said trustees shall thereupon cease and determine. Trustees to deliver deeds, &c., to vestry.

10. And be it enacted that the said vestry so from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise all the Powers, &c., of vestry.

same powers, and rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same as are now possessed and exercised by the trustees, together with such other laws, and rights, and duties as are hereinafter specified.

Power of vestry to call in money and make contracts.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this ordinance, and in their own names to make and enter into, perform and execute or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Power of vestry to sue.

12. And be it further enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent court in this colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever; and all such suits and actions shall and may be brought by them in the name of the vestry of the episcopal church Sidbury without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal or going out of office of any individual members thereof.

Actions against vestry.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust or shall arise or accrue to any person whatsoever against the said vestry shall be brought by such person in manner and in name aforesaid, and not against any individual member of the said vestry.

Accounts by vestry.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter money received and paid by them under and by virtue of the provisions of this ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid, and published if requisite for general information.

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon as conveniently may be choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the United Church of England and Ireland so far as the same may be applicable to this colony.

Election of churchwardens and their powers, &c.

16. And be it further enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church or congregation; and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same; and the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Accounts of charity collections.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

Tenure of office by churchwardens.

18. And be it further enacted that in case any member of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his office it shall and

Occasional vacancies in vestryship.

may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying or desiring to resign or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Free sittings.

19. And be it enacted that there shall be set apart in the said church two free pews, one to be allotted to the use of the minister and the other to that of the churchwardens, and that a proportion, namely one third of the remaining accommodation in the church, be reserved as free sittings for the poor.

Pews to be let.

20. And be it further enacted that all the pews and sittings in the said church with the exception of those allotted and reserved as aforesaid shall and may be let by the vestry by the year or for any other shorter period to any person desiring to take the same at a rent to be affixed to them respectively by the vestry, and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hinderance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable: Provided, always, that nothing in this section shall be construed to interfere with the claims of any person at present holding sittings in the church.

Remedy when  
pew-rent in  
arrear.

21. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive from recovering the amount of such rent in arrear by action in any competent court.

22. And be it further enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the church of England shall take place in the burial-ground consecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose. Rites of burial.

23. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon payment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof. Monuments and vaults, erection of.

24. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vault in the said burial-ground by and with such permission as aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglect to repair the same it shall and may be lawful after a general notice of such intention to remove the same. Monuments and vaults, maintenance of.

25. And be it enacted that this ordinance shall be deemed and taken to be a public ordinance and shall be judicially taken notice of by all judges, magistrates, and others without being specially pleaded. Public ordinance.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 3rd day of March, 1842.

By command of His Excellency the Governor,

(Signed) J. MOORE CRAIG,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk of the Legislative Council.

No. 3.—Sd. George Napier.] [26th March, 1842.

Ordinance for continuing the provisions of an Ordinance bearing date the 14th day of February, 1833, entitled “An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Register.” (1)

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No. 4.—Sd. George Napier.] [26th March, 1842.

Ordinance, to declare certain Immovable Property belonging to the Colonial Government to be exempt from Municipal Taxation.

[Repealed by Ordinance No. 3, 1843.]

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No. 5.—Sd. George Napier.]

Ordinance to provide for the Lodgment elsewhere than in the Government Discount Bank of this Colony of certain Moneys now by Law required to be lodged in the said Bank.

WHEREAS by the Ordinance No. 64, entitled “An Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony,” it is provided that the trustee or trustees of any insolvent estates shall in a certain event in the said ordinance mentioned open an account with the government discount bank of this colony, and shall pay into the said bank the certain sum or sums of money in the said ordinance particularly stated: And whereas by an ordinance bearing date the 1st day of September, 1829, entitled “An Ordinance for authorizing a Sum of Money to be raised in Shares for erecting an English Church at Cape Town,” it is provided that the trustees therein mentioned shall in a certain event therein specified open an account with the said government discount bank, and from time to time pay into the said bank the certain sum and sums of money in the said ordinance particularly stated: And

(1) *Vide* Ordinance No. 9, 1853, and Act No. 4, 1860.

whereas by an ordinance bearing date the 11th day of November, 1833, entitled "An Ordinance for authorizing a Sum of Money to be raised in Shares for building a Church at Wynberg," it is provided that the trustees therein mentioned shall in a certain event therein specified open an account with the government discount bank aforesaid or with the savings' bank in this colony, and from time to time pay into either of the said banks the sum and sums of money in the said ordinance particularly stated: And whereas by the Ordinance No. 97 (continued or re-enacted by certain other ordinances), and 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," it is provided that any sum which should by virtue of certain sections of the said ordinance be paid to the registrar of deeds should forthwith be paid into the said discount bank by the said registrar of deeds to the credit of certain person or persons in the said ordinance mentioned: And whereas by the Ordinance No. 8, 1836, entitled "An Ordinance for providing for the better and more effectual management of the Public Library in Cape Town," it is provided that the treasurer of the said library for the time being shall at the period in the said last-mentioned ordinance provided open an account with the bank aforesaid and pay over to the cashier thereof the sum and sums of money in the said ordinance particularly stated: And whereas it is expedient to make provision by law for relieving the said government discount bank from the obligation of receiving the several moneys hereinbefore mentioned, as well as for the paying into some bank or banks other than the said last-mentioned bank of all and singular the said several moneys: Be it therefore enacted by the governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing of this ordinance it shall not be incumbent upon the trustee or trustees of any insolvent estate or any trustees of either of the two churches aforesaid or the registrar of deeds in this colony or any treasurer of the library aforesaid for the time being to open an account with the said government discount bank or to pay into the said bank any sum or sums of money whatsoever, nor shall it be incumbent upon the said bank to permit or allow the opening of any such account or to receive from

Deposits in  
government  
discount bank  
abolished.

any such trustee or trustees of any insolvent estate or treasurer of such library or trustees of either of the said churches any sum or sums of money whatsoever; anything contained in any of the ordinances hereinbefore mentioned to the contrary in anywise notwithstanding.

Funds of insolvent estates to be deposited in bank chosen by creditors.

2. And be it enacted that from and after the passing of this ordinance it shall and may be lawful for and shall be the duty of the creditors of any insolvent estate at the meeting held for the election of trustees, immediately after such election in case such election shall take place at such meeting, and in case such election shall not then take place then immediately after the votes of the said creditors in regard to such election shall have been given, to nominate and appoint some certain bank or banks within this colony with which bank or banks it shall be the duty of the trustee or trustees of such estate to open an account instead of opening such account with the government discount bank, and into which bank or banks the certain sum or sums of money now by law required to be paid into the said discount bank shall be paid, and in case of a difference of opinion amongst the said creditors assembled at such meeting the greater part in value of the said creditors shall determine upon the bank or banks to be so nominated and appointed as aforesaid, and from and after any such nomination and appointment of any such bank or banks the trustee or trustees of such insolvent estate whether chosen by the creditors or provisionally appointed shall open an account with such bank or banks, and pay into the same every sum of money received by such trustee or trustees belonging to the said estate, and draw any such money out of the said bank or banks, under the same conditions, penalties, and provisions in all respects precisely as if in the seventy-sixth and seventy-seventh sections of the Ordinance No. 64 the name or names of such bank or banks so nominated and appointed were substituted for the name of the said government discount bank wherever the said last-mentioned name occurs.

Deposit account to be opened by provisional trustees.

3. And be it enacted that if any trustee or trustees shall before the meeting of creditors for the election of trustees be appointed under and by virtue of the forty-sixth section of the said Ordinance No. 64 to act provisionally in the collection, administration, and distribution of any insolvent estate, such provisional trustee or trustees shall under the same conditions, penalties, and provisions as aforesaid open an account



with and pay all sums of money into and draw all sums of money out of such bank or banks as shall in that behalf be nominated and appointed by the order of court appointing such provisional trustee or trustees, but from and after the meeting of creditors for the election of trustees such provisional trustee or trustees shall, until removal, obey such directions relative to the deposit of the moneys belonging to the estate as shall in the manner in the last preceding section mentioned be given by the said meeting; and in case the bank or banks nominated and appointed by such meeting shall be different from the bank or banks nominated and appointed by such order of court, such provisional trustee or trustees is hereby authorized and required forthwith to draw out of the bank or banks last mentioned all moneys which may then be deposited therein belonging to the said estate, and forthwith to pay the same into the bank or banks nominated and appointed by the meeting of creditors in manner aforesaid, there to remain in the same condition as all other moneys paid into such bank or banks belonging to such insolvent estate.

4. And be it enacted that the trustee or trustees whether provisional or otherwise of any insolvent estate belonging to which estate there shall at the passing of this ordinance be any moneys remaining deposited in the said government discount bank shall within fourteen days after the promulgation of this ordinance call a general meeting of the creditors of such estate and require their directions touching and concerning the disposal of the moneys so remaining deposited as aforesaid, and it shall be the duty of such meeting to nominate and appoint some bank or banks within this colony other than the said government discount bank with which an account shall be opened, and into which all such moneys so remaining deposited in the bank last mentioned and all moneys to be afterwards received by the said trustee or trustees shall be paid, and the said meeting shall, as far as practicable, proceed in the same manner to nominate and appoint, and the nomination and appointment thereof shall have the same operation and effect as is hereinbefore directed and provided with respect to the meeting for the election of trustees.

Meeting of  
creditors for  
choosing bank  
of deposit  
when money  
lying in  
government  
discount bank.

5. And be it enacted that any trustee or trustees whether provisional or otherwise of any insolvent estate belonging to which estate there shall not at the passing of this ordinance be any moneys remaining deposited in the said government discount bank shall so soon as he or they shall have received any sum of money exceeding twenty pounds belonging to

Meeting of  
creditors for  
choosing bank  
of deposit  
when no  
money lying  
in government  
discount bank.

the said estate call a general meeting of the creditors of such estate and require their directions touching and concerning the disposal of the said sum of money, and such meeting shall nominate and appoint some bank or banks in the manner and for the purposes in the last preceding section mentioned, just as if the sum of money received as aforesaid had been a sum of money remaining deposited as in the said section contemplated and provided for.

Trustees of  
Cape Town  
and Wynberg  
English  
churches to  
select bank for  
deposit.

6. And be it enacted that the respective trustees for the time being appointed under and acting in pursuance of either of the two ordinances hereinbefore mentioned, and relating respectively to an English church at Cape Town and a church at Wynberg, shall within fourteen days next after the promulgation of this ordinance select and appoint some bank or banks in this colony other than the said government discount bank, with which bank or banks an account shall be opened and into which the moneys belonging to the church fund of each of the said churches respectively shall be payable; and from and after the selection and appointment of such bank or banks the trustees respectively of the said churches respectively shall open an account with such bank or banks and pay into the same every sum of money received by such trustees and draw such money out of the said bank or banks under the same conditions, penalties, and provisions in all respects precisely as if in the twenty-third and twenty-fourth sections of the said ordinance relating to the said church at Cape Town and in the twenty-second and twenty-third sections of the said ordinance relating to the said church at Wynberg the name or names of such bank or banks so elected and nominated were substituted for the name of the said government discount bank wherever the said last-mentioned name occurs: Provided, always, that the trustees of the said church at Wynberg shall not be obliged to select or nominate any such bank or banks as aforesaid unless they shall deem it expedient so to do; and provided, also, that as soon as possible after any such selection and appointment as aforesaid the said trustees respectively shall and they are hereby authorized by a cheque or order to be signed by the said trustees respectively or by two of each respective set of trustees for themselves and co-trustees to draw out of the said government discount bank all the funds which shall then be deposited therein belonging to either of the before-mentioned church funds and to lodge the same in such bank or banks as shall have been selected

and appointed; and in case no such selection or appointment shall be made by the trustees of the Wynberg church aforesaid the funds to be so drawn as aforesaid out of the said government discount bank shall be lodged in the savings' bank of this colony; and provided, lastly, that it shall be lawful for the trustees respectively of the two above-mentioned respective churches and they are hereby authorized from time to time as often as they shall think fit to change the bank or banks in which the church funds shall be deposited, and from time to time to draw the same by means of such cheques as is in the section mentioned out of any one bank and then to lodge the same in any other bank as they shall in their discretion deem fit and proper.

7. And be it enacted that when under and by virtue of the nineteenth, twenty-first, and twenty-second sections of the Ordinance No. 97 hereinbefore mentioned any sum shall be paid to the registrar of deeds, the said registrar shall forthwith pay said sum into such bank or banks in this colony as shall in that behalf from time to time be nominated and appointed by the committee for the time being in the said ordinance mentioned; and it shall be and is hereby declared to be the duty of the said committee to nominate and appoint from time to time as they shall think proper such bank or banks, and such sum or sums as may be therein deposited shall remain there to the credit of the person or persons in the twenty-third section of the said ordinance mentioned, precisely in the same manner as but for this ordinance such sum or sums would have remained in the said discount bank, save and except that it shall be lawful for the said committee to require and for the bank or banks which they shall nominate and appoint to allow upon such sum or sums such rate of interest as may be agreed upon, which interest shall be claimable on demand by such person or persons as shall by law be entitled to demand the principal of the said sum or sums, anything in the said twenty-third section of the said ordinance to the contrary notwithstanding.

8. And be it enacted that the committee of the public library in Cape Town shall within fourteen days next after the promulgation of this ordinance select and appoint some bank or banks within this colony other than the government discount bank, with which bank or banks the treasurer of the said library shall open an account and into which the said treasurer shall pay all sums which he may receive on the

Deposit bank  
for moneys  
received by the  
registrar of  
deeds.

Deposit bank  
for moneys of  
the public  
library.

library account as soon as possible after the receipt thereof; and when and as soon as such bank or banks shall be selected and appointed by the said committee the said treasurer shall and he is hereby authorized by a cheque upon the said discount bank signed by the said treasurer and countersigned by the chairman of the said committee for the time being to draw forthwith out of the said discount bank all the funds then deposited therein belonging to the said library, and forthwith to lodge the same in the bank or banks which shall be selected and appointed by the said committee as aforesaid; and it shall be competent for the committee of the said library for the time being to select and appoint from time to time such bank or banks for the deposit of the funds of the said library as they shall deem most expedient and from time to time to direct the treasurer of the said library for the time being to remove the said funds from any given bank or banks to any other bank or banks which the said committee shall select and appoint; and the treasurer of the said library for the time being is hereby authorized and required from time to time to pay into such bank or banks as the said committee shall select and appoint all sums which he may receive on the library account at such time and under the like penalty in case of default as in the ninth section of Ordinance No. 8, 1836, are mentioned and provided; and the said treasurer for the time being is further authorized and required whenever he shall be to that effect directed by the committee of said library for the time being to remove all such sums belonging to the said library as shall be deposited in any particular bank or banks to such other bank or banks as the said committee shall select and appoint, and such removal of the said funds shall be made as aforesaid by means of cheques to be drawn by the treasurer and countersigned by the chairman of the committee for the time being.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 4th day of May, 1842.

By command of His Excellency the Governor,

(Signed) J. MOORE CRAIG,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 6.—Sd. George Napier.]

[25th May, 1842.

Ordinance for applying a sum not exceeding £155,199 7s. for the service of the year 1843.

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Order in Council.]

[27th Aug., 1842.

Order of Her Majesty in Council passed on the 27th August, 1842, and promulgated in this Colony on the 14th December, 1842, "For amending and consolidating the Law regulating the Rights and Duties of Masters, Servants, and Apprentices."

[Repealed by Act No. 15, 1856.]

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No 1.—Sd. George Napier.]

Ordinance for amending the Law relative to the Qualification of Jurors.

WHEREAS the qualifications required for serving upon petit juries as the same are set forth in Ordinance No. 85, entitled "An Ordinance for altering and amending the Ordinance No. 84," have now become in some respects inapplicable, and it is expedient to abolish the same and substitute one uniform qualification in their stead: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said Ordinance No. 85 shall be and the same is hereby declared to be repealed, except so far as the same repeals any former law or ordinance or any part of any former law or ordinance.

Ordinance No. 85 repealed.

And be it enacted that every man qualified and liable to serve as a juror according to the provisions of any former law or ordinance (save and except the said Ordinance No. 85 hereby repealed) and not being qualified to serve as a grand juror, and who shall be the occupier of any immovable property either as owner or renter of the yearly value of fifteen pounds, or who shall be the son of any such occupier as aforesaid, shall be qualified and liable to serve on any petit jury which shall be impanelled in the supreme court or in any circuit court which shall be held in or for the district in which such person shall reside.

Qualification of petit jurors.

And be it enacted that where any immovable property shall be jointly occupied by more persons than one as

Joint property may give several qualifications.

owners or renters each of such joint occupiers shall be qualified and liable to serve on any such petit jury as in the last section mentioned in respect of the immovable property so jointly occupied in case the yearly value of such property shall be of an amount which when divided by the numbers of such joint occupiers shall give a sum not less than fifteen pounds for each and every such joint occupier.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 22d day of April, 1843.

By command of His Excellency the Governor,

(Signed) J. MOORE CRAIG,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) W. TENNANT,  
Acting Clerk to the Legislative Council.

No. 2.—Sd. George Napier.]

[22nd April, 1843.

Ordinance for establishing a Toll at the Pass called Platte Kloof in the Division of Swellendam, and for keeping in repair the Road over the said Pass.

[Expired.]

No. 3.—Sd. George Napier.]

Ordinance for repealing the Ordinance No. 4, of 1842, entitled an Ordinance to declare certain Immovable Property belonging to the Colonial Government to be exempt from Municipal Taxation.

WHEREAS a certain ordinance was made and passed in this colony bearing date the 26th day of March, 1842, and numbered 4, 1842, and entitled "An Ordinance to declare certain Immovable Property belonging to the Colonial Government to be exempt from Municipal Taxation:" And whereas it is expedient to repeal the said ordinance: Be it therefore enacted by the Governor of the Cape of Good

Hope, by and with the consent of the Legislative Council thereof, that the said Ordinance No. 4, 1842, shall be repealed and the same is hereby repealed accordingly.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 4th day of May, 1843.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk of the Legislative Council.

No. 4.—Sd. George Napier.] [4th May, 1843.

Ordinance for establishing the validity of certain Writings Testamentary and Powers of Attorney, executed without being witnessed as by Law required, and for other purposes.

[Amended and repealed in part by Ordinance No. 11, 1845, and *in toto* by Ordinance No. 15, 1845.]

No. 5.—Sd. George Napier.] [21st June, 1843.

Ordinance for applying a sum not exceeding £161,039 19s. 5d. for the service of the year 1844.

No. 6.—Sd. George Napier.]

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

WHEREAS the law as contained in the Ordinance No. 64, bearing date the 6th of August, 1829, and entitled "An Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," requires certain additions and alterations: And whereas it is

Repeal of  
former laws.

expedient in order that the said additions and alterations may most conveniently be made that the said Ordinance No. 64 should be repealed and a new ordinance enacted in its stead: And whereas it is also expedient that all insolvent estates within this colony should be hereafter administered under one uniform system of law, and to that end that the benefit or relief of cession of goods and property commonly called the *cessio bonorum* now available to insolvent debtors in this colony should be abolished: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that from and after the passing of this ordinance the ordinance aforesaid, No. 64, and the publication of the 4th of September, 1805, respecting transfers, cessions, pledges, and other securities entered into by debtors within twenty-eight days previous to their insolvency, and so much of Ordinance No. 5, 1842, entitled "An Ordinance to provide for the Lodgment elsewhere than in the Government Discount Bank of this Colony of certain Moneys now by law required to be lodged in the said Bank," as is in substance hereinafter set forth and re-enacted, and all laws and customs heretofore in force within this colony in so far as the same are repugnant to or inconsistent with any of the provisions of this ordinance shall be and the same are hereby respectively repealed.

*Cessio bonorum*  
abolished.

1. And be it enacted that from and after the passing of this ordinance it shall not be lawful for any person or persons to obtain from any court within this colony or for any such court to grant to any person or persons the benefit or relief of cession of goods and property commonly called the *cessio bonorum* as heretofore known to and allowed by the law of this colony: Provided, however, that nothing herein contained shall be deemed or taken to affect in any way the estate or condition of any person to whom before the passing of this ordinance the said benefit or relief shall have been duly granted, which estate shall be administered and which condition shall be judged of precisely as if this ordinance never had been made.

Voluntary  
surrender.

2. And be it enacted that it shall and may be lawful for the supreme court or any circuit court or for the chief justice of this colony or any other of the judges of the supreme court, upon the petition in writing of any person setting forth that he is insolvent and desirous of surrendering



his estate for the benefit of his creditors, to direct such person to appear before him to be examined touching his said insolvency or to require such other proof thereof by affidavits of the said insolvent and others as to the said court or the judge may seem fit or to direct such petitioner to appear before any person duly appointed by the supreme court its commissioner for such purposes, and to direct such commissioner to examine the petitioner in manner aforesaid and to take such proof of the matters aforesaid as to the said commissioner shall seem fit and to make out and transmit to the registrar of the supreme court a report of such examination and proof taken as aforesaid; and it shall and may be lawful for the said court or judge before whom such examination is taken or for the said court or the chief justice or any judge of the supreme court, on considering the report of any such commissioner made in manner aforesaid upon proof of the matter aforesaid to his satisfaction, to accept the surrender of such estate, and by order under his hand to place the same under sequestration in the hands of the master of the said court: Provided, also, that any person authorized by power of attorney to administer the estate of any person absent from the colony may present in the name of such last-mentioned person such petition as aforesaid, and thereupon the same proceeding shall as near as may be be had and taken as if the person so absent from the colony had himself petitioned.

Voluntary  
surrender by  
attorney.

3. And be it enacted that it shall in like manner be lawful for the supreme or any circuit court or for the chief justice or any other of the judges of the supreme court, upon the like petition of any person legally vested with the administration of the estate of any person deceased or of any person legally or actually incapable of the administration of his estate situated within this colony, stating the insolvency of such estate, or upon the like petition stating the insolvency of the estate of any company trading or having an estate or effects within this colony made by the greater number of the partners of such company who at the time of presenting the petition are within this colony, to examine the petitioner or petitioners or cause him or them to be examined in manner aforesaid or to take or cause to be taken proof of the matters aforesaid in manner hereinbefore provided; and it shall be lawful for the judge before whom such examination is taken or for the chief justice or any judge

Voluntary  
surrender by  
executors, &c.

Or by trading  
companies.

of the supreme court, on considering the report of any commissioner of the said court made in the manner aforesaid, upon proof of the matters aforesaid to his satisfaction, to accept the surrender of any such estate and to place the same under sequestration in manner aforesaid; and after the order for any such sequestration is made the like proceedings shall and may be had and take place concerning such estates and the persons in whom the administration thereof is legally vested and the partner or partners of such companies as are herein provided concerning other estates and other insolvents.

Circumstances  
constituting  
insolvency.

4. And be it enacted that if any person having any property, movable or immovable, personal or real, within this colony shall depart therefrom or being out of this colony shall remain absent therefrom or shall depart from his dwelling-house or otherwise absent himself with intent to defeat or delay his creditors in obtaining payment of their debts, or having against him the sentence of any competent court being thereunto required shall not satisfy the same or shall not point out to the officer charged with the execution thereof sufficient disposable property to satisfy the same, if it shall appear from the return made by such officer or his affidavit that he has not found sufficient disposable property of such person to satisfy such sentence, or shall make or cause to be made either within this colony or elsewhere any alienation, transfer, gift, cession, delivery, mortgage, or pledge of any of his goods or effects movable or immovable, personal or real, with intent or in such manner as to defeat or delay his creditors in obtaining payment of their debts or with intent to prefer one creditor before his other creditors, such person shall be deemed thereby to have committed an act of insolvency.

Compulsory  
sequestration  
at instance of  
creditor.

5. And be it enacted that it shall and may be lawful for the supreme or any circuit court or for the chief justice of this colony or any other of the judges of the supreme court upon petition made in writing against any person having committed any act of insolvency by any creditor or creditors whose debt or debts amount to the value hereinafter provided, and setting forth the amount of the debt of such creditor and the cause thereof and the alleged act of insolvency, and praying that the estate of such person may be sequestrated for the benefit of his creditors, upon proof thereof to the satisfaction of the said judge, provided there shall be pro-

duced to the said judge together with such petition the affidavit or affidavits and certificate hereinafter required by order under his hand to place the estate of every such person or persons under sequestration in the hands of the master of the said court until the same shall in manner hereinafter mentioned be adjudged to be sequestrated or the said petition shall be discharged.

6. And be it enacted that no estate shall be placed under sequestration unless the debt of a single creditor petitioning that the same may be sequestrated shall amount to fifty pounds, or unless the debts of two or more creditors so petitioning shall jointly amount to one hundred pounds; and every person who is the creditor of another upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when the act of insolvency was committed, may so petition or join in petitioning as aforesaid whether he shall have any security for the same or not.

Debt of creditor petitioning for sequestration.

7. And be it enacted that every petitioning creditor shall before presenting any petition for having any estate placed under sequestration make an affidavit in writing before one of the judges of the supreme court or a commissioner of the said court appointed to take affidavits (which affidavits shall be filed with the proceedings in the estate) of the truth of his debt and the cause thereof, and shall likewise give security to the satisfaction of the master of the supreme court or of the resident magistrate of the district in which such petition shall be presented for payment of the necessary fees and charges for prosecution of the said sequestration until the choice or appointment of trustees; and the master of the said court or resident magistrate as the case may be shall forthwith endorse on every such petition a certificate that such security has been found and shall sign the same.

Affidavit of and security by petitioning creditor.

8. And be it enacted that the creditor or creditors on whose petition any order for sequestration shall be made shall at his or their own cost prosecute all the proceedings in the said sequestration until the election or appointment of trustees in manner hereinafter mentioned, and the same having been first taxed and ascertained by the master the said trustees shall reimburse the said creditor or creditors out of the first money that shall be received; and the costs incurred under any sequestration after the election or appointment of trustees in rendering any part of the insolvent estate over which any

Petitioning creditor to prosecute sequestration.

Costs of realizing property mortgaged.

Liability of mortgagee as to costs of sequestration.

Costs of sequestration how to be paid.

Liabilities of creditors for the costs.

Sequestration of company estates.

creditor shall hold any special mortgage, pledge, hypothec, or lien available for the payment of the debt thereby secured shall be paid out of the proceeds of the property over which any such security extends when the proceeds shall be sufficient for the same; and when the proceeds shall be insufficient such creditor shall be personally liable for the same; and no creditor holding any such security shall be liable to pay or to have deducted from the proceeds of any such property any part of the costs of sequestration incurred for any other purpose; and all costs incurred previous to the election or appointment of trustees as aforesaid in all cases in which upon the petition of the insolvent any estate has by order been placed under sequestration together with all costs incurred in every case of the sequestration of estates as insolvent (whether the same has been ordered or petition as aforesaid is adjudged at the instance of the creditors), for any other purpose than as aforesaid after the election or appointment of trustees as aforesaid shall in the first place and before any other debt be paid out of the free residue of the insolvent estate when it shall be sufficient for the same; and when the said free residue shall be insufficient for the payment thereof all the creditors who have proved against the insolvent estate debts not secured as aforesaid shall be personally liable for the same in proportion to such debts: Provided, however, that no person shall by merely proving a debt or receiving a dividend or appearing or voting at a meeting of creditors as a creditor be so liable for any claim by any person employed by the trustee in relation to any action or suit at law affecting the said estate or for any portion of the compensation or remuneration of the trustee for his care and diligence, reserving always to every person employed by the trustee such recourse against the said estate or the said trustee as may be competent to him, and reserving also to such trustee recourse against the said estate and against such creditors thereof or others as may on other grounds be liable to such recourse.

9. And be it enacted that any creditor or creditors of any company may in like manner as aforesaid petition against the partners of any such company to have the estate of such company placed under sequestration, in case any such company have by any one or more of its partners committed any act of insolvency with intent or in such manner as to defraud the creditors of such company or to defeat or delay them in

obtaining payment of the debt due by such company; or provided the sentence of any competent court has been obtained against such company and the partners thereof being thereunto required have not satisfied the same or pointed out to the officer charged with the execution of such sentence sufficient disposable property to satisfy the same, and provided it shall appear from the return made by such officer or his affidavit that he has not found sufficient disposable property of such company to satisfy such sentence; and every order for sequestration issued upon such petition shall be valid although it do not include all the partners of the company; and after the order for sequestration of such estate is made the like proceedings shall and may be had and take place concerning such estate and such partner or partners as are herein provided to be had and take place concerning other estates and other insolvents: Provided, always, that nothing herein contained shall extend or be construed to prevent the creditor or creditors of any company from proceeding against any partner or the separate estate of any partner thereof in respect of debts due by such company in the same way in which it is herein provided that the creditors of any person may proceed against him and his estate in respect of debts due by such person in his individual capacity; and provided, also, that it shall be lawful upon such petition and proof as last aforesaid and such other proof if any as may be required to include in the same order for sequestration (should the chief justice or other judge aforesaid making the same see fit so to do) as well the separate estate or estates of any partner or partners of any company as the joint estate of such company, but the separate estate of a partner shall not be entered upon or attached by virtue merely of an order for the sequestration of the estate of the company to which such partner belongs; and when any separate estate or estates shall be included together with the estate of the company in the same order for sequestration the creditors of the separate estate or estates and of the estate of the company respectively shall together and indifferently vote in the election of the trustee or trustees and in all matters relating to the said estates so included in the same order just as if the debt of every such creditor were due and owing by one single and undivided estate: Provided, always, that the trustee or trustees of any sequestrated estates so consolidated and the trustee or trustees of every joint and separate estate which may be included as aforesaid in the

Effect of  
sequestration  
of company  
estate on  
proceedings  
against its  
partners.

Conjunction of  
company with  
partnership  
estates.

Separate accounts where estates conjoined.

same order for sequestration shall be bound to keep separate and distinct accounts of the joint estates and of each separate estate, and shall rank the respective creditors and frame the account and plan of distribution hereinafter mentioned and award dividends and generally dispose and arrange the respective rights and claims of the consolidated estate and settle the affairs thereof according to the provisions hereinbefore in that behalf set forth precisely as if each of the consolidated estates were under a separate administration.

Sequestration of estates of deceased or incapable persons.

10. And be it enacted that any creditor or creditors of the estate of any person deceased or of any person legally or actually incapable of the administration of his estate situated within this colony may in like manner as aforesaid petition to have such estate placed under sequestration as insolvent, provided the person in whom the administration of such estate is legally vested has either in his individual or in his fiduciary capacity committed any act of insolvency with intent or in such manner as to defraud the creditors of such estate or to defeat or delay them in obtaining payment of the debts due by such estate, or provided the sentence of any competent court has been obtained against any such estate and the person in whom the administration thereof is legally vested has not satisfied the same, or being thereunto required pointed out to the officer charged with the execution of such sentence sufficient disposable property to satisfy the same, and provided it shall appear from the return made by such officer or his affidavit that he has not found sufficient disposable property belonging to such estate to satisfy such sentence; and after the order for any such sequestration is made the like proceedings shall and may be had and take place concerning such estates and the persons in whom the administration thereof is legally vested as are herein provided to be had and take place concerning other estates and other insolvents.

Privileges, &c., given to individual creditors extended to partners of companies and administrators of estates of third persons.

11. And be it enacted that every privilege and power given by this ordinance to any creditor in respect of any debt due to him individually by any insolvent, and every liability or penalty imposed by this ordinance on any such creditor shall be and is hereby declared to be given to and imposed on the partner or partners of any company in respect of any debt due to such company by any insolvent, and to be given to and imposed on every person legally vested with the administration of the estate of any person

deceased or of any person legally or actually incapable of the administration of his estate situated within this colony in respect of any debt due to such estate by any insolvent: Provided, always, that in reckoning the number of votes at any meeting of creditors or the number of creditors who have signed the certificate of any insolvent the partners of any company and any persons in whom the joint administration of any estate is vested as aforesaid shall be entitled to only one vote and shall be considered as one person.

12. And be it enacted that the party obtaining any order for sequestration shall forthwith lodge the same with the sheriff of this colony at his office in Cape Town or with the deputy sheriff of the district in which such order has been obtained, and the said sheriff or deputy sheriff shall enregister the said order and note thereon the day and hour of its production, and the deputy sheriff shall forthwith deliver or cause to be delivered to the sheriff at his office in Cape Town every order lodged with him after the same shall have been enregistered as aforesaid; and the sheriff shall at his said office enregister every such last-mentioned order and note thereon the day on which he received the same, and the sheriff shall forthwith deliver or cause to be delivered to the master of the supreme court every order as aforesaid whether lodged with himself or received from any deputy, and the said master shall when the order has been made at the instance of creditors cause the same to be notified in the Government Gazette of the colony; and every insolvent obtaining any order for sequestration shall also lodge with the master of the supreme court a list containing to the best of his knowledge and belief the names and places of abode of his several creditors.

13. And be it enacted that the master of the supreme court upon any estate being placed under sequestration in his hands shall by his messenger enter and lay an attachment on the estate under inventory thereof, and when the same shall be sequestrated upon the petition of any creditor the said messenger shall be accompanied by the petitioning creditor or some one authorized by him on behalf of himself and the other creditors of the said estate, and when the said estate shall be sequestrated upon the surrender of any insolvent it shall be lawful for any of the creditors or for the agent of any of the creditors of the insolvent to accompany

Order of  
sequestration,  
deposit of  
with sheriff.

Registration  
of by sheriff.

Transmission  
of by sheriff to  
master.

Publication of  
by master.

Attachment  
and inventory  
of estate by  
master.

the messenger and to be present with him while making out the inventory aforesaid.

Intermeddling  
with property  
attached.

14. And be it enacted that when any movable property belonging to any insolvent estate is attached as aforesaid in virtue of any order for the sequestration thereof, the messenger making such attachment shall leave with the person in whose possession any such property is attached a copy of the said inventory having subjoined thereto a notice both in the English and Dutch languages that the property therein specified has been attached by the said messenger by virtue of an order for the sequestration thereof and that any person who knowing the same to have been so attached shall dispose of, remove, conceal, or receive the same or any part thereof with intent to defeat the said attachment is liable on conviction of such offence to be transported for any period not exceeding seven years or to be imprisoned with or without hard labour for any period not exceeding five years: Provided, always, that it shall be lawful for such messenger to secure on the premises by sealing up any repository, room, or closet any articles which in the discharge of his duty it shall seem to him expedient so to secure, causing no unnecessary hinderance or inconvenience to any party by so doing, or to leave some person on the premises in custody thereof; and the said messenger shall forthwith report his execution of the said attachment to the master of the supreme court, who shall take such measures and give such directions for the safe custody of the said property as to him shall seem fit.

Securing by  
master of  
property at-  
tached.

Report of  
attachment to  
the master.

Resident  
magistrates,  
duty of, in  
regard to  
sequestration.

15. And be it enacted that the resident magistrates of this colony in their respective districts shall aid and assist in carrying this ordinance and the provisions thereof into effect; and for that purpose shall do and execute all such matters and things as they shall be required to do and execute by any rule or order of the supreme court by virtue of this ordinance.

Sheriff, his  
deputies and  
messengers of  
magistrates,  
their duties in  
regard to  
sequestration.

16. And be it enacted that the sheriff of this colony either by himself or by his deputy and the messengers of the courts of the resident magistrates being thereunto required by the master of the supreme court shall within the districts in which they have respectively been appointed to act do and execute the duties directed by this ordinance or by any rule or order of the supreme court in pursuance of this



ordinance to be done and executed by a messenger; and shall receive to their own use for such service out of the assets of any insolvent estate as to which they may be so employed such reasonable fees as are or shall be allowed by the supreme court for their service.

17. And be it enacted that it shall and may be lawful for every petitioning creditor who shall duly obtain any order for placing the estate of his debtor under sequestration thereupon to take out the process of the supreme court to summon the debtor that he appear before the supreme court or the circuit court of the district within which the debtor's ordinary place of residence is, on a certain day to be appointed by the judge making such order as to the said judge shall seem fit, to show cause why his estate should not by sentence of the said court be adjudged to be sequestrated for the benefit of his creditors; and the service of the said process shall be made in the same manner as is or shall be by law provided for the service of any other process of the said court: Provided that if any debtor has been forty days absent from his usual place of residence or business within the colony copies of the said summons shall also be affixed upon the outer door of the supreme court and inserted in the Government Gazette of this colony.

Summons of insolvent for adjudication of sequestration.

18. And be it enacted that upon the day appointed for any person to show cause why his estate should not be adjudged to be sequestrated, it shall and may be lawful for the court to receive proof of the matters aforesaid and to adjudge thereon whether the said person having been thereto lawfully summoned shall appear to the said summons or not; or upon sufficient cause being shown to their satisfaction to delay the said adjudication for any reasonable time at their discretion; and if the petitioning creditor shall make default in appearing or proving his said debt or the act of insolvency to the satisfaction of the court it shall and may be lawful for the said court to supersede the said order for sequestration and to dismiss the said petition or to require further proof of the matters contained therein as to the said court shall seem fit; and whenever any such petition shall be dismissed by the said court all questions affecting the estate of any person against whom it was presented or any right of such person or of his creditors or debtors, or the validity of any alienation, transfer, gift, cession, delivery, mortgage, pledge, payment, acquittance, surrender,

Adjudication on petition for sequestration.

or discharge made by such person, or payment made to such person shall be judged of and determined as if such petition had never been presented.

Where petition  
vexatious or  
malicious.

19. And be it enacted that if it shall appear to the court before whom any person has been so summoned upon such petition for sequestration that the said petition was unfounded and vexatious or malicious it shall and may be lawful for the said court to allow the said person on his application for the same forthwith to prove any damage alleged to have been by him sustained thereby, and to award to the said person such satisfaction for the said damage as the said court shall deem fit or otherwise to leave the said party to his action for the said injury.

Sequestration  
may be fol-  
lowed out by  
other than  
petitioning  
creditor.

20. And be it enacted that if after any order has been made for the sequestration of any estate the debts of the petitioning creditors or any of them be found insufficient to entitle such creditors to apply for and obtain such order for sequestration or if such order shall be superseded in consequence of the consent or default of the petitioning creditor or creditors or his or their collusion with the insolvent, it shall be lawful for the supreme court or such circuit court as aforesaid upon the application of any other creditor or creditors whose debt or debts amount to the value hereinbefore provided and have been incurred prior to the said order for sequestration, and who shall produce at the time of making such application the affidavit or affidavits and the certificate hereinbefore required, to order that the said sequestration shall be revived and be proceeded in as if it had been originally obtained on the petition of the creditor or creditors last mentioned; and thereafter the said sequestration shall be revived with all the consequences and effects thereof as if it had never been superseded; save only that when the sequestration shall be revived after the same shall have been superseded the validity of every alienation, transfer, gift, cession, delivery, mortgage, pledge, payment, acquittance, surrender, and discharge made by such insolvent, and every payment to and dealing with the said insolvent between the time of the superseding of the order for sequestration and the time of the making of the order for reviving the same shall be judged of and decided upon on such and the like grounds and principles and no other as would by law have been applicable to the same in case such order for revival were a primary and original order for sequestration.

21. And be it enacted that if any person against whom any order for sequestration has been made shall pay any money to the person who obtained the same or give or deliver to any such person any satisfaction or security for his debt or any part thereof whereby such person may receive more in the pound in respect of his debt than he would be entitled to receive if the sequestration were proceeded in and the estate distributed among the creditors thereof according to their legal rights and preferences, such payment, gift, delivery, satisfaction, or security shall be a new act of insolvency; and every person so receiving such money, gift, delivery, satisfaction, or security shall in the event of the sequestration being afterwards proceeded in by any other creditor or creditors in manner hereinbefore mentioned or of a new order for sequestration being issued upon such new act of insolvency deliver up such security and shall repay the said money, gift, or the full value thereof to such person or persons as the court shall appoint for the benefit of the creditors of such insolvent, and shall pay all the costs which shall be incurred by any other creditor in obtaining the revival of the said sequestration, and shall forfeit the whole of the debt due and owing to him by such insolvent.

Collusive agreement between insolvent and petitioning creditor.

22. And be it enacted that further execution of any judgment against any insolvent or his estate for the amount of any debt or sum of money shall after any order for sequestration of such estate is lodged with the sheriff or any such deputy sheriff as aforesaid for registration be stayed during the pendency of such sequestration, and the insolvent if in prison in virtue of any decree of civil imprisonment given in respect of any judgment, debt, or costs, or any order for committal made in respect of disobedience to any order for the payment of money made in any civil suit or proceeding may be released from his imprisonment in so far as the same is occasioned by reason of any such decree, order, or arrest as aforesaid by the order of the supreme court or of any judge thereof or of any circuit court, in case such court or judge shall not see cause to refuse to make such order shall be discharged therefrom; and it shall and may be lawful for the person having right to such judgment to prove the debt and costs secured thereby against the sequestered estate, and to take the benefit thereof upon distribution of the said estate; and where any property has been attached by legal process for satisfaction of any judgment, and has not

Effect of order of sequestration upon judgments, &c.

been sold or having been sold the proceeds thereof remain undistributed in the hands of the sheriff or other officer of the law, such property or such proceeds shall be placed under sequestration in the same manner as any other part of the insolvent estate, and the person holding such judgment shall on the distribution of the said estate be entitled to be preferred over the proceeds of the property attached or sold as the case may be at the time of the lodgment with the sheriff or deputy sheriff of the order aforesaid for the costs incurred by him for and in respect of the writ of execution and the execution of the same, but not for the amount of his judgment debt or of his costs of suit by him incurred before the suing out of such writ of execution. <sup>(1)</sup>

Effect of order of sequestration upon actions against insolvent.

23. And be it enacted that all actions pending against any insolvent for any debt or demand provable against his estate and all proceedings therein shall upon any order being made for the sequestration of such estate in virtue thereof be stayed, and the insolvent if in prison under any arrest granted in security of any debt or demand in regard to which any such action shall have been instituted may by the authority and under the condition in the last preceding section mentioned be discharged therefrom, and it shall and may be lawful for the plaintiff in such action to prove his debt together with the taxed costs of suit then incurred against the sequestered estate and to take the benefit thereof upon distribution of the said estate: Provided, however, that all actions pending against any insolvent for damages alleged to have been sustained from any injury or wrong or breach of any contract committed by him, such damages being uncertain, or for recovery of any claim unliquidated as to its amount and all proceedings therein shall upon any order being made for the sequestration of his estate be stayed until a trustee shall be elected for the administration thereof if the sequestration shall remain in force so long; and thereupon the plaintiff in such action after summoning the trustee to take up and defend the said action may proceed to obtain the judgment of the court thereon, and the said judgment when recovered together with the taxed costs of suit shall be a debt provable against the said estate.

Effect of order of sequestration upon actions by insolvent.

24. And be it enacted that all actions commenced by any person whose estate shall afterwards be placed under seques-

(1) *Vide supra* Ordinance No. 30, 1844.

tration as insolvent for any debt or demand due to the said estate and all proceedings therein shall upon the order for such sequestration being made be stayed until the trustee thereafter chosen for the administration of the said estate shall make election to prosecute or discontinue the same, and the trustee shall be bound to make such election within six weeks after notice to that effect shall be served upon him by any defendant in any such action or otherwise shall be deemed to have abandoned the same: Provided, however, that any insolvent shall be permitted to continue in his own name and for his own benefit any action commenced by him previous to his insolvency for any personal injury or wrong done to himself or any of his family, and any damages which may be recovered in any such action shall not go or belong to the insolvent estate nor shall any property proved to have been purchased or obtained by the insolvent with any such damages.

Damages for personal injury saved from sequestration.

25. And be it enacted that the master of the supreme court shall after any estate has been placed under sequestration upon surrender thereof as insolvent or has been adjudged to be sequestered forthwith cause notice thereof to be given in the Government Gazette of this colony, and shall thereby appoint two public meetings of the creditors of such estate at such times and places as he shall deem most convenient for all the parties concerned, the first for receiving proofs of debts against the said estate and the second for the same purpose and for electing a trustee for the collection, administration, and distribution thereof; and such publication shall be deemed notice thereof to all persons who may reasonably be presumed to have seen the same; and the times and places so fixed for the holding of any of the meetings aforesaid may on cause shown to the said master or to the supreme court by any party dissatisfied with the appointment made by said master be altered, of which alteration notice shall be forthwith given in the Government Gazette: Provided, always, that if it shall appear to the said master before causing notice to be given as aforesaid that the goods and effects of the insolvent available for the payment of his debts are not the value of seventy-five pounds sterling he shall specify the same in the said advertisement, and shall therein also give notice that unless it shall be shown at the first meeting called as aforesaid that the goods and effects of the insolvent exceed the value of seventy-five pounds

Calling of first and second meeting of creditors.

Election of trustee.

When value of estate not above £75.

sterling the master or resident magistrate holding such meeting will summarily proceed to rank the debts which shall be proved at such meeting according to their respective preferences and to direct the proceeds of the insolvent estate to be forthwith distributed accordingly by a trustee to be then elected by the greater part of the creditors in number and value attending at such meeting; and in such case the said insolvent shall at such first meeting attend before the creditors to account for his insolvency, and shall being thereunto required do and perform thereat all such other matters and things as are hereinafter required to be done and performed by him at any meeting of creditors under the provisions of this ordinance; and if at the said first meeting, which meeting may be adjourned from time to time if the said master or resident magistrate shall deem it necessary to adjourn the same, it shall still appear to the said master or resident magistrate as the case may be before whom the same is holden that the available assets of the said estate do not exceed the amount of seventy-five pounds sterling, it shall and may be lawful for the said master or resident magistrate to rank the creditors who shall prove their debts at such meeting according to the legal order of their preference, and for the creditors to elect a trustee for the collection, administration, and distribution of the estate of the said insolvent according to the order of ranking, and to direct the said trustee forthwith to collect, administer, and distribute the same accordingly; and further at the said first meeting the said master or resident magistrate shall and may respectively execute all the powers and authority which may be executed by them at any meeting of creditors under the provisions of this ordinance, and shall also do and perform thereat all matters and things required to be done for the final settlement of the said estate; and the creditors present at the said first meeting shall then determine what part of the wearing apparel, bedding, household furniture, and tools of trade of the insolvent shall be excepted from the sale of his movable property and shall be allowed to him, and shall also give to the said trustee such directions as to the management of the said estate as to them shall seem fit; and no other meeting shall be thereafter holden unless upon cause shown to the said master by any trustee or creditor of the said estate the said master shall think fit to order the same.

26. And be it enacted that in all cases where any meeting of creditors for the proof of debts or for the election of trustees shall be appointed to be holden in Cape Town the same shall take place before the master of the supreme court, and if in any district of the colony other than the Cape district then before the resident magistrate of such district under the direction of the said master; and the said master or resident magistrate shall respectively take the votes of the creditors and declare the party so elected trustee of the said estate, and in all cases where such meeting shall be holden before the resident magistrate of any district he shall forthwith certify to the said master the proceedings thereat.

Before whom  
meetings of  
creditors to be  
held.

27. And be it enacted that every creditor shall prove his debt against the said estate to the satisfaction of the master or resident magistrate as the case may be, who shall admit any debt or reject the same as not proved; and every creditor shall prove his debt by affidavit which shall be sworn before the master or resident magistrate or some commissioner appointed by the supreme court for taking affidavits or some justice of the peace, and which shall state the nature of the alleged debt and when such debt accrued originally to the deponent himself, that the same is a just, true, and lawful debt, and when such debt has accrued to the deponent by cession or otherwise from any other person then that the said debt is a just, true, and lawful debt to the best of the deponent's knowledge and belief, and such affidavit shall state what other persons if any are besides the insolvent liable for the said debt or any part thereof or that there are no such persons so liable, and shall state all pledges or security which the deponent or any person for his use holds from the insolvent for the said debt or any part thereof, and shall depose to the genuineness of all vouchers or evidences of debt which the deponent shall produce with his said affidavit: Provided, always, that it shall be lawful for the said master or resident magistrate in case he shall find that any clerk, agent, or other person is more fully cognizant of the nature of the debt sought to be proved than the creditor is to allow such clerk, agent, or other person to swear the affidavit aforesaid with such alterations as will thereby become necessary; and provided that any creditor who is out of or absent from this colony may in case he have no known agent or mandatory in this colony cognizant of and capable of proving the alleged debt make the necessary

Proof of debts.

Proof by agent.

affidavit before some person duly qualified to administer oaths in the place where he resides, such person being certified to be so qualified by some sufficient authority in that behalf should such creditor reside or be in any part of Her Majesty's dominions, and if such creditor should reside or be elsewhere than in those dominions then the said person shall be certified as aforesaid by a British minister or a British consul or by a notary public; and provided that it shall and may be lawful for the supreme court or any circuit court on the application of any party interested finally to admit or reject any debt admitted or rejected by the said master or resident magistrate or to allow any action which may have been instituted for the proof or recovery of any such debt against the insolvent prior to the sequestration and which has in consequence thereof been stayed to be proceeded in after the election of a trustee shall have taken place and after the trustee so elected shall have been duly summoned to take up and defend such action, and if the plaintiff shall thereafter obtain judgment thereon he shall be ranked on the insolvent estate for the amount of such judgment; and provided, also, that any such court as aforesaid before adjudging finally as to the admission or rejection of any debt may remit such case to the master or resident magistrate for further proof or may direct any question of fact to be tried by pleadings and proofs or adopt such other course as to such court shall seem fit.

Disposal of  
proofs by  
supreme court.

Resumption of  
actions against  
insolvent.

Nature of proof  
where mutual  
credits be-  
tween insol-  
vent and  
creditor.

28. And be it enacted that all debts due by any insolvent at the time of adjudication or surrender may be proved against his estate; and when there has been mutual credit given by the insolvent and any other person or where there are mutual debts between the insolvent and any other person upon which compensation can by law be pleaded on either side the master of the court or resident magistrate taking the proof of debt shall thereupon state the account between them and shall set one debt or demand against the other, and what shall appear due on either side on the balance of such account and no more shall be allowed to be proved or claimed or paid on either side respectively: Provided that the person claiming the benefit of such set-off had not when such credit was given or when the cause of his debt accrued notice of the order for sequestration having been made or of any act of insolvency in virtue of which such order shall have been made; and provided, always, that it shall and may



be lawful for the supreme court on the application of any person interested who shall consider himself aggrieved by any such decision of the said master or resident magistrate to review the same and to pronounce such judgment or to direct or allow such further proceedings as to the court shall appear just and proper.

29. And be it enacted that in all questions upon this ordinance every person to whom the insolvent was at the time of the surrender or adjudication or sequestration of his estate under any legal obligation to pay money at a certain future time shall be accounted creditor *de præsenti* and shall be entitled to prove his debt for the amount of the money specified in the obligation; but in case the said debt shall not have become payable at the date of the order for sequestration and shall not bear interest until the term of payment or shall bear interest at a less rate than six per cent. per annum, the said debt shall be valued in voting, and such creditor shall receive payment thereof or dividend thereon only after deduction thereout of a rebate of interest of six per cent. per annum or of so much per cent. per annum as shall correspond with the difference between the rate of interest payable on such debt and the rate of six per cent. per annum as the case may be, to be computed from the date of the order for sequestration to the time when such debt would have become payable according to the terms on which it was contracted.

Proof of debts  
not yet due.

Dividend on  
debts not yet  
due.

30. And be it enacted that any creditor who shall hold a preferable security or lien upon any part of the insolvent estate shall when he is the petitioning creditor be obliged upon oath in the affidavit accompanying the petition and when he is not the petitioning creditor in the affidavit produced by him at the time of proving his debt to put a value upon such security so far as his debt may thereby be covered and to deduct such value from the debt proved by him, but shall have the right to vote for trustees and commissioners and in all matters regarding the property over which he shall have such security or lien both in number and value for the full and entire amount of his debt, and in all other matters respecting the insolvent estate he shall vote as creditor only for the balance, which balance shall be specified in his affidavit without prejudice to such valuation being afterwards corrected and without prejudice to the amount of the said debt in other respects; and in case any creditor shall hold any preferable security or lien for payment of his debt

Creditors hold-  
ing lien, their  
rights as to  
proof of debt,  
&c.

obtained prior to the order for sequestration of the insolvent estate and not liable to be set aside in virtue of this ordinance upon any part of the said estate, the amount or value of such security or lien shall be deducted from his debt, and he shall only be ranked for or receive payment of or a dividend for the balance after such deduction; and if any dispute shall arise about the value of such security the creditor or claimant shall upon oath put a value upon it, and the trustees shall then have an option either of taking an assignment of the security for the benefit of the creditors at large on payment of the value so estimated out of the first assets of the insolvent estate or of reserving the full effect of it to the creditor himself; and in either case the creditor shall be ranked on the divisible fund for the balance of his debt so ascertained together with the other creditors, such creditor being in no event entitled to draw more than full payment of the debt, but being at the same time entitled to vote both in number and value according to the provisions and within the limits hereinbefore set forth.

Contingent  
creditors, proof  
by and ranking  
of.

31. And be it enacted that no person whose debt depends upon a contingency or an uncertain condition shall be entitled to petition or join in the petition for sequestration of any estate or to vote in the choice of trustee or any of the other proceedings herein specified so long as the contingency shall not happen or the condition shall not be performed: Provided, always, that the creditor in any such debt contracted before the order for sequestration shall have been made may if he think fit while the contingency or condition upon which such debt depends shall not have happened or shall not have been performed apply to the trustee to set a value upon such debt, and the trustee is hereby required to ascertain the value thereof and to admit such creditor to prove the amount so ascertained; and such creditor shall thereafter be entitled to vote and to receive dividends or payment as in respect of a debt of the value of the amount so ascertained; but whether such value shall or shall not be so ascertained before the contingency shall have happened or the condition shall have been performed such creditor may whenever such contingency shall have happened or such condition shall have been performed prove in respect of his whole debt and receive dividends or payments thereon with the other creditors; provided, always, that when the creditor in any such debt or claim the contingency of which

shall not have happened or the condition of which shall not have been performed and the value of which shall not have been ascertained as aforesaid shall enter a claim on the estate in respect of such debt, the trustee shall rank the claimant as if the contingency had happened or the condition had been performed, and shall forthwith apply to the supreme court to make an order and the said court shall make such order for securing the dividend or sum which the claimant would be entitled to draw until the contingency or condition upon which the debt depends shall happen or be performed or until it shall have become certain that such contingency or condition shall never happen or be performed, when the sum so secured shall be paid to the claimant or to the other creditors as the case may be, and any interest which may in the mean time arise and be received thereupon shall belong to and be paid to the other creditors; and provided, also, that the holder of any such contingent debt or claim of which the value shall not have been ascertained and who has been ranked as a claimant as if the contingency had happened or the condition been performed shall, for the purpose of agreeing to or dissenting from any offer of composition or the certificate of the insolvent as hereinafter mentioned, be deemed and taken to be creditor for whatever sum the master of the supreme court shall under the circumstances of the said debt fix and allow, subject to appeal from his decision to the supreme court.

32. And be it enacted that when by reason of the absence of any person from this colony or for any other cause appearing to the supreme court the said court shall be of opinion that a claimant who has not proved a debt to the satisfaction of the court may eventually be able to establish the same, it shall and may be lawful for the said court to allow such claim to be entered on the proceedings in the insolvent estate and to give reasonable time for proving the same, and in the mean time to make such order for securing the amount thereof in case the said claim shall be afterwards established as the said court shall see fit.

Allowance of claim where debt not yet proved.

33. And be it enacted that the mode of settling claims and the interest upon them shall be as follows, namely, the principal sum of each debt on which interest is chargeable together with the arrears of interest if there be any due upon it at the time the order for sequestration was made shall be accumulated as at the date of the said order for the

How interest upon claims to be ranked and paid.

purpose of the claimant being ranked for and receiving payment of such accumulated sum together with the principal sums of such debts as do not bear interest or from which there may be a rebate of interest as not being payable till an after period ; and the assets of the insolvent estate shall be applied first in payment according to the legal order of preference of all the preferent debts and the interest which shall have been due thereon prior to the date of the said order to the extent to which such interest is by law entitled to a preference, and every creditor shall have the same preference for the interest which shall have accrued on his debt between the date of the said order and the time of payment to which he may be entitled for any part of the interest which may have become due prior to the said order ; and secondly in payment of all the other accumulated sums so ranked without allowing any interest upon them from and after the date of the said order, if the said assets shall not be sufficient to discharge all the claims due to the insolvent estate ; but if after discharging the whole of such claims there shall be any residue left of the sequestered estate the creditors as well those from whom interest has been deducted on account of the provisions of the twenty-ninth section of this ordinance as all others shall be entitled to claim out of such residue any arrear of interest which may be due on them as arising since the date of the order for sequestration upon the respective sums ranked as hereinbefore mentioned.

Ranking and  
administration  
of company  
and partners'  
estates.

34. And be it enacted that in every case in which it shall happen that the estate of any company and the estate or estates of any one or more of the partners of such company shall be concurrently under administration as insolvent the creditors of the said company shall prove their debts against and rank upon the estate of the company, and the creditors of each partner in respect of debts due by such partner separately from the other partners shall prove their debts against and rank upon the estate belonging to their debtor separately from the other partners, and the estate of the company shall be first applied in satisfaction of the creditors of the company and each separate estate shall be first applied in satisfaction of the separate creditors of that estate ; and if the estate of the company shall prove insufficient to satisfy the creditors of the company or if there be no such estate then each creditor of the company shall rank upon the surplus of each separate estate which may remain after

satisfying the separate creditors of that estate either for the residue or entire of his debt as the case may be, but so, however, as not to receive in all more than the whole of their debts respectively; and if the separate estate of any partner shall prove insufficient to satisfy the separate creditors who have claimed upon it then the separate creditors upon that separate estate shall rank upon the surplus if any of the company's estate which shall remain after satisfying the creditors of that estate in proportion to the share in such surplus belonging to or claimable in right of the particular partner whose separate estate has so as aforesaid proved deficient; and whenever the company's estate shall prove insufficient to satisfy the company's creditors and the latter shall thereupon receive satisfaction wholly or in part out of the surplus of the separate estate of any of the partners of such company, the trustee of the separate estate so satisfying wholly or in part any of the creditors of the company shall be entitled to rank upon the separate estate of any other partner of such company for amount of whatever the contribution in respect of the debts of the company wholly or in part discharged such trustee may by law be authorized to claim: Provided, however, that no partner if insolvent and no trustee of the insolvent estate of any partner shall under any circumstances rank for the amount of any such claim for contribution upon the insolvent estate of any other partner in competition or concurrence with any of the creditors of the company claiming upon any such lastmentioned estate, which creditors are hereby declared to be entitled to be paid in preference and priority to any such partner or trustee; and provided, also, that nothing herein contained shall be construed so as to abridge or affect the rights which the creditors of any insolvent company may by law possess to seek satisfaction for their debts from any partner of such company whose estate shall not have been sequestered or to abridge or affect the rights which any such solvent partner may by law possess in regard either to the insolvent estate of the company or to that of any of his partners whose estate may have been sequestered.

35. And be it enacted that in every case in which the separate estate of any partner of a company shall be sequestered as insolvent and whether the estate of such company shall also be or have been sequestered or not any creditor to whom the insolvent is indebted jointly with the

Company  
creditors may  
vote in seques-  
tration of  
partners'  
estates.

other partner or partners of the company shall be entitled to prove his debt under the sequestration of such separate estate for the purpose of voting in the election of trustees and of agreeing to or dissenting from any offer of composition and the certificate and discharge of the insolvent as hereafter mentioned, but no further; and such creditor shall not receive any dividend out of the separate estate of the insolvent until all the separate creditors shall have received the full amount of their respective debts, unless such creditor have been a petitioning creditor in regard to the sequestration of such separate estate, in which case such creditor may vote and receive dividends in respect of his debt in the same manner as the separate creditor of such estate.

Law to prevail in cases not provided for as to competition between creditors of company and of partners.

36. And be it enacted that in every case not hereinbefore expressly provided for, and relating to the ranking and priority of the joint creditors of any company in competition with the separate creditors of any of the partners of such company or relating to the reciprocal claims of any such insolvent estates in reference to or in relief of each other, the rule for the time being in respect of the like case according to the law and administration of bankruptcy in England shall first be resorted to, and failing any such rule the common law of the colony shall be applied.

Within what period debts may be proved.

37. And be it enacted that any debt which was due or the cause of which arose prior to the order for sequestration of any estate may be proved at any meeting of the creditors appointed before the master or a resident magistrate at any time before the final distribution of the estate; and any creditor may after the second meeting called by the master of the supreme court in manner hereinbefore provided at his own expense call such meeting expressly for the purpose of proving his debt: Provided, always, that when any debt is so proved after any dividend has been paid to the creditors such dividend shall not in any way be disturbed or affected by or in respect of any such debt; and provided, also, that when any such debt is proved after the plan of distribution of such estate has been confirmed, and in consequence of the proof of such debt any alteration in such plan of distribution or any further proceedings in the sequestration shall be rendered necessary, the creditor proving such debt shall be liable for all expenses which may be incurred in consequence of any such alteration or proceedings.

If dividend disturbed.

38. And be it enacted that in all cases of votes given by creditors under this ordinance, when the creditors are to be counted in number no creditor whose debt is below thirty pounds sterling shall be reckoned in number but the debt due to such creditor shall be computed in value; and that in all cases in which any deduction is directed by the provisions of this ordinance to be made from the amount of the debt of any creditor, the vote of such creditor shall still be counted in value to the extent of the balance remaining after such deduction; and such creditor shall also be reckoned in number provided such balance amount to thirty pounds and upwards.

How votes of creditors to be reckoned as to number and value.

39. And be it enacted that in all cases where under the provisions of this ordinance the creditors of any insolvent estate are required or entitled to meet and to vote in any matter regarding such estate any creditor so entitled may attend and vote at such meeting personally or by agent authorized by any power of attorney to that effect duly executed, upon proof thereof to the satisfaction of the master of the supreme court, resident magistrate, or other person presiding at such meeting, and all questions at any meeting of creditors shall be determined by a majority in value of those present and entitled to vote in case a majority both of number and value shall not in respect of any such question be by law specially required.

Vote of creditors by agent.

What votes to determine.

40. And be it enacted that at the second meeting called as aforesaid or any adjournment thereof (if the said master or resident magistrate shall find it necessary to adjourn the same which they are hereby authorized and empowered to do) a trustee or trustees not exceeding three in number shall be chosen for the collection, administration, and distribution of the insolvent estate and effects; and all creditors who have proved debts against the insolvent estate shall be entitled to vote in such choice; and creditors holding any preferable security or lien shall vote in manner and form hereinbefore provided; and the choice shall be made by the votes of the greater part in number and value of the creditors or their agents present and entitled to vote: Provided, however, that it shall be competent to any person interested in any such insolvent estate or the due administration thereof, and who shall complain of any such election, upon giving within two days after the said election a notice in writing of the particulars of such complaint to the said master or

Election of trustee.

Complaint against election.

Recal of  
election.

resident magistrate as the case may be at any time before the election is confirmed in manner hereinafter mentioned to bring the same under review of the supreme court, who shall summarily or otherwise as such court shall see fit decide and make such order thereon as the justice of the case may require: Provided, always, that it shall be lawful for any person interested in the due administration of the estate at any time after the confirmation to apply to the court to recal the confirmation and set aside the election on the ground that such election was fraudulently or unduly made.

Persons dis-  
qualified from  
being trustee.

41. And be it enacted that in no case shall it be competent for the creditors to elect as trustee the insolvent himself or any person related to the insolvent by consanguinity or affinity within the fourth degree, nor any minor, nor any attorney, nor any person who having had his estate at any time placed under sequestration shall not have obtained the sequestration to be superseded or who shall not have been rehabilitated under the provisions of the law heretofore in force within this colony or shall not have obtained his certificate and allowance thereof as hereinafter provided, nor any person not resident within the jurisdiction of the supreme court, nor any person having an interest opposed to the general interest of the creditors in the insolvent estate, nor any person declared to be incapable of being elected by virtue of the provisions in the next succeeding section contained.

Acts by trustee  
inferring his  
disqualification.

42. And be it enacted that if any person elected a trustee shall be proved to the satisfaction of the supreme court or of any circuit court holden for the district in which the election of trustee was had to have procured or been privy to the omission from the schedule of the insolvent of the name of any creditor of the insolvent with intent thereby to obtain some peculiar advantage in regard to the election of trustee or to have either directly or indirectly given or promised to give to any creditor of the insolvent any species of valuable consideration whatsoever in order to obtain the vote of such creditor at the election of trustee or to have agreed to secure and make good to any creditor some certain sum or dividend in discharge or diminution of his debt, upon condition or in order that such creditor should give his vote to such trustee, or to have offered or agreed in case any creditor of the insolvent should consent to vote for such trustee to abstain



from opening up or investigating some previous transactions between such creditor and the insolvent which were or were supposed to be of questionable validity or to have contrived or been privy to any plan or arrangement by which debts or securities really belonging to some one or more persons have been divided amongst a greater number of persons for the purpose merely of increasing the number of votes at the election for trustee and thereby influencing the same or to have undertaken to share with any creditor or creditors of the insolvent in return for his or their votes the commission or remuneration to be awarded to him as such trustee, then such supreme or circuit court as aforesaid shall whether before or after the decree confirming the appointment of such trustee declare such trustee to have forfeited the office of such trustee in regard to the insolvent estate for which he shall have been elected and to be incapable of being again elected thereto, and it shall and may be lawful for such court if it should so think fit to further declare that the person so offending shall be incapable of being elected a trustee under the provisions of this ordinance for and during his natural life or such period as such court shall determine and adjudge; and any person interested in the due administration of the insolvent estate may apply by motion to such supreme or circuit court as aforesaid either before or after the decree confirming the appointment of any trustee to declare any such trustee to have forfeited his office by reason of any such misconduct as aforesaid; and as often as a vacancy in the office of trustee shall be created by any such forfeiture the court declaring the same shall order a new trustee to be elected, and the same proceedings shall be had thereon as on the original election of trustee.

43. And be it enacted that it shall and may be lawful for the supreme court or for any judge thereof on circuit and whether sitting in any circuit court or not, on cause shown by the master of the said court or any person interested in the due administration of the insolvent estate, by order of court to appoint one or more fit person or persons to be trustee or trustees of any insolvent estate provisionally and until the creditors of the said estate shall make choice of a trustee, which trustee or trustees may be removed at the meeting of creditors for the choice of a trustee if the said creditors shall think fit, but shall and may until so removed <sup>Provisional trustee, appointment of.</sup> <sup>Powers of.</sup> act in the collection, administration, and distribution of the

said estate in all respects the same as trustees elected by the creditors are by this ordinance authorized or required to do : Provided, however, that no such trustee or trustees shall proceed to make sale of any part of the said estate without the authority for that purpose of the supreme court or of some judge thereof or of some circuit court or of the master of the supreme court first had and obtained.

Trustees, remuneration of.

44. And be it enacted that all trustees so appointed by the court or elected by the creditors shall receive and be paid out of the assets of the said estate a reasonable compensation for their care and diligence in the said trust to be assessed by the master of the said court, subject to the review of the said court upon the petition of any creditor or of any of the said trustees or of any person having any interest in the said estate.

Confirmation of election of trustee.

45. And be it enacted that so soon as the trustees elected by the creditors shall have accepted their office it shall and may be lawful for the supreme court upon the report of the master to make a decree confirming the appointment of such trustee.

Vesting of insolvent's rights in master of court.

46. And be it enacted that every order made for placing any estate under sequestration as insolvent shall so soon as made have the effect in law to divest the insolvent and all persons administering the whole or any part of his estate for his use and behoof and to vest in the master of the supreme court for the uses and purposes of the sequestration all the present and future estate, movable and immovable, personal and real, and every right, title, and interest in and to any property, movable or immovable, personal or real, wheresoever the same may be known or found which shall belong or be due to such insolvent at the date of making such order or as to which any right of reversion shall then be vested in him or which may thereafter be purchased or acquired by or may revert, descend, or be devised or come to the insolvent at any time before the making of the order of court allowing and confirming as hereinafter mentioned the account and plan of distribution to be framed by the trustees (except as in the forty-ninth section is excepted), together with all deeds, vouchers, papers, or writings respecting the same ; and after the said order for sequestration has been made neither the insolvent nor any person claiming through or under him shall have power to alienate, give, cede, deliver, mortgage, pledge, or to recover or to release or

discharge the same or any part thereof; neither shall the same be attached by any person as the property of or belonging to the insolvent.

47. And be it enacted that every order of court appointing any provisional trustee or trustees shall so soon as made have the effect in law to divest the master of the supreme court and to vest in such provisional trustee or trustees for the uses and purposes of the sequestration, and until their removal or until the making of the order of court allowing and confirming as hereinafter mentioned the account and plan of distribution (whichever shall first happen), all the present and future estate of the insolvent as fully, as completely to all intents and purposes as the said estate is by virtue of the next succeeding section of this ordinance vested in the trustee or trustees elected by the creditors by the decree of the court confirming the appointment of the same; and whenever any provisional trustee or trustees shall die or be removed before the making of the decree aforesaid for confirming the appointment of any trustee or trustees elected by the creditors then the whole present and future estate of the insolvent for the time being shall vest again in the said master, precisely as if the same had never been divested.

Vesting of insolvent's rights in provisional trustee.

48. And be it enacted that every decree made as herein directed for confirming any trustee or trustees shall so soon as made have the effect in law to divest the master of the supreme court or any provisional trustee and to vest in the trustee or trustees thereby confirmed for the uses and purposes of the sequestration, and so long as such trustee or trustees shall continue to hold their office, all the present and future estate, movable and immovable, personal or real, which shall have belonged or been due to such insolvent at the time when the order for placing his estate under sequestration was made or as to which any right of reversion shall then be vested in him or which may thereafter be purchased or acquired by or may revert, descend, or be devised or come to the insolvent during the continuance of the sequestration and before the making of the order of court allowing and confirming the account and plan of distribution as hereinafter provided, wheresoever the same may be found or known (except as in the forty-ninth section is excepted), together with all deeds, vouchers, papers, or writings respecting the same; and the said trustee or trustees shall have the

Vesting of insolvent's rights in the permanent trustee.

Execution after order for sequestration of powers vested in the insolvent.

like remedy to recover the said estate of the insolvent or any part thereof in their own names for the purposes of the sequestration as the insolvent himself might have had if his estate had not been sequestrated; and all powers vested in any insolvent at the time the order for placing his estate under sequestration was made, or which may thereafter become vested during the continuance of the sequestration and before the making of the said order allowing and confirming the account and plan aforesaid, which such insolvent might have legally executed for his benefit, shall after the said order for placing his estate under sequestration and until an order of court appointing a provisional trustee or trustees or until a decree be made for confirming the appointment of a trustee or trustees elected by the creditors be executed by the master of the supreme court, and may after such order appointing a provisional trustee or trustees be executed by such provisional trustee or trustees until their removal, and may after their removal be executed by the said master until a decree be made for confirming the appointment of such trustee or trustees as aforesaid, and after such decree is made for confirming such appointment as aforesaid may be executed by the trustee or trustees whose appointment is thereby confirmed for the benefit of the creditors in such manner as the insolvent might have executed the same, and the said insolvent is hereby declared to be incapable to exercise or execute any such power as aforesaid.

Insolvent incapacitated from acquiring property.

49. And be it enacted that during the time which shall intervene between the time of the making of the order for the sequestration of any insolvent estate and the making of the order allowing and confirming the account and plan of distribution as hereinafter provided, the insolvent so long as he shall remain without his certificate shall (except in the certain cases hereinafter excepted) be absolutely disqualified and incapacitated to acquire or possess as against the person in whom for the time being the insolvent estate shall by law be vested any property, goods, or effects, movable or immovable, personal or real, or any right to any such property, goods, or effects, and shall in like manner be absolutely disqualified and incapacitated to cede, transfer, or convey, so as to bind the person in whom for the time being the insolvent estate shall by law be vested, any property, goods, or effects, or any debt, claim, or demand, or any bond, bill of exchange, promissory note, or other security for money, and

as against or in question with such last-mentioned person every such attempted cession, transfer, or conveyance shall be totally null and void ; and no person who shall have sold and delivered upon credit any goods, wares, merchandize, or other matter or things to any such insolvent shall be entitled to reduce or set aside the sale or to claim the amount of the purchase money from the person in whom the insolvent estate shall for the time being by law be vested by reason merely that the said insolvent was at the time of the contract of sale so disqualified and incapacitated as aforesaid or that the articles sold and delivered have been taken possession of by such person in whom the said estate was vested as aforesaid for the benefit of the said estate ; and no such insolvent shall be deemed or taken to have any power to bind any such last-mentioned person or the insolvent estate in him vested by any sort or description of dealing, contract, or transaction whatsoever, unless the same shall have been entered into by virtue of an authority to that effect from such person in writing : Provided, always, that nothing herein contained shall be construed so as to prevent any such insolvent from passing a valid title by any such cession, transfer, or conveyance as aforesaid while acting so far as he shall be authorized in writing so to do as the mandatory or agent of his trustee or from acting as the mandatory or agent of any other person by whom such insolvent shall be authorized in writing so to act, and for whom he shall have been in writing permitted so to act by the person in whom for the time being the insolvent estate shall be vested : Provided, also, that nothing herein contained shall be construed so as to prevent any insolvent whether acting as such mandatory or agent as aforesaid or not from well and effectually passing title to any person whatever by the delivering to him of any movable goods or effects which were next before such delivery in the actual possession of such insolvent in pursuance of any real and *bond fide* purchase from such insolvent for a just price duly paid, or to prevent any such insolvent from well and effectually passing title to any money paid by him in cash down for any matter or thing purchased by him at the time of such payment, or to prevent any such insolvent from receiving, suing for, and recovering in his own name and for his own personal and exclusive use and free from the control of his trustee the hire, wages, or reward of his work and labour or that of any

From contract-  
ing;

But not from  
acting as an  
agent,

Or completing  
delivery of  
goods sold and  
paid for,

Or from work-  
ing for hire,

Or from vindicating personal wrongs.

of his family by him or them bestowed during the intervening time aforesaid or any part thereof, or any damages claimable by reason of any personal wrong or injury done to such insolvent or any member of his family; and provided that whenever any property, goods, or effects shall be proved by such insolvent to have been purchased or obtained by means of any moneys receivable or recoverable as aforesaid for his own personal use, such property, goods, or effects shall also be free from the control of his trustee in like manner as the moneys were by which they were purchased or obtained.

Power of election by trustee as to actions in favour of or against estate.

50. And be it enacted that it shall and may be lawful for the trustees to take up and continue in their own names the process in any action commenced for any debt or demand due to the estate before their appointment or to discontinue the same as they shall see fit, and also to commence any new suit or action in any competent court for any debt or demand due to or affecting the estate of any insolvent person; and also to defend any action brought against them or pending against the insolvent relating to or affecting the said estate.

Insolvent competent witness in suits affecting estate.

51. And be it enacted that in every such action as in the last preceding section mentioned and in every action between any parties for determining the validity of the claim of any person claiming to be a creditor in the insolvent estate or the right of any person or persons to or of preference over any part of the assets of the insolvent estate the insolvent whether he shall have obtained his certificate or not shall not be deemed or taken to be an incompetent witness either for or against the said trustees or either of the parties in any such action as aforesaid by reason of any interest which he may have or be presumed to have in the event of the suit.

Causes for removal of trustee.

52. And be it enacted that it shall and may be lawful for the supreme court or any circuit court on cause shown by the master of the said court or by any person interested in the due administration of the insolvent estate to remove any trustee or trustees for insolvency or for any misconduct in the said trust or on account of absence from this colony, and thereupon and as often as any trustee shall die or obtain leave from the said court to resign or shall become incapacitated it shall and may be lawful for the said court or any judge thereof to order a new trustee to be elected, and the same proceedings shall be had thereon as on the original election of trustees, and it shall and may be lawful for the

When office of trustee vacant, how to be supplied.

said court or any judge thereof in the mean time to make such order as may be necessary or expedient for the preservation of the insolvent estate until such new trustee shall be elected and confirmed.

53. And be it enacted that whenever on the death or removal of any trustee any new trustee shall be elected and confirmed in manner hereinbefore provided the decree confirming the appointment of such new trustee shall have the effect in law to vest in the new trustee the whole insolvent estate present or future as hereinbefore particularly described, and every power, right, title, privilege, and remedy vested in or competent to the former trustee as trustee before his death or removal as fully and to the same extent as the same was vested in the former trustee by the decree made for confirming his appointment in manner aforesaid: Provided, always, that the death or removal of any trustee shall not affect the validity or force of any lawful act done by him as trustee for the purposes of the sequestration prior to his death or removal; and during any period of time which shall elapse between the death or removal of any trustee and the making of the decree for confirming the election of the trustee confirmed in his place and no longer the whole of the then existing insolvent estate shall, except when notwithstanding such death or removal there shall remain in office one or more of the trustees of the said estate, be vested in the master of the supreme court.

Vesting of estate in trustees newly appointed.

Death of trustee not to affect his acts.

Vesting of estate during vacancy in office of trustee.

54. And be it enacted that whenever a trustee shall die or a new trustee shall be chosen no action relative to the insolvent estate shall be thereby abated, but the court in which any such action is depending may upon the suggestion of such death or removal or that a new trustee has been chosen and confirmed allow the name of the surviving or new trustee or trustees to be substituted in the place of the former; and the said action shall proceed as if such surviving or new trustee or trustees had originally commenced or defended the same.

Death of trustee not to abate actions.

55. And be it enacted that every trustee on being confirmed shall forthwith cause notice of the sequestration and of his appointment to be given by advertisement in the Government Gazette, and the master of the supreme court shall cause notice of every order made for the removal of any trustee to be given by advertisement in the Government Gazette.

Gazette notice of sequestration and of appointments or removal of trustees.

Power of trustees to call meetings of creditors.

56. And be it enacted that it shall and may be lawful for any trustee or trustees at any time to call a general meeting of the creditors, and to require their directions concerning the collection or sale of any part of the estate or concerning any matter or question relating to the administration of the said estate, and the trustee or trustees shall call such meeting whenever they are thereto required by one fourth of the creditors in value who have produced and proved their claims; and the said trustees shall pursue the directions of the greater part of the creditors attending such meeting: Provided, always, that twenty-eight days' notice at the least shall be given of every such meeting and of the purpose thereof in the Government Gazette, unless in any particular case the master or resident magistrate shall authorize the trustee or trustees to call a meeting upon some shorter notice; and provided, also, that no such meeting shall be competent to direct the said trustees to do any thing calculated to interfere with or injure the just rights of any creditor who shall hold any preferable security or lien upon any part of the insolvent estate; and in case any direction shall be given by any such meeting calculated to interfere with or injure such rights such creditor may apply by motion to the supreme court to set aside such direction and thereupon the said court shall make such order in the premises as shall to justice appertain.

Gazette notice of meetings.

Saving of rights of creditors holding liens.

Before whom meetings of creditors to be held.

57. And be it enacted that all meetings of creditors called by virtue of this ordinance and appointed to be holden in Cape Town shall take place before the master of the supreme court, and if appointed to be holden in any district of the colony other than the Cape district then before the resident magistrate of such district or the person acting as such, who shall forthwith certify to the said master the proceedings thereat.

Legal advice may be taken by trustees.

58. And be it enacted that it shall and may be lawful for the trustees to take legal advice on any legal question affecting the insolvent estate or the administration thereof and to employ an attorney for the conducting and defending all actions and suits for or against the insolvent estate, and to charge against the insolvent estate all such fees as shall thereby be incurred and shall be allowed upon taxation by the master of the supreme court, subject to the review of the supreme court upon the complaint of the attorney so employed or of any person having an interest in the due



administration of the estate under sequestration; and when it shall be made to appear to the supreme court that any attorney has improperly advised, commenced, conducted, or defended any such action or suit or incurred any improper or unnecessary expense therein with the purpose of thereby benefiting himself and not with the *bonâ fide* purpose of thereby benefiting the insolvent estate it shall and may be lawful for the said court to order the whole or any part of the costs of such action to be paid by such attorney as the said court shall think fit.

59. And be it enacted that it shall and may be lawful for the master of the supreme court and for any trustees whether provisional or elected respectively to grant and allow to the insolvent out of the assets of the insolvent estate such moderate sum or sums as the said master or the said trustees respectively shall find to be indispensably necessary for the support of the insolvent and his family pending the decision of the creditors in regard to such support, and the said master and such trustees as aforesaid may if they shall respectively see fit employ the insolvent or any other person in the gathering and preservation of any crops or produce for any reasonable time necessary for the gathering and preservation thereof; and also leave the said insolvent or place any other person in the charge of any property, manufactory, or concern belonging to the insolvent estate until the same shall be sold, disposed of, or wound up, and make to the said insolvent or other person so employed a reasonable allowance per diem for his labour: Provided that the amount of every such allowance whether for support or labour as the case may be granted before the meeting of creditors which shall be first holden after the second meeting of creditors by this ordinance directed shall be submitted to such meeting, which meeting shall have power to decide whether any such allowance shall be continued, and if so for what length of time and what shall be the amount thereof; and provided, also, that every trustee who shall make any such allowance to an insolvent except with the consent of the creditors assembled at such meeting as last aforesaid or at some other meeting duly convened shall forthwith report to the master of the supreme court the amount and grounds of such allowance; and provided that every such allowance made by any trustee without the consent of the creditors shall be subject to the review of the supreme court upon the

Interim allowance to insolvent by master or trustees.

Interim care of estate.

application of the said master or of any person interested in the due administration of the insolvent estate.

Insolvent to attend meetings of creditors.

60. And be it enacted that the insolvent or legal administrator of any insolvent estate shall attend before the creditors at the first, second, and third meetings of creditors to be holden by virtue of this ordinance and at every adjournment of the said second meeting, unless authorized by the master or resident magistrate as the case may be not to attend any such adjourned meeting, and shall also attend before the creditors at every other meeting of creditors held by virtue of this ordinance whenever he shall be required so to do by a notice in writing signed by the master of the supreme court or by the resident magistrate before whom such meeting is to be held (which notice the said master and resident magistrate are hereby respectively authorized to give), and shall at every meeting of creditors which he shall attend answer all such lawful questions as shall be put to him by the said master or the said resident magistrate as the case may be touching and concerning his affairs and estate and the cause and ground of his insolvency, and shall at the said second meeting being thereunto required by the creditors lodge with the master or resident magistrate as the case may be to be by him delivered to the trustee or trustees when appointed or confirmed a true inventory of the whole of such estate and effects, movable and immovable, personal and real, wheresoever the same may be situated, and of all estates and effects in expectancy or contingency or to which the insolvent may have any eventual right, and all debts due to and by him to the best of his knowledge and belief, and all books of accounts, papers, writings, documents, bills, and vouchers relating to the said estate which are in his custody or power; and the said insolvent or administrator shall upon being thereunto required surrender the said books, papers, writings, documents, bills, and vouchers to the said master or resident magistrate as the case may be to be by him delivered to the trustee or trustees when appointed or confirmed.

To answer questions,

To give account of his estate,

And to deliver up papers, &c.

Examination of insolvent by officer presiding at meetings.

61. And be it enacted that it shall and may be lawful for the master of the supreme court and for the resident magistrate when they shall respectively preside at any meeting of creditors before which the insolvent shall attend to examine the insolvent upon oath if they shall see fit so to do touching all matters relating to his trade, dealings, or estate, or which may tend to disclose any secret alienation, transfer, cession,

delivery, or concealment of his estate and effects, movable or immovable, personal or real, and to cause his examination to be reduced to writing and signed by him and annexed to the proceedings in the said estate.

62. And be it enacted that it shall and may be lawful for the supreme court or any circuit court upon the application of the trustee or trustees whenever and so often as they shall see fit to summon any insolvent before the supreme court or any circuit court or any commissioner of the supreme court if the said court shall see fit so to order, whether the said insolvent shall have obtained his certificate and allowance thereof or not; and it shall be lawful for such court or commissioner to examine him upon oath touching all matters relating to his trade, dealings, or estate which may tend to disclose any secret alienation, transfer, cession, delivery, or concealment of his estate or effects, movable or immovable, personal or real, and to cause his examination to be reduced to writing and signed by him and annexed to the proceedings in the said estate.

Special examination of insolvent as to estate, &c.

63. And be it enacted that if any insolvent being lawfully summoned as aforesaid to appear before the supreme court or any circuit court or any commissioner of the supreme court shall not at the time and place appointed in the summons for his appearance come before such court or commissioner (having no lawful impediment at such time made known to and allowed by such court or commissioner), it shall be lawful for such court or for such commissioner under his hand to grant warrant authorizing any officer of the law or other person to apprehend such insolvent and forthwith to bring him before such court or commissioner or to lodge him in any prison, therein to be detained until the time which such court or commissioner as aforesaid shall have appointed anew on the application of the trustee or trustees for his examination, and the gaoler of every such prison shall cause him to be brought before such court or commissioner at the time and place specified in such warrant; and every insolvent aforesaid who being summoned as aforesaid shall depart from the colony or abscond or conceal himself within the same with the purpose and intent to evade appearing at any such examination to which he was summoned or to prevent any warrant hereinbefore mentioned from being executed upon him shall be deemed guilty of the crime of fraudulent insolvency, and shall on conviction thereof suffer transportation

Consequence to insolvent of not obeying summons for examination,

And of absconding.

for any period not exceeding seven years or imprisonment with or without hard labour for any period not exceeding five years.

Consequence  
to insolvent of  
not lodging  
inventory of  
estate, &c.,

64. And be it enacted that if any insolvent shall at the second meeting of his creditors or any adjournment thereof held as aforesaid, being thereunto required, refuse to lodge a true inventory of his estate and effects or to surrender the books, papers, writings, documents, bills, or vouchers relative to his estate as aforesaid, or shall at his examination before any court or commissioner before mentioned, or any meeting of creditors which he shall attend as aforesaid refuse to be sworn or shall refuse to answer any lawful questions put to him by such court or commissioner or by the said master or resident magistrate touching any of the matters aforesaid or shall refuse to sign or subscribe his examination so reduced into writing as aforesaid (not having any lawful objection to so doing), it shall be lawful for such court or commissioner or for such master or such resident magistrate by warrant under his hand to commit him to such prison as they shall think fit, there to remain without bail until he submit to do the matters aforesaid or to be sworn or make answer to such lawful questions as shall by them be put to him or sign and subscribe such examination as aforesaid.

And of refus-  
ing to be  
examined.

Examination  
of third parties  
in regard to  
estate.

65. And be it enacted that after surrender or adjudication of sequestration of any estate as insolvent it shall and may be lawful for the supreme court or any circuit court upon the application of the said trustee or trustees to summon before the said court or any circuit court or any commissioner of the supreme court the wife of the insolvent, or any person known or suspected to have in possession any of the estate of the insolvent or to be indebted to the insolvent, or any person whom the said court may see reason to believe capable of giving information concerning the person, trade, dealing, or estate of such insolvent, or any information material to the full disclosure thereof, and also to require such person to produce any books, papers, deeds, writings, or other documents in his or her custody which may appear to the said court necessary to the verification or disclosure of any of the matters aforesaid; and it shall and may be lawful for the said supreme court or circuit court or commissioner to examine every such person upon oath concerning the person, trade, dealings, or estate of such insolvent, and to cause his or her examination to be reduced

to writing and signed by him or her and annexed to the said proceedings; and if any such person shall upon being lawfully summoned to appear to be examined fail so to appear (having no lawful impediment made known to the court or commissioner before whom such person is summoned at such time and allowed by them) it shall be lawful for such court or for such commissioner under his hand to grant warrant authorizing and directing any officer of the law or other person to apprehend the person so summoned and failing to appear, and to bring the said person before such court or commissioner or to lodge the said person in any prison, therein to be detained until the time which such court or commissioner shall on the application of the trustee or trustees have appointed anew for his or her examination, and the gaoler of any such prison shall cause such person to be brought before such court or commissioner at the time and place specified in such warrant; and if any such person so summoned or brought before such court or commissioner for examination shall refuse to be sworn or shall refuse to answer any lawful question put by such court or commissioner touching any of the matters aforesaid or shall refuse to sign his or her examination so reduced into writing as aforesaid not having any lawful objection allowed by such court or commissioner, or shall not being thereunto required produce any books, papers, deeds, writings, or other documents in his or her custody or power relating to any of the matters aforesaid and to the production of which he or she shall not state any objection allowed by them, it shall be lawful for such court or for such commissioner by warrant under his hand to commit him to such prison as they shall think fit, there to remain without bail until such person shall submit to be sworn or make answers to all such lawful questions as shall by such court or commissioner be put or sign such examination or produce such books, papers, deeds, writings, or other documents as aforesaid in his or her custody or power, to the production of which no such objection as aforesaid shall be allowed.

Consequence  
to third parties  
of refusing to  
be examined.

66. And be it enacted that the insolvent and every other person summoned before the supreme court or circuit court or any commissioner by order of the said court to be examined or give evidence or make disclosure of the trade, dealings, estate, or effects of any insolvent under or by virtue

Tender of  
expenses to  
parties to be  
examined.

of this ordinance shall have his necessary expenses tendered to him by the trustee or trustees of such insolvent estate in like manner as is by law required upon service of a subpoena to a witness in any civil suit; and such necessary expenses shall also be tendered to every insolvent who is required by any notice in writing signed by the master of the supreme court or by any resident magistrate to attend any meeting of creditors other than the first, second, and third meetings as aforesaid or some adjournment of the second meeting.

Penalty of false answers during examination.

67. And be it enacted that every insolvent or other person sworn by or before any court or commissioner or by the master of the supreme court or by any resident magistrate by virtue of any of the provisions of this ordinance who shall wilfully make any false answer to any lawful question put by such court, commissioner, master, or resident magistrate, such person shall be deemed guilty of the crime of perjury, and on conviction thereof shall suffer any punishment provided by law for such crime.

Warrant of commitment at examination.

68. And be it enacted that if any person whatsoever be committed by any court or commissioner or by the said master or by any resident magistrate for refusing to answer or not fully answering any question put to him by them they shall in their warrant of commitment specify every such question; and if any person so committed as aforesaid shall make any application to any court or judge competent to entertain the same in order to be discharged from such commitment, and there shall not appear to such court or judge any insufficiency or informality in the form of the warrant whereby such person was committed by reason whereof he might be discharged, it shall be lawful for such court or judge and such court or judge is hereby required to recommit such person to the same prison, there to remain until he shall conform as aforesaid, unless it be shown to such court or judge by the party committed that he has fully answered all lawful questions put to him on his examination as aforesaid, or if such person was committed for refusing to be sworn or for not signing his examination, unless it shall appear to such court or judge that he had a sufficient reason for the same: Provided, also, that such court or judge shall if required thereto by the party committed consider the whole examination of such party whereof any such question was a part, and if it shall appear from the whole examination

Proceedings on application to be discharged.

that the answer or answers of the party committed is or are satisfactory such court or judge shall and may order the party so committed to be discharged.

69. And be it enacted that in case any suit or action shall be instituted or sought to be instituted against the master of the supreme court or any commissioner of the said court or any resident magistrate by reason or on account of any commitment to prison of the insolvent or other person the said master, commissioner, and resident magistrate shall respectively possess and enjoy in reference to such action and the process and proceedings therein every right, privilege, and provision and be subject to every liability which do or shall by law belong and pertain to suits or actions instituted or sought to be instituted against justices of the peace for anything done by them in the execution of their office: Provided, also, that the court before which any action founded upon a commitment for refusing to answer or not fully answering any question or questions put to the plaintiff is tried shall if required thereto by the defendant consider the whole examination of the plaintiff whereof such question was or such questions were a part, and if it shall upon such consideration appear to such court that the plaintiff was lawfully committed the defendant shall have the same benefit therefrom as if the whole of such examination had been set forth in the warrant of commitment.

Master, &c.,  
same protec-  
tion as justices  
of peace in  
action brought  
against them.

70. And be it enacted that if any insolvent whose estate shall have already been or shall hereafter be surrendered or adjudged to be sequestered as insolvent shall either before or after the making of the order for sequestration have alienated, transferred, given, ceded, delivered, mortgaged, or pledged or shall have embezzled, concealed, or removed any part of his estate or effects to the value of ten pounds sterling or upwards, or shall have concealed, removed, destroyed, falsified, or mutilated any books of accounts, papers, writings, documents, bills, or vouchers relating thereto with intent to defraud his creditors, or shall have fraudulently contracted any debt, or if any insolvent shall at the second meeting of his creditors or any adjournment thereof, holden before the master of the supreme court or any resident magistrate for the purpose aforesaid, wilfully lodge any inventory containing any false statement of his estate or effects or any part thereof or with respect to any debt due to or by him, or shall produce any books of accounts, papers, writings,

What acts  
constitute  
fraudulent  
insolvency.

documents, bills, or vouchers which are false, or on which any erasure or alteration has been made or caused to be made by him or with his knowledge with the intent to defraud his creditors, or if any such insolvent shall at any time when examined in manner aforesaid before any court or commissioner or by the master of the supreme court or by any resident magistrate wilfully make any false answers to any lawful questions then put to him with intent to defraud his creditors, or shall have connived at or concealed from the trustee his knowledge of the proof by any person of a false debt against his estate, he shall be deemed to be guilty of the crime of fraudulent insolvency, and on conviction thereof shall suffer transportation for life or for any shorter period not less than five years or imprisonment with or without hard labour for any period not exceeding five years.

What acts  
constitute  
culpable insol-  
vency.

71. And be it enacted that if any insolvent whose estate shall hereafter be surrendered or adjudged to be sequestrated as insolvent shall fail to attend before his creditors at the first, second, and third meetings thereof or shall fail to attend at any adjournment of the said second meeting unless authorized by the master or resident magistrate as the case may be not to attend the same, or shall without good and lawful reason for absenting himself fail to attend before his creditors at any meeting thereof after having been personally served with a notice in writing signed by the master or the resident magistrate as the case may be requiring him to attend such meeting, or shall not in case his estate is deficient to the amount of five hundred pounds or upwards have kept or caused to be kept such reasonable and proper books or accounts containing all such entries belonging to and exhibiting the nature of his dealings and transactions as regard being had to his particular trade or calling might reasonably be expected and required, or shall not when thereto required by the said master or the resident magistrate as the case may be at any meeting of his creditors account for or discover what has become of any money or valuable security or other property or effects which shall have been proved to have been in his possession so recently before the sequestration as to make it his duty so to do, or shall not when thereto required by such master or resident magistrate as aforesaid give a true and a sufficient explanation of the cause or causes of his insolvency, or if he shall have given to any of his



creditors an undue preference as the same is hereinafter defined, or shall have contracted any debt without any reasonable or probable expectation at the time of contracting the same of being able to pay the same, or shall have incurred any debt by reason of any breach of trust, or shall without having obtained his certificate and the allowance thereof between the time of the making of the order for the sequestration of his estate and the time of the making of the decree confirming the account and plan of distribution as hereinafter mentioned have entered into any dealing or business or taken upon him the buying and selling of any goods, wares, or merchandize whether for himself or any other person whatsoever without the authority in writing of the person in whom the insolvent estate shall for the time being by law be vested first had and obtained, or shall have granted, made, or promised any gratuity, payment, security, or other undue consideration in order to procure or obtain the concurrence or assent of any creditor either to any offer of composition or to the certificate as the same are hereinafter mentioned, such insolvent shall be deemed to be guilty of the crime of culpable insolvency, and upon conviction be imprisoned with or without hard labour for any period not exceeding six months.

72. And be it enacted that it shall and may be lawful for the courts of the resident magistrates in this colony respectively on the conviction before any such court of any person of any of the offences set forth in the last preceding section mentioned to sentence such person to the punishment in the said section provided.

Jurisdiction of magistrates in culpable insolvency.

73. And be it enacted that every trustee and every creditor of or on the estate of any insolvent shall with regard to any of the offences set forth in the seventy-first section of this ordinance have the same right of prosecution which any private person has by law with regard to any offence committed against his person or property and no other right: Provided, always, that no creditor or creditors shall be entitled to exercise any such right of prosecution for any such offence without first obtaining from the trustee and producing a certificate that the trustee declines to prosecute for that offence.

Prosecution of culpable insolvency by creditors.

74. And be it enacted that if any person shall receive or accept any alienation, transfer, gift, cession, delivery, mortgage, or pledge made by any insolvent of any part of his

Fraudulent alienation, &c., by insolvent in favour of third parties.

estate or effects with intent to defraud the creditors of the insolvent knowing at the time the same to be fraudulently made such person shall on conviction thereof suffer transportation for life or for any period not less than five years or imprisonment with or without hard labour for any period not exceeding five years.

Removal, &c.,  
of effects  
sequestered.

75. And be it enacted that if any person shall dispose of, remove, conceal, embezzle, or receive any movable property belonging to any insolvent estate which has been attached by virtue of any order for the sequestration thereof or any movable property which has been attached by process of any competent court knowing the same to have been so attached and with intent to defeat the said attachment such person shall on conviction thereof suffer transportation for any period not exceeding seven years or imprisonment with or without hard labour for any period not exceeding five years.

Recovery of  
sequestered  
effects con-  
cealed.

76. And be it enacted that in all cases when on the application of the master of the supreme court or any trustee or trustees of any insolvent estate it shall on oath be made to appear to the satisfaction of any judge of the supreme court or resident magistrate or justice of the peace that there is reason to suspect or believe that property of any insolvent is concealed in any house or other place not belonging to the insolvent it shall and may be lawful to the said judge, magistrate, or justice of the peace to grant a warrant to search for and take the said property, which warrant shall be executed in like manner as is by law allowed in execution of a search warrant for property reputed to be stolen and concealed; and any property of the insolvent so found shall forthwith be delivered if no trustee or trustees have hitherto been confirmed to the master of the supreme court, or otherwise to the trustee or trustees who have been confirmed or to any person appointed by the said master or trustee or trustees to receive the same.

Third meeting  
of creditors.

77. And be it enacted that it shall be lawful for the master of the supreme court and he is hereby required so soon as the trustee or trustees chosen at the second meeting of the creditors of any insolvent estate in manner aforesaid have been confirmed forthwith to appoint the third meeting of the creditors of the insolvent to be holden before himself or any resident magistrate at such time and at such place as he shall deem most expedient for all parties concerned, for the purpose of receiving proof of debts and for receiving

For proof of  
debts

the report of the trustee or trustees as to the condition of the insolvent estate and for giving directions to the trustee or trustees as to the management thereof; and the said trustee or trustees shall give notice of the time and place at which and of the purposes for which such meeting is to be held in the same advertisement in the Government Gazette in which notice is hereinbefore required to be given by them to the creditors of their confirmation as trustee or trustees.

And report as to condition of estate.

78. And be it enacted that it shall and may be lawful for the creditors of any insolvent estate present at such third meeting as aforesaid or at any other subsequent meeting to elect if they shall by a majority determine so to do one commissioner who shall be either a creditor or the mandatory of a creditor, and the same proceedings shall take place and the same regulations apply in regard to his election as are hereinbefore provided in regard to the election of trustee except that no decree of the supreme court confirming his appointment shall be necessary: Provided that no person shall be eligible to be a commissioner who is disqualified to be a trustee, and provided that after every such election of a commissioner the master of the supreme court or the resident magistrate as the case may be shall annex a record thereof to the proceedings in the insolvent estate; and provided that the trustee shall in all cases when a commissioner has declined to act or died or resigned or become incapacitated call a meeting of creditors for the purpose of electing should they by a majority think proper so to do a new commissioner, and such new commissioner shall be elected in the manner hereinbefore provided; and provided that no commissioner shall be entitled to or receive any species of salary, commission, allowance, or remuneration whatever from the insolvent estate for his services as such commissioner; and provided that when the question of electing a commissioner shall be sought to be submitted to any meeting of creditors other than the third meeting a public notice of not less than fourteen days shall be given in the Government Gazette that such a question will be submitted to such meeting.

Commissioner, election of.

79. And be it enacted that it shall and may be lawful for the said commissioner when such shall be elected as aforesaid to superintend the proceedings of the trustee, give his advice and assistance in the management of the estate, inquire from time to time into the situation thereof and of

Duties of commissioner.

every part thereof, examine all the accounts of the trustee regarding the said estate, require from the trustee all such reasonable explanation or information as he or they may from time to time demand touching any matter or thing belonging to the administration of the said estate, and assist the master of the supreme court in assessing the compensation to be paid to the trustee.

Power of commissioner to call meetings and report.

80. And be it enacted that it shall and may be lawful for the commissioner to call at any time a general meeting of the creditors and to make to such meeting such reports or representations in regard to any matter or question respecting the administration of the insolvent estate as he shall deem necessary or expedient, and the trustee shall pursue the directions of the greater part of the creditors attending such meeting: Provided always that twenty-eight days' notice at the least shall be given of every such meeting and of the purpose thereof in the Government Gazette.

Trustee to furnish information to commissioner.

81. And be it enacted that any trustee who shall neglect or refuse to give to any commissioner any such information concerning the situation and administration of the insolvent estate or any such insight into the accounts thereof as the said commissioner is as aforesaid authorized and empowered to demand and require shall be deemed and taken to have misconducted himself in his trust and may thereupon be removed in manner and form as hereinbefore provided from the office of trustee.

Getting in of debts by the trustee.

82. And be it enacted that the trustee or trustees shall after being confirmed forthwith call in and collect all debts due to the estate, and for that purpose they shall by advertisement in the Government Gazette summon all debtors to pay or cause the same to be paid to them at such time and place as shall be therein appointed for that purpose; and any person neglecting or refusing to make such payment and being afterwards sued for any such debt shall if the said trustee or trustees obtain a judgment against him, and if he shall not show cause to the satisfaction of the court awarding such judgment for such neglect or refusal, pay to the said trustee or trustees double costs of suit for the benefit of the said estate; and the said publication shall be deemed notice thereof to all persons who may reasonably be presumed to have seen the same; and the said trustee or trustees shall also proceed to set aside and if necessary by legal process all such payments, alienations, and pledges made by any

person whose estate shall be sequestrated as insolvent as are hereinafter particularly described and declared to be null and void, precisely as if the money or other property delivered or pledged had belonged to the said trustee or trustees at the time of the making of such payments, alienations, or pledges respectively.

83. And be it enacted that every alienation, transfer, gift, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, made by any insolvent at a time when it shall be made to appear by proof that his liabilities fairly calculated exceeded his assets fairly valued shall unless the same shall have been made *bonâ fide* and upon just and valuable considerations be null and void; and whenever the immediate and necessary effect of any such alienation, transfer, gift, cession, delivery, mortgage, or pledge as aforesaid shall be to cause such an excess of liabilities over assets then the same to the extent to which such excess shall have been thus produced shall be null and void.

Gratuitous  
alienations by  
insolvent.

84. And be it enacted that every alienation, transfer, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, and every payment made by any insolvent to any creditor, such insolvent at the time contemplating the sequestration either voluntary or otherwise of his estate and intending thereby to prefer directly or indirectly such creditor before his other creditors, shall be deemed to be an undue preference and is hereby declared to be null and void; and every such alienation, transfer, cession, delivery, mortgage, or pledge as aforesaid made by any insolvent to any person whatever, such insolvent at the time contemplating as aforesaid the sequestration of his estate and intending thereby to prefer directly or indirectly any creditor before his other creditors, shall be deemed to be an undue preference of such creditor in so far as he shall have been benefited thereby, and the trustee or trustees shall be entitled to recover the amount or value of such undue preference from the creditor so preferred.

Undue pre-  
ference of  
creditors.

85. And be it enacted that every alienation, transfer, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, and every payment made by any insolvent with the intention of thereby benefiting any person who not being a creditor of such insolvent would yet have become liable for the amount paid, satisfied, or

Undue pre-  
ference of  
sureties for  
insolvent.

secured by the insolvent in case it had not been so paid, satisfied, or secured, either in the character of a surety for such insolvent or in some character by law analogous thereto, such insolvent at the time contemplating the sequestration either voluntary or otherwise of his estate, shall be deemed to be an undue preference, and the trustee or trustees shall be entitled to claim and recover from the person so intended to be benefited whatever amount the insolvent shall have paid, satisfied, or secured in discharge or relief of such person's liability.

Transactions  
in ordinary  
course of tra. etc.

86. And be it enacted that every alienation, transfer, cession, delivery, mortgage, or pledge as aforesaid and every payment made by any insolvent to any creditor in the usual and ordinary course of trade or business shall *prima facie* be held and taken to have been made or given *bona fide* and without an intention to give to such creditor any preference although such insolvent may at the time contemplate the sequestration of his estate as insolvent, and in every such case it shall be necessary for the trustee or trustees seeking to set the same aside to show the existence of some collusive arrangement, mutual understanding, or common consent between the insolvent and the creditor, the one to give and the other to get a preference over the other creditors of the insolvent under colour of a transaction in the usual and ordinary course of trade or business.

Collusive  
payments to  
creditors under  
execution  
before seques-  
tration.

87. And be it enacted that every payment obtained by any creditor before the making of the order for sequestration by means or under colour of legal process against the insolvent shall be deemed an undue preference and be null and void when and as often as such payment shall have been obtained or facilitated by connivance of the insolvent or by collusion between such insolvent and such creditor, such insolvent when so conniving or colluding contemplating the sequestration of his estate and intending to give such creditor or allow such creditor to get a preference above the other creditors of such insolvent.

Forfeiture by  
creditors  
where undue  
preference  
collusive.

88. And be it enacted that in every case in which any person whether actually a creditor or not shall be obliged by virtue of the eighty-fourth or eighty-fifth or eighty-seventh sections of this ordinance to restore or repay as the case may be for the benefit of the insolvent estate any alienation, transfer, cession, delivery, mortgage, or pledge, or any payment as having been an undue preference, such person shall

not be allowed to claim or prove as a debt the amount of what he shall have so restored or repaid but shall wholly forfeit such amount as regards the insolvent estate in case such undue preference was received by such person by or through any collusive arrangement, mutual understanding, or common consent between such person and the insolvent, the one to give and the other to get such undue preference.

89. And be it enacted that it shall and may be lawful for the trustee or trustees of any insolvent estate in any suit or action which he may cause to be instituted against any person for the restoration or repayment of any matter, money, or thing alleged to have been given or paid by the insolvent by way of undue preference to claim amongst other things that the defendant in such suit or action may be declared by the judgment of the court in which such suit or action shall be pending to have forfeited in regard to the insolvent estate the amount in which he shall be found to have been unduly preferred by reason of the collusive arrangement, mutual understanding, or common consent in the last preceding section mentioned, and the question of such forfeiture shall be tried and determined together with the other questions in the case; and in case it shall not be necessary to institute any suit or action against persons who shall be alleged by the trustee or trustees to have been unduly preferred the right of any such last-mentioned persons to prove a debt in respect of the amount or value of the matter, money, or thing by them restored or repaid shall if disputed be determined in manner and form as is hereinbefore provided for the regulation of the proof of debts.

How question as to forfeiture in 88th section may be raised.

90. And be it enacted that in case any creditor of any insolvent shall have received from such insolvent an undue preference but under circumstances which do not by force and virtue of the eighty-eighth section of this ordinance occasion a forfeiture of the value or amount of such preference then in case such creditor shall have received such undue preference in respect of any bill of exchange or promissory note with recourse on other parties which was payable by the insolvent and held by such creditors, or in any respect of any debt of the insolvent for which such creditor had any security which by reason of the act of the insolvent constituting the undue preference such creditor has *bonâ fide* given up, discharged, or in law precluded himself from enforcing, such creditor shall not be liable to restore or repay to the trustee

If no forfeiture under 88th section, creditor before restoring preference to be indemnified as to his recourse on third parties.

or trustees the value or amount of such undue preference unless the trustee will indemnify and save him harmless in respect of whatever loss such creditor would sustain in case he were unconditionally condemned and adjudged to restore the value or amount aforesaid, and which loss such creditor would not have sustained in case he had never received from the insolvent the payment or other satisfaction constituting such preference.

*Boná fide* purchases by third parties of subject of undue preference from creditor preferred.

91. And be it enacted that if any person shall lawfully, *boná fide*, and without notice purchase or acquire any bills of exchange, promissory notes, or other securities for money or any goods or effects, movable or immovable, personal or real, which have been alienated, transferred, given, ceded, or delivered by any insolvent under circumstances or in a manner declared by any of the preceding or succeeding sections of this ordinance to be null and void from any person to whom such bills, notes, goods, or effects were so alienated, transferred, given, ceded, or delivered by any true bargain or agreement upon just and valuable consideration, nothing contained in this ordinance shall extend or be construed to extend to annul or affect any right which any such person has lawfully, *boná fide*, and without notice purchased or acquired in such bills or notes, goods, or effects; but in all such cases the persons to whom the same were alienated, transferred, given, ceded, or delivered by the insolvent shall be bound and obliged to pay the true value of all such goods and effects by them disposed of to the third party to the trustee or trustees of the insolvent estate for the benefit of the creditors thereof.

Collusive and fraudulent discharges of debt given by insolvent.

92. And be it enacted that all acquittances, surrenders, or discharges of any just debt or of any security for any just debt or other matter or thing, payment or delivery, of which has not been actually and *boná fide* received, made by any insolvent while contemplating the sequestration of his estate having the effect to deprive his creditors of the benefit of any debt or other matter or thing shall be and are hereby declared to be as against the trustee or trustees of such insolvent null and void; and in every case in which the person accepting from the insolvent any such acquittance, surrender, or discharge aforesaid had at the time of accepting the same actual knowledge or reasonable notice that the effect of the same if undetected would be to deprive the creditors in the insolvent estate of the debt or other matter



or thing in question such person shall besides making good such debt, matter, or thing to the trustee or trustees of the insolvent estate be also bound and obliged to pay to such trustee or trustees a further sum equal to the value of the debt or other matter or thing originally due and owing wrongfully acquitted, surrendered, or discharged or attempted so to be.

93. And be it enacted that all alienations, transfers, gifts, cessions, deliveries, mortgages, or pledges of any goods or effects, movable or immovable, personal or real, belonging to the insolvent estate, and all payments and all acquittances, surrenders, and discharges of any just debt due to such insolvent estate or of any security for any such just debt or of any other matter or thing belonging or owing to the said estate made by any insolvent after any order for the sequestration of his estate has been made and before the making of the order of court allowing and confirming, as hereinafter mentioned the account and plan of distribution to be framed by the trustees shall be and are hereby declared to be null and void, the several payments and alienations which such insolvent is by virtue of the forty-ninth section of this ordinance rendered competent to make alone excepted.

Dealings with insolvent estate after the order of sequestration.

94. And be it enacted that all payment or satisfaction made to any insolvent by any person who was the debtor of such insolvent at the time of the making of any order for the sequestration of the insolvent's estate after the making such order shall be null and void; except only that where the sequestration of such estate shall have been adjudged at the instance of the creditors thereof all payment or satisfaction really and *bonâ fide* made to any such insolvent or to any person legally entitled to receive the same on his behalf before such sequestration has been adjudged shall be valid and effectual in case any such person as aforesaid making such payment or satisfaction had not when so doing notice of any order for the sequestration of the estate of the insolvent having been made.

*Bonâ fide* payments by debtors to insolvent after the order of sequestration.

95. And be it enacted that every provision hereinbefore contained relative to what shall be deemed to be undue preferences made by persons contemplating the sequestration of their own estates and to the avoiding of the same and to the forfeiture under certain circumstances of the amount of every such preference shall be deemed and taken to apply *mutatis mutandis* to preferences given out of the assets of the

Undue preferences given by executors and the like persons.

estates which they administer by persons legally invested with the administration of the estates of deceased persons and of persons legally or actually incapable of the administration of their estates, when such persons so invested contemplating the sequestration of the estates which they administer and intend to prefer some one or more creditors of any such estate before the other creditors thereof.

Recovery of preferences given by executors and the like persons.

96. And be it enacted that it shall and may be lawful for the trustee or trustees of the insolvent estate of any deceased person or of the insolvent estate of any person legally or actually incapable of the administration of his estate to demand and recover either from the person legally administering such estate before the sequestration thereof and by whom any such undue preference shall have been given out of the assets of such estate or from the person to whom or for whose benefit such undue preference shall have been given the value or amount of such undue preference, or such trustee or trustees may sue such persons successively: Provided, always, that it shall not be competent for any such trustee or trustees to require the restoration or repayment of such undue preference or of the amount thereof from both such persons as aforesaid concurrently or to recover from them both when sued successively more than the single value or amount of such undue preference together with the costs and charges of such trustee or trustees.

Transaction by trustees of claims by estate on third parties.

97. And be it enacted that it shall and may be lawful for the trustee or trustees subject to the directions of the creditors given in the manner hereinbefore mentioned to agree if he or they should think fit to any offer of composition made by any debtor of the insolvent estate who is himself insolvent or to the certificate of any such insolvent, and to compound with any debtor to the insolvent estate and take any reasonable part of the debt in discharge of the whole or to give a reasonable time or take security for the payment of such debt or to submit any dispute between them and any person concerning or affecting the said estate to the determination of arbitrators to be chosen by the trustee or trustees and the party with whom they shall have such dispute, and the award of such arbitrators shall be binding on all the creditors: Provided, always, that previous notice of their intention so to agree to any offer of composition or to any certificate or to compound any debt or submit any dispute to arbitration has been given for twenty-eight days at least by advertise-

Reference to arbitration.

ment in the Government Gazette; and for the purpose of such offer of composition or certificate the trustees signing if more than one shall reckon only as one creditor in number and value.

98. And be it enacted that the trustee or trustees shall subject to the directions of the creditors given in manner hereinbefore provided forthwith proceed to make sale of all the property belonging to the said estate movable and immovable, giving due notice thereof in the Government Gazette and also such other notice as they shall think fit: Provided that from the sale of the said movable property shall be excepted until the creditors shall determine thereon the wearing apparel, bedding, household furniture, and tools of trade of the insolvent and his family; and provided that the sale of all immovable property shall take place in such manner and under such conditions as shall be determined on by the greater part in number and value of the creditors present at any meeting duly summoned, provided, however, that such conditions shall be subject to the approval or disapproval of the supreme court or of any circuit court on the application of any person interested in the due administration or reversion of the estate under sequestration.

Sale by trustee of sequestrated estate.

Exceptions.

99. And be it enacted that it shall and may be lawful for the said trustee or trustees with the consent of the greater part in number and value of the creditors who shall have proved their debts present at any meeting whereof and of the purpose of which twenty-eight days' notice shall have been given in the Government Gazette to permit the said insolvent to retain for his own use the whole or such part of his wearing apparel, bedding, household furniture, and tools of trade excepted from the sale of his movable property as the said creditors shall agree to allow to the said insolvent: Provided that every such permission shall be subject to the approval or disapproval of the supreme or any circuit court on the application of any person interested in the due administration of the estate.

Retention of wearing apparel, &c., by insolvent.

100. And be it enacted that it shall and may be lawful for and shall be the duty of the creditors of any insolvent estate at the meeting held for the election of trustees immediately after such election in case such election shall take place at such meeting, and in case such election shall not then take place then immediately after the votes of the said creditors in regard to such election shall have been given, to

Choice by creditors of bank for deposit of moneys of estate.

nominate and appoint some certain bank or banks within this colony with which bank or banks it shall be the duty of the trustee or trustees of such estate to open an account, and in case of a difference of opinion amongst the said creditors assembled at such meeting the greater part in value of the said creditors shall determine upon the bank or banks to be so nominated and appointed as aforesaid, and from and after any such nomination and appointment of any such bank or banks the trustee or trustees of such insolvent estate whether chosen by the creditors or provisionally appointed shall as soon as he or they shall receive any sum of money exceeding twenty pounds belonging to such estate open an account with such bank or banks in the name of the insolvent estate, and such sum and every other sum exceeding twenty pounds so received by him or them shall with all convenient speed be paid into such bank or banks to be placed to the credit of such account, and all checks or orders for the payment of any such money out of the said bank or banks shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees or by one of them for himself and co-trustees :

**Deposit of sums exceeding £20.** Provided that in case the creditors of any insolvent estate shall neglect in manner aforesaid to nominate any such bank or banks as aforesaid it shall be lawful for the trustee or trustees aforesaid to open an account with and pay all such moneys as aforesaid into any such bank or banks in this colony as he or they shall select ; and provided that every provisional trustee appointed under this ordinance before the meeting of creditors for the election of trustees shall pending such meeting open an account with and pay all such moneys as aforesaid into any such bank or banks in this colony as he shall select ; and provided that all trustees whether provisional or elected shall in regard to the bank or banks with which such account as aforesaid shall be kept and such moneys as aforesaid lodged pursue such directions as they shall from time to time receive from any general meeting of the creditors of the insolvent estate.

**Cheques upon bank account.**

**Choice of bank by trustee.**

**Opening of bank account by provisional trustees.**

**Non-deposit or use by trustee of sums exceeding £20.**

101. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding twenty pounds sterling part of any insolvent estate longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid into some such

bank or banks as aforesaid, and who shall not have any just and lawful cause for so retaining the same, or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money part of any insolvent estate, shall forfeit and pay for the benefit of the said estate double the amount of the sum so retained or employed; and the said sum so forfeited shall be deducted out of any claim the said trustee may have against the said estate and the surplus if any shall be recovered by action in any competent court.

102. And be it enacted that the trustee or trustees shall keep an account wherein they shall enter all property of the insolvent received by them and all payments made by them on account of the insolvent's estate, which account every creditor who shall have proved may inspect at all reasonable times; and it shall and may be lawful for the master of the said court whenever he shall think fit to summon the said trustee or trustees by writing under his hand to produce the said book, and the said master shall as often as he shall see fit examine and inspect the same.

Accounts to be kept by trustee.

103. And be it enacted that if any insolvent shall have entered into any agreement for the purchase or exchange of any estate or interest in any immovable property, it shall and may be lawful for the trustee or trustees of such insolvent either to abide by, execute, and sue for performance of such agreement or abandon the same; and if the said trustees shall not (upon being thereto required) elect whether they will abide by and execute such agreement or abandon the same, the vendor or person having made such agreement as aforesaid or any one legally claiming under him shall be entitled to apply by motion to the supreme court or to any circuit court who may thereupon order the trustees to deliver up any such agreement and the possession of the premises to the vendor or person so agreeing as aforesaid or any one claiming under him, or may make such other order therein as the said court shall think fit: Provided that nothing herein contained shall prevent such vendor or person having made such agreement as aforesaid from suing the trustee or trustees in any competent court and recovering judgment against the insolvent estate for any damage which he shall prove to the satisfaction of such court to have been by him sustained by the non-fulfilment on the part of the insolvent of any such agreement or deprive the said trustee or trustees of their legal defence against such suit.

Election by trustee as to adopting purchases by insolvent of immovable property.

Right of action reserved to vendor.

Leases terminated by sequestration.

Saving rights of action to lessor.

Saving claim of trustee for meliorations.

Action upon lease may be avoided by adopting it.

Reclamation by vendors of property sold to insolvent but not paid for.

104. And be it enacted that if any insolvent shall be entitled to any lease or agreement for any lease of immovable property such lease or agreement for lease shall upon the surrender or adjudication of sequestration of the estate of such insolvent cease and determine: Provided that nothing herein contained shall prevent the lessor or person having made such agreement from suing the trustee or trustees in any competent court and from recovering judgment against the insolvent estate for any rent which he shall prove to the satisfaction of such court to have been due by the insolvent prior to the surrender or adjudication of sequestration of his estate or for any damage which he shall prove to the satisfaction of such court to have been by him sustained in consequence of the non-performance of the conditions of such lease or agreement for a lease during the full period of the stipulated endurance thereof, or to deprive the trustee or trustees of their legal defence against such suit; or to prevent such trustee or trustees from suing the lessor or person having made such agreement in any competent court for the amount of any ameliorations made on the subject and in contemplation of such lease or agreement by the insolvent prior to the surrender or adjudication of sequestration of his estate, or to deprive such lessor or person of his legal defence against such suit; and provided, also, that it shall be lawful for such trustee or trustees when sued for damages for the non-fulfilment of such lease or agreement for a lease to offer to take over and accept the same and to perform the conditions thereof during the full period of the stipulated endurance thereof, and that it shall be lawful for such lessor or person having made such agreement when sued for the amount of such ameliorations as aforesaid to offer to receive the trustee or trustees as lessors in the place of the insolvent under the conditions and for the full period of the stipulated endurance of such lease; and if such offer shall be refused the party who has made it shall be absolved from the suit in which it has been made and shall be entitled to his costs.

105. And be it enacted that no person from whom any insolvent shall have purchased any property, movable or immovable, personal or real, and who shall have delivered or caused or permitted such property to be delivered to such insolvent shall be entitled either to claim such property being in the sequestrated estate or to claim to be preferred in any way for the price or value thereof by reason alone that such

property was sold by such person to such insolvent without any period having been stipulated until the expiration of which period the price should not be payable, or upon any actual agreement or tacit understanding that such price should be paid or payable forthwith: Provided that nothing herein contained shall be deemed or taken to alter or affect any previous law in force in this colony in regard to the right of a vendor to rescind any sale and reclaim his property on account of fraud and circumvention practised upon him by the purchaser, except only in so far as the matters aforesaid hereby declared to be of themselves not sufficient to entitle any such vendor to claim again property sold and delivered shall have been deemed to amount to or to be conclusive evidence of such fraud and circumvention; and provided, also, that nothing herein contained shall apply to any case in which any such vendor shall within three days of the delivery of any property sold as aforesaid reclaim by notice in writing the possession of the said property and proceed thereafter without any unnecessary delay to enforce the re-delivery of the said property by means of legal process.

106. And be it enacted that if at the third public meeting of the creditors appointed by the master of the supreme court as aforesaid or at any subsequent meeting of the creditors assembled together by advertisement in the Government Gazette stating the purpose of such meeting the insolvent or any person on his behalf shall make an offer of composition or security for composition which nine tenths of the creditors in number and value assembled at such meeting shall agree to accept the trustee or trustees shall forthwith call another meeting for the purpose of deciding upon such offer, whereof at least forty-two days' notice shall be given by advertisement in the Government Gazette specifying the time, place, and purpose of such meeting; and if at such second meeting nine tenths in number and value of the creditors then present shall also agree to accept such offer then upon such acceptance being certified to the supreme court by the master of the said court, and upon oath of the insolvent that he has made a full and fair surrender of his estate and has not granted or promised any preference or security or made or promised any payment or entered into any secret or collusive agreement or transaction to obtain the concurrence of any creditor to the said offer of composition, it shall

Offer of  
composition  
by or for  
insolvent.

Meeting of  
creditors upon.

Oath to be  
taken by  
insolvent.

Discharge by court.

Previous notice to creditors.

Objections by creditors.

Effect of composition upon preferences or securities

Upon claims reserved to be proved.

Inquiry for absent creditors.

be lawful for the said court upon motion to pronounce if it should so think fit a decree discharging the insolvent from all debts due by him at the time his estate was surrendered or adjudged to be sequestrated and from all claims and demands proved or hereby made provable or claimable against his estate and declaring the sequestration at an end and the insolvent re-invested with his estate, but reserving, however, always the claims of the creditors for such composition or security for composition as may have been agreed for and be still unexecuted: Provided that at least twenty-one days' notice of the day on which such motion as aforesaid is to be made shall have been given by advertisement in the Government Gazette and that the said court shall hear any objection which may be made by any creditor against the pronouncing of such decree and shall determine thereupon as the justice of the case shall require; provided, also, that if the creditors present at any such second meeting as aforesaid and agreeing to the offer of composition do not amount in number and value to four fifths in number and value of the whole of the creditors who have proved debts against the insolvent estate then the acceptance of such offer of composition by at least four fifths in number and value of such lastmentioned creditors must be certified to the said court by the said master at the time of the making of the said motion; and provided that nothing in this section contained shall be construed so as to affect the right of any creditor entitled by law to be paid in preference in so far as such creditor shall be so entitled unless such creditor shall expressly consent to give up his preference and be bound by the said composition, and no creditor by accepting any such offer of composition shall be deprived of his right to claim from any person bound to him as surety for the insolvent the balance of the debt secured; and provided that the court aforesaid shall not in any case pronounce the decree aforesaid until it shall be satisfied that no injury or injustice will thereby be done to any person who has been allowed by the said court to enter a claim upon the insolvent estate and who shall not at the time of the making of such motion as aforesaid have yet proved his debt, and until the said court shall have made or caused to be made inquiry by taking the oath of the insolvent or otherwise whether there are not other creditors having just and lawful debts and claims against the estate of such insolvent and who by reason of



absence from the colony or other causes may not have proved or claimed against the said estate; and provided that if upon such inquiry it shall appear to the said court that there are such just and lawful debts and claims it shall not be competent for the said court to pronounce such decree as aforesaid until it shall have been certified to such court by the said master that there has been paid to or deposited with him or to or with some other person or persons with his approbation for and on account of such other just and lawful creditors as aforesaid whatever amount according to the terms of the composition they would have been entitled to receive in case they had proved their debts; and provided that no sum of money or other matter or thing which shall be impounded or secured for any person who has entered a claim upon the insolvent estate or any such creditor as last aforesaid shall after any discharge of the insolvent as in this section provided revert to such insolvent, but the same in case the person or persons on whose behalf it was so impounded or secured shall not within such reasonable time as the supreme court shall fix prove title to and claim the same shall be ordered by the said court upon the motion of any person interested to be divided ratably amongst the remaining creditors and claimants, the costs of the motion last mentioned being first deducted and paid to the party making the same.

107. And be it enacted that it shall and may be lawful for the supreme court upon the application of any insolvent to release if it should so think fit the estate of such insolvent from sequestration whenever it shall be certified to the said court by the master of the said court that all creditors who have proved debts or entered claims against such estate have testified in writing their consent to such release or whenever it shall be certified by the said master that all the creditors who have proved debts or entered claims as aforesaid have been paid or have had tendered to or deposited for them as the case may be the full amount as well principal as interest of their several demands: Provided that no such application to release any such estate from sequestration under the provisions of this section shall be capable of being granted until after the third meeting of creditors as hereinbefore mentioned shall have been held; and provided that it shall be lawful for the said court before granting any such application as aforesaid to make or cause to be made such inquiry relative to the existence of other just and lawful

Release of  
estate from  
sequestration.

Not before  
third meeting.

Nor before  
inquiry as to  
other creditors.

creditors who have neither proved nor claimed as is in the last preceding section mentioned, and thereupon to grant or refuse such application, and that either absolutely or conditionally as to the said court shall seem just; and provided that no such release as aforesaid shall be construed to be a discharge of the insolvent or to alter or affect in any way the rights of any creditors of any such insolvent who have neither proved debts nor entered claims upon the insolvent estate, which rights shall be judged of after any such release exactly as if such estate had never been surrendered.

Account of estate to be rendered by trustee to the master.

108. And be it enacted that the trustee or trustees of any insolvent estate shall as soon as may be and not later than six months after their appointment unless upon application to the supreme court upon sufficient cause to the satisfaction of the said court further time be given for that purpose frame and lay before the master of the said court an exact account and balance of the said estate, containing the proceeds of all sales and debts then collected and an account of all debts still outstanding and an inventory of all property and effects still unsold, and also all debts due by the said estate; and shall also form a general plan for distribution of the assets of the said estate, specifying first such creditors as are preferent by law in the order of their legal preference and secondly the concurrent creditors and as nearly as may be the probable balance which will remain for division amongst them; and when and as often as the usual place of residence of any insolvent shall be in any district of this colony other than Cape Town and the district thereof or the Cape division the trustee or trustees of that insolvent shall before laying the account and plan aforesaid before the said master lay the same before the resident magistrate of such district, in whose office it shall remain for the inspection of creditors for at least seven days, and every such resident magistrate shall cause to be affixed in some public place in or about his said office a list of all insolvent estates in which such account and plan as aforesaid remains for the time being for inspection together with the date of its intended transmission.

Plan of distribution.

Account and plan to be exhibited in magistrate's office.

Plan and account also to lie in master's office.

109. And be it enacted that as soon as the master shall receive from the trustees any such account of the estate and plan for distribution the same shall lie open in his office for the inspection of the creditors a reasonable time to be appointed by the said master, not being less than fourteen

days from the advertisement thereof, according to the distance from Cape Town of the residence of any creditor who has proved a debt against the said estate, and the said trustee or trustees shall cause notice thereof to be given in the Government Gazette and that the supreme court will thereupon be moved to confirm and allow the said account and distribution of the estate.

110. And be it enacted that it shall and may be lawful for the insolvent or any party interested in the estate under sequestration and for any creditor who may conceive himself aggrieved by the said plan of distribution within the time aforesaid to enter his objection in writing with the said master stating the grounds thereof; and also it shall and may be lawful for the supreme court to permit such objection to be entered at any time before the final confirmation of the said plan upon sufficient cause to be shown to the satisfaction of the said court and upon such terms as the said court shall impose.

Objections to plan of distribution.

111. And be it enacted that any person objecting to the said account or plan of distribution shall apply to the supreme court on motion calling upon the trustees and also upon the party whose interest might be affected thereby to show cause why the said plan should not be altered or amended as the case may be, and thereupon it shall and may be lawful for the said court upon hearing the said parties to make such order thereon as to the said court shall seem fit: Provided that when any alteration or amendment shall be ordered in the said plan whereby the interest of any party who has not made appearance in the said court shall be affected the same shall again lie open for inspection of the creditors and notice thereof shall be given as aforesaid.

Disposal of objections.

Exhibition of plan after alterations upon it.

112. And be it enacted that it shall and may be lawful for the trustee or trustees after the expiration of the time appointed for the inspection of the said account and plan of distribution, and no objection being entered thereto, or if any objection has been stated after the court has made order thereon as aforesaid, to apply to the supreme court on motion praying that the said plan may be allowed and confirmed by the court, and thereupon it shall and may be lawful for the said court to allow and confirm the same; and such allowance and confirmation shall have the effect of a final sentence of the said court except against such creditors as shall afterwards be admitted by the said court in manner hereinbefore

Confirmation of account and plan

Effect of confirmation.

provided to prove their debts and rank upon the said estate at any time before the final distribution thereof.

Distribution of estate.

113. And be it enacted that after confirmation and allowance of the said account and plan of distribution the trustees shall upon the demand of the said creditors distribute the said estate according thereto, and the remedy of any creditor to obtain payment of and dividend due to him shall be during the continuance in office of the said trustee or trustees to the supreme court or any circuit court by motion.

Scheme of division.

114. And be it enacted that if it shall from the nature and circumstances of the insolvent estate be found impracticable to frame the plan of distribution aforesaid so as to arrange the distribution according thereto of the whole of the insolvent estate then the trustee or trustees shall as soon as may be after the allowance and confirmation of the said plan, and not later than six months after such allowance and confirmation unless upon application to the supreme court upon sufficient cause to the satisfaction of the said court further time be given for that purpose, frame and lay before the master a scheme of division which shall contain an account of such of the matters hereinbefore required in regard to the account and plan of distribution in the one hundred and eighth section of this ordinance mentioned as the then state and condition of the assets of the insolvent estate shall permit and shall duly apportion the funds in hand amongst the creditors, and the like proceedings in all respects shall be had and taken relative to the said scheme of division as are hereinbefore prescribed in regard to the said account and plan of distribution, and after the allowance and confirmation of such scheme of division the dividends declared thereby shall be distributed, and there shall be the like remedy as aforesaid for obtaining the same; and if it shall happen that the whole of any insolvent estate shall not be included in one such scheme of division as aforesaid, then as soon as may be after the framing of the same but not later (except as hereinbefore excepted) than six months after the date on which the six months above fixed for the framing of the first scheme of division shall have expired a second such scheme of division shall in like manner and form be framed and proceeded on, and so on from six months until the whole estate shall have been wound up and finally distributed.

Successive schemes of division.

Advertisement of dividends.

115. And be it enacted that the trustee or trustees shall whenever any dividend is payable give a public notice in the

Government Gazette stating that such dividend is in course of payment and calling upon all creditors entitled thereto to apply for and receive the same, and in case any dividend or dividends shall remain unclaimed for the space of six months from the date of such notice then it shall be the duty of the trustee or trustees should he or they still continue in office or of the master of the supreme court should the said trustee or trustees have been discharged to pay such unclaimed dividend or dividends into the guardian fund to the credit of the parties entitled, there to be subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the colony; and if any trustee or trustees shall neglect to pay in manner aforesaid into the said fund by the hands of the said master any dividend remaining unclaimed for the space and term aforesaid such trustee or trustees shall forfeit and pay for the benefit of the colonial treasury any sum not exceeding the amount of the dividend or dividends unduly retained which shall be awarded by the supreme court, and it shall be lawful for the said master to summon any such trustee or trustees to show cause before the said court why he or they should not be adjudged to pay to him the amount of any such dividend or dividends as also the fine or forfeiture aforesaid, and the said court shall summarily make such decision thereon as to it shall seem meet; and the said master shall be at all times after the confirmation and allowance of the plan of distribution authorized and entitled to call upon such trustee or trustees to show by vouchers or other sufficient proof what number of the dividends payable are actually paid, and for the purpose of the penalty hereby imposed any neglect or refusal to produce such vouchers or other sufficient evidence to prove the payment of any given dividend shall amount to *prima facie* proof that the same is still unclaimed; and it shall be lawful for the supreme court in case of disobedience by any such trustee or trustees to any order or decision of such court made by virtue of this or of the one hundred and thirteenth section to direct the sum in question to be levied by attachment and sale of the goods of the offender, or otherwise to commit such offender to prison until he shall obey such order or until the said court shall order his liberation, or otherwise to apply both remedies, and that either concurrently or successively as the court shall see fit.

Unclaimed dividends.

Penalty on trustees not paying over unclaimed dividends.

Master to require account of dividends paid

Discharge of trustee.

116. And be it enacted that when any trustee desires to resign his office or so soon as the plan of distribution of the insolvent estate has been confirmed it shall be lawful for such trustee to apply to the supreme court by motion for leave to resign his office and to be discharged and acquitted of the said trust, and if no valid objection be stated and if the court be satisfied that the trustee has complied with the regulations of this ordinance so far as regards him his application may be granted by the said court, but if any objection be stated thereto the court shall proceed to determine the same in a summary manner and shall make such order thereon as they shall think fit ; and if the application of the trustee for leave to resign be granted the said court shall thereupon make such order as they shall see fit for the preservation and administration of the estate until a new trustee be chosen and confirmed, and for the discharge and acquittance of the said trustee, and for the security and payment of any unclaimed dividends to the parties entitled to the same : Provided, always, that no order of the said court allowing the said trustee to resign shall prevent the trustee thereafter chosen and confirmed in his stead from calling upon him to account for any part of his conduct as trustee prior to his resignation ; and provided, always, that before making any application for leave to resign the trustee shall make out a full statement of his accounts and of the situation of the insolvent estate and shall call a meeting of the creditors to consider the same, of which meeting at least twenty-eight days' notice shall be given by advertisement in the Government Gazette, intimating the purpose of the meeting and also that the aforesaid statement will in the mean time lie open for their inspection in the office of the master of the supreme court.

Trustee to account with successor.

Account by trustee before discharge.

Discharge of insolvent.

Consent of creditors.

117. And be it enacted that any insolvent may after the third public meeting of his creditors called by the master of the supreme court as aforesaid and after his examination (if any has been applied for and ordered as aforesaid) apply to his creditors for a certificate testifying their consent to the discharge of the insolvent being granted by the court in manner hereinafter mentioned ; and every insolvent who shall have obtained such certificate signed by four fifths in number and value of the creditors who have proved debts against his estate, or after six months from the date of the confirmation in manner aforesaid of the plan of distribution then either by three fifths in number and value of such

creditors or by nine tenths in value alone, and who shall make oath in writing that he has made a full and fair surrender of his estate and has not granted or promised any preference or security or made or promised any payment or entered into any secret or collusive agreement or transaction in order to obtain the consent and certificate of his creditors or of any of them, may apply to the supreme court by motion to have his certificate allowed: Provided that at least six weeks' notice of the day on which such motion is to be made shall have been given by advertisement in the Government Gazette, and if no objection be made thereto by any of the creditors of the insolvent the said court shall make an order allowing such certificate, but if any objection shall be made by any creditor the said court shall judge and determine thereon, and shall refuse or suspend the said certificate or allow the same absolutely or conditionally as the justice of the case shall require; provided, always, that where in consequence of the goods and effects of the insolvent being under the value of seventy-five pounds sterling the proceedings in such case directed by the thirty-second clause of this ordinance shall have taken place it shall be lawful for such insolvent at any time not being less than three months after the said first meeting to apply to his creditors for a certificate as aforesaid.

Notice of application for.

118. And be it enacted that if any insolvent shall have committed any act herein declared to amount to the crime of fraudulent insolvency such insolvent shall not be entitled to his certificate or allowance, and any certificate and allowance which such insolvent may have obtained shall be null and void.

Fraudulent insolvent not to have discharge.

119. And be it enacted that all preferences, gratuities, securities or payments granted, made, or promised by any insolvent to or in trust for any creditor of such insolvent and all secret and collusive agreements and transactions intended to persuade any such creditor to accept any offer of composition or security for composition or to consent to sign such certificate shall be and are hereby declared to be null and void; and any creditor who shall have received any money, matter, or thing, or promise of the same as a consideration for or inducement to such creditor to accept any such composition or sign any such certificate as aforesaid shall forfeit a sum equal to the amount of whatever debt such creditor originally proved upon the insolvent estate together

Collusive agreements with creditors as to composition or discharge.

Forfeiture by the creditors.

Action for recovery of forfeiture.

with the amount of whatever money, matter, or thing he may have received from such insolvent as such consideration or inducement as aforesaid and also the amount of any composition which may have been paid or secured to such creditor; and all such moneys, matters, or things hereby declared to be claimable or recoverable from any such creditor shall and may be sued for and recovered in any competent court by any person who was a creditor of such insolvent estate at the time of the acceptance of any such composition or the signing of any such certificate for the use and benefit of such person jointly with that of all such other persons who were also creditors at the time aforesaid as shall within twenty-eight days after a public notice in the Government Gazette, signed by the person purposing to sue, join and concur in the bringing of such suit and agree to contribute to the expense thereof; but no such notice need set forth the name of the party intended to be sued or state more than that legal proceedings are intended to be taken under this section in a certain case of which the particulars may be learned from the person signing the said notice.

Effect of discharge of insolvent.

120. And be it enacted that every such certificate when allowed by the supreme court shall have the effect to discharge the insolvent from all debts due by him at the time his estate was surrendered or adjudged to be sequestrated and from all claims or demands proved or hereby made provable or in any manner claimable against his estate; but no such certificate and allowance thereof shall have effect to release or discharge any person who was partner with such insolvent at the time of his insolvency or who was then jointly bound or who had made any joint contract with such insolvent or who was a surety for him.

Residue of estate.

121. And be it enacted that in every case any residue of the insolvent estate which may remain after the payment of all claims thereupon shall be paid to the insolvent or his legal representatives, to whom shall also be restored the property of and in all debts and assets belonging to the estate which may after the satisfaction as aforesaid of all claims remain or be outstanding.

Trustee becoming insolvent, as such, effect of as to his discharge.

122. And be it enacted that any trustee becoming insolvent and being indebted to the estate of which he was trustee in respect of any sum of money improperly retained or employed by him if he shall obtain his certificate and allowance thereof shall not be discharged thereby as to his



future effects in respect of the said debt, and such insolvent shall be for ever incapable of being again elected a trustee under this ordinance.

123. And be it further enacted that any insolvent who after his certificate has been allowed shall have any action brought against him for any debt, claim, or demand due by him at the time his estate was surrendered or adjudged to be sequestrated proved or hereby made provable or in any manner claimable against his estate may plead in general that the cause of action accrued before he surrendered his estate or the same was sequestrated aforesaid, and may give this ordinance and the special matter in evidence, and such insolvent's certificate and allowance thereof shall be sufficient evidence of the insolvency, surrender, or adjudication, and other proceedings precedent to the obtaining the said certificate and allowance thereof; and if any such insolvent shall be taken in execution or detained in prison for such debt, claim, or demand where judgment has been obtained before the allowance of his certificate it shall be lawful for any judge of the court wherein judgment has been obtained (or for any judge of the supreme court) on such insolvent's producing his certificate and allowance thereof to order any gaoler or officer who shall have the said insolvent in custody by virtue of the said execution to discharge him therefrom so far as regards such estate without exacting any fee from the defendant, and the said gaoler or officer shall be and is hereby indemnified for so doing.

Discharge  
answers to  
action for  
previous debts

And ground  
for release  
from execution.

124. And be it enacted that at any time after the plan for distribution of any insolvent estate has been confirmed in manner hereinbefore mentioned or after the distribution of the said estate has been directed to be made under the provisions of the twenty-fifth clause of this ordinance and before the insolvent shall have obtained his certificate and allowance thereof it shall and may be lawful for the trustees or any creditor of the said estate to apply to the supreme court or any circuit court by motion for the process of the said court for the civil imprisonment of the said insolvent, provided the said insolvent shall first have been duly summoned to appear before such court on the day whenever the said motion shall be made to show cause why process of civil imprisonment should not be issued against him, and thereupon and upon proof to the satisfaction of the said court that the said estate is not sufficient to discharge the

Imprisonment  
of insolvent.

debts proved or provable against the said estate as aforesaid it shall and may be lawful for the court to which such application shall be made to grant the same absolutely or conditionally or to refuse the same as to the said court shall seem just: Provided that when the application for civil imprisonment has been made by one or more creditors and the said court shall suspend the same upon the condition of the insolvent paying any sum of money such payment shall be made to the trustees or to the master of the court as the case may be for the benefit of the creditor or creditors making the application and of such other creditors as shall before distribution claim to be admitted to a share thereof.

Application by insolvent to be freed from imprisonment.

125. And be it enacted that at any time after the plan for distribution of any insolvent estate has been confirmed in manner hereinbefore mentioned or after the distribution of the said estate has been directed to be made under the provisions of the twenty-fifth clause of this ordinance and before the insolvent shall have obtained his certificate and the allowance thereof, it shall and may be lawful for any insolvent to apply to the supreme or any circuit court by motion for a decree of such court declaring such insolvent not liable to process of civil imprisonment for or in respect of any debt, claim, or demand proved or provable or in any manner claimable against the insolvent estate, provided that at least six weeks' notice of the day on which such motion is to be made shall have been given by advertisement in the Government Gazette; and upon the making of such motion any creditor of the insolvent estate who has not been fully paid and satisfied may be heard against making the said decree, and such court having regard to the conformity of the insolvent to the provisions of this ordinance and to his conduct as well before as since the sequestration of his estate and to his ability to pay from time to time or otherwise any sum or sums of money for the benefit of such creditors as aforesaid and generally to the justice of the case shall judge of any objection against the making of such decree and either find the insolvent entitled thereto and make the same or refuse or suspend the making thereof or annex such conditions thereto as circumstances shall render just; and every such decree declaring any insolvent not liable to the process of civil imprisonment in respect of any of the matters aforesaid shall have the same effect in protecting his person from such process as his certificate and the allowance thereof

Opposition of creditors

Effect of order relieving insolvent from imprisonment.

would have had, but no such decree shall have any effect whatever either upon the assets of the insolvent estate or upon the right and power of any such creditor to proceed in manner and form as hereinafter mentioned against the future acquired property of such insolvent (so long as he shall remain without his certificate and the allowance thereof) in order to obtain payment of his debt: Provided that upon cause shown to the satisfaction of such court establishing that any such decree as aforesaid was fraudulently or unduly obtained it shall be competent for such court to recall the same, and thereupon the condition of the insolvent shall be judged of precisely as if it never had been made.

126. And be it enacted that from and after the making of the decree aforesaid confirming the account and plan of distribution of the insolvent estate aforesaid the insolvent although he shall not have obtained his certificate and the allowance thereof shall be competent to acquire and possess for his own use and as his own property all such goods and effects, movable or immovable, personal or real, as may be purchased or acquired by him or may revert, descend, or be devised or come to him in manner whatsoever other than by virtue of any right of reversion which was vested in the insolvent at the date of the order for the sequestration of his estate, precisely as if the estate of such insolvent had never been placed under sequestration.

127. And be it enacted that in every case in which any insolvent shall not have obtained the allowance of his certificate as hereinbefore mentioned it shall and may be lawful for the trustee or trustees of the insolvent estate should any such be or for the master of the supreme court or for any creditor of the insolvent estate to whom it shall appear by such account and plan as aforesaid or any such scheme of division as aforesaid that any portion of his debt is still due and owing to apply to the supreme court or any circuit court by motion, of which notice shall be given to said insolvent, for leave to issue execution against such insolvent for any sum not exceeding the whole amount of the deficiency which shall at the time of making such application exist in the insolvent estate, and the said court upon being satisfied by affidavit or otherwise that a certain deficiency does so exist and that there are reasonable grounds for believing that there are assets belonging to the insolvent capable of satisfying the same wholly or in part shall allow a writ of execution

Competency of insolvent to acquire property.

Execution against insolvent for deficiency of estate.

to be issued, and such writ of execution shall be executed in the like manner as writs of execution issued upon judgments of the said court, and every attachment or levy made thereunder and every incident belonging thereto as well in regard to the right of other writs of execution lodged in the hands of the sheriff or other proper officer of the law to share in the proceeds levied and made as otherwise shall be judged of upon the same principles which do or shall by law belong to ordinary writs of execution, and the proceeds of every execution levied under the provisions of this section shall be paid by the sheriff or other proper officer of the law to the trustee or trustees of the insolvent estate if such there be or if there be none such to the master of the supreme court, and every such payment by the said sheriff or other proper officer of the law shall be deemed in law to be the distribution of the proceeds of the writ of execution and the amount of any such proceeds of the writ of execution and the amount of any such proceeds which shall be so paid to any such trustee or trustees or to the said master after deducting thereout any costs which shall have been properly incurred by the party realizing the same shall be divided amongst all such creditors of the insolvent estate as shall before the distribution thereof claim to be admitted to participate in the same: Provided that the said trustee or trustees or the said master as the case may be shall distribute such proceeds ratably and proportionably amongst the creditors so claiming, except that if the said proceeds shall have arisen out of an execution issued at the instance of any concurrent creditor such creditor shall receive a dividend greater by five shillings in the pound than that receivable by any other creditor of equal rank, and if by reason of there being preferent creditors in the said estate or from any other cause the said recompense shall be deemed inadequate it shall be lawful for the master of the supreme court to award to such concurrent creditor such reasonable commission in lieu thereof as he shall think fit subject to an appeal to the supreme court; provided, also, that no division of such proceeds shall be made by any such trustee or trustees or by the said master until after twenty-one days' previous notice shall have been given in the Government Gazette.

Proceeds of,  
execution how  
to be applied.

Fresh surren-  
der by  
undischarged  
insolvents.

128. And be it enacted that it shall and may be lawful for the chief justice of this colony or any other of the judges of the supreme court to accept if he shall see cause so to do

the surrender of the estate of any insolvent who shall not have obtained his certificate and the allowance thereof at any time after the making of the decree of court confirming the plan of distribution as aforesaid, and the estate of any such insolvent may be adjudged to be sequestrated at the instance of his creditors as well those whose debts remain unsatisfied from any former sequestration (if there shall have been more sequestrations than one) as those whose debts have been incurred since the making for the last time of such decree as aforesaid, precisely as if the estate of such insolvent had never been placed under sequestration.

129. And be it enacted that in addition to the several matters and things hereinbefore mentioned and declared to be respectively acts of insolvency, all of which are hereby declared to be applicable to the case of every such insolvent as is in the last preceding section mentioned equally with every other person, the suffering of any attachment to be laid on under and by virtue of any writ of execution issued under and by virtue of the one hundred and twenty-seventh section of this ordinance and the subjecting himself by any such insolvent to the issuing against him of the process of civil imprisonment under and by virtue of the one hundred and twenty-fourth section of this ordinance shall be deemed to be respectively acts of insolvency in the case of every such insolvent as aforesaid and shall entitle any creditor or creditors whose debt or debts is or are of the competent amount and has or have accrued since the making of the last decree confirming such account and plan of distribution as aforesaid to petition in manner and form as by this ordinance is provided to have the estate of such insolvent as aforesaid sequestrated for the benefit of his creditors; but no order for sequestration issued in regard to the estate of any such insolvent shall discharge or affect any process of civil imprisonment which may have been issued under and by virtue of the one hundred and twenty-fourth section of this ordinance unless the chief justice or other judge making such order should as he is hereby authorized to do otherwise direct.

130. And be it enacted that as often as the estate of any insolvent remaining as aforesaid uncertificated shall be again sequestrated as insolvent the creditors under any former sequestration shall prove debts and rank upon the insolvent

Compulsory  
sequestration  
against  
undischarged  
insolvents.

Ranking under  
fresh seques-  
tration of  
creditors  
under former  
sequestration.

estate for whatever balance shall still be due and owing to them respectively according to the nature of their respective debts, whether preferent or concurrent, just as if the last order for sequestration had been the only such order ever issued.

Preferences by  
undischarged  
insolvent.

131. And be enacted that in determining all questions relating to undue preferences given by any insolvent remaining as aforesaid uncertificated and the proceedings thereon and the consequences thereof the creditors under any former sequestration and those who have first become such since the making of the last decree confirming the account and plan of distribution shall be considered as one body, and without difference or distribution except in so far as in particular cases the circumstances of the one class of creditors or of the other may affect as matter of evidence the application of the principles hereinbefore in regard to such questions as aforesaid stated and set forth.

Publication of  
the names of  
undischarged  
insolvents.

132. And be enacted that the master of the supreme court shall cause to be published in the Government Gazette once every three months for general information two lists alphabetically arranged, the first showing the name and residence of every uncertificated insolvent in whose estate the account and plan of distribution aforesaid shall not have been confirmed together with the date of the order for the sequestration of the estate of such insolvent, and the second showing the name and residence of every uncertificated insolvent in whose estate such account and plan as aforesaid shall have been confirmed together with the date of the decree confirming the same; and the charge of publishing such lists in the said Gazette as well as of inserting all such notices as are hereinbefore directed to be given by the master of the supreme court by advertisement in the said Gazette shall be defrayed by government.

Ordinance to  
regulate  
sequestrations  
under Ordinance No. 64.

133. And be it enacted that all the provisions of this ordinance shall apply to and regulate all estates placed under sequestration in pursuance of Ordinance No. 64 in so far as the provisions of this ordinance or any part thereof shall be applicable thereto in the situation and condition in which such estates shall be at the time of the passing of this ordinance: Provided, always, that nothing in this ordinance contained shall be applied to or affect in any way the rights of any person at whose suit any property shall have been

attached by legal process at the time of the promulgation of this ordinance or the determination of any actions or suits which shall be pending at the time of the promulgation thereof, all which rights, suits, and actions shall be determined according to the principles and provisions of Ordinance No. 64 precisely as if this ordinance never had been passed; and provided, also, that all crimes created or declared by the said Ordinance No. 64 and committed before the promulgation of this ordinance may notwithstanding the repeal of the said ordinance be prosecuted and punished precisely as if the said ordinance remained in full force and effect.

134. And be it enacted that as often as the Ordinance No. 64 is mentioned in Ordinances Nos. 104 and 105 or in any other former ordinance or any of the clauses or provisions of the said Ordinance No. 64 mentioned or referred to every such former ordinance shall be construed as if this ordinance were therein mentioned instead of Ordinance No. 64 and as if the provision of this ordinance corresponding to that provision of Ordinance No. 64 which is in such former ordinance referred to were expressly substituted in lieu and stead thereof.

This ordinance to be read for Ordinance No. 64 in certain Ordinances.

135. And be it enacted that the master of the supreme court shall enter of record and have the custody of all proceedings relating to any insolvency under and by virtue of this ordinance, and the insolvent or any creditor who has proved shall at all reasonable times have inspection of the same and be permitted to take extracts or copies therefrom; and extracts of such proceedings signed by the said master shall be received as evidence in all courts of justice within the colony.

Custody of proceedings in insolvencies.

136. And be it enacted that whenever it shall be made to appear to the supreme court or any circuit court that the master of the said court or resident magistrate as the case may be is prevented by illness or any unavoidable cause from holding any meeting under the provisions of this ordinance it shall and may be lawful for the said court to appoint a commissioner for the special purpose of holding such meeting who shall have for the purpose of such meeting the same powers and authorities as are by this ordinance given to the said master or resident magistrate in like cases, and failing such appointment the chief clerk of any resident

Substitution of commissioner for master or magistrate.

magistrate is hereby authorized to exercise for the purpose of any such meeting the powers and authorities of such magistrate.

What things  
may be done  
by one judge.

137. And be it enacted that for the hearing and determination of all questions, matters, and things as to which jurisdiction is given to the supreme court in virtue of the clauses of this ordinance hereinafter enumerated, that is to say, the twenty-second, twenty-fifth, thirty-first, fortieth, forty-fifth, sixty-second, sixty-third, sixty-fourth, sixty-fifth, ninety-eighth, one hundred and thirteenth, one hundred and sixteenth, one hundred and seventeenth, one hundred and twenty-fourth, one hundred and twenty-fifth, and one hundred and thirty-sixth clauses, except as to so much of the fortieth clause as relates to recalling the confirmation and setting aside the election of any trustee or trustees on the ground that such election was fraudulently or unduly made, the said court shall and may be holden in Cape Town before any one or more of the judges thereof at such times as the said supreme court shall by any rule or order of court appoint.

Rules to be  
framed by  
supreme court.

138. And be it further enacted that it shall and may be lawful for the supreme court from time to time as they shall think fit to make such rules, orders, and regulations for carrying this ordinance into effect and also touching the form and manner of proceeding under the same as to the said court shall seem fit.

First operation  
of ordinance.

139. And be it enacted that this ordinance shall be in full force and effect from and after the date of publication hereof, from and after which day the Ordinance No. 64 shall stand repealed.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 24th day of October, 1843.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.



No. 7.—Sd. George Napier.]

Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead.\*

WHEREAS the church regulations made and published by the Commissioner-General of the then Batavian Government of the Cape of Good Hope, J. A. de Mist, LL.D., bearing date the 25th of July, 1804, have in many respects ceased to be suitable either to the Dutch Reformed church or to the ecclesiastical condition of this colony in general: And whereas it is expedient in order that other and more suitable provisions should be substituted for such portions of the regulations aforesaid as have become obsolete or inapplicable that the said regulations should be wholly repealed and the substance of such of them as it is desirable to preserve expressly re-enacted: Be it therefore enacted by the Governor of the colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said church regulations of the 25th of July, 1804, and all other laws or customs heretofore in force in this colony so far as the same are repugnant to or inconsistent with any of the provisions of this ordinance shall be and the same are hereby repealed.

Previous laws repealed.

2. And be it enacted and declared that no religious community or denomination within this colony is or shall be entitled to claim as matter of right from or out of Her Majesty's revenue in this colony any pecuniary contribution or allowance for or towards the support of the ministry of any such community or denomination or any other object whatsoever, and that all such sums as shall from time to time be granted from and out of the said revenue to or in behalf of any such community or denomination shall be deemed to be merely voluntary and gratuitous, and as such to be at all times and exclusively under the absolute disposition and control of Government, and revocable at Her Majesty's will and pleasure.

No government church contributions to be demandable as of right.

3. And whereas it is expedient that the religious community or denomination commonly called the Dutch reformed church in South Africa should be invested with the power of regulating its own internal affairs: And whereas the general assembly or synod of the said church is the natural

Previous regulations of Dutch church repealed.

\* Revived by Ordinance No. 2, 1851.

and proper ecclesiastical authority by which rules and regulations for the government of the said church in its own internal affairs may rightfully be made: And whereas the last general assembly or synod of the said church which was held in Cape Town in the month of November, 1842, did agree upon and desire to have duly authorized and established a number of rules and regulations having for their object the proper direction and management of the said church in its own internal affairs: And whereas it is expedient in order to prevent delay and inconvenience that the said lastmentioned rules and regulations should with some exceptions be forthwith established and declared to form and be the rules and regulations for the time being of the said church: Be it enacted that all former rules and regulations for the government of the said church whensoever and by whomsoever made shall be and the same are hereby declared to be repealed, and that the several rules and regulations in the schedule to this ordinance contained shall be, and the same are hereby declared to be the rules and regulations for the time being of the said church and shall be duly observed as such.

General assembly or synod may alter or improve rules, &c.

4. And be it enacted that it shall be lawful for the general assembly or synod of the said church from time to time duly assembled, and proceeding in conformity with the rules or regulations for the time being in regard to the manner and form of altering, enlarging, or improving church laws and ordinances to add to, annul, alter, enlarge, or improve the rules and regulations contained in the said schedule and any further or other rules and regulations which may from time to time be successively established: Provided, always, that any rule or regulation of the said general assembly or synod repugnant to or inconsistent with any of the provisions of this ordinance shall be null and void.

Vacancies in salaried incumbencies to be filled up by the governor.

5. And be it enacted that in every case in which a vacancy shall occur in the office of minister in any congregation belonging to the said church of which congregation the minister for the time being receives a salary from the colonial government, the governor of this colony for the time being shall have and possess and shall exercise in whatever manner he shall deem the best for the vacant congregation the sole and unrestricted right of filling up such vacancy by the appointment of whatever individual he may select from amongst the number of such ministers as shall by the rules and regulations of the said Dutch reformed church for the

time being be competent to be appointed to supply vacancies in the ministry thereof.

6. And be it enacted that the said Dutch reformed church shall be and remain a church exercising its discipline and government by consistories, presbyteries, and a general assembly or synod and acknowledging, receiving, and professing in regard to the doctrine thereof the doctrines contained in the confession of the synod of Dort and in the Heidelberg catechism; and if any questions or divisions respecting church government discipline, or doctrine should hereafter arise between any members or reputed members of the said church or of any congregation, consistory, presbytery, or general assembly of the same then those persons adhering to and professing respectively the said discipline and government and the doctrines of the said confession and catechism shall be deemed and taken as against all persons who shall adhere to and profess any different discipline, government, or doctrines to be the true congregation, consistory, presbytery, or general assembly as the case may be of the said church, and as such of right entitled to the possession and enjoyment of any funds, endowments, or other property or rights by law belonging to the said church or to the congregation, consistory, presbytery, or general assembly in which any such questions or divisions shall have arisen.

Doctrine and government of the church.

7. And be it enacted that the general assembly or synod of the said church shall at all times be composed of all acting ministers of the said church and an acting or retired elder to be nominated by each consistory, but the consistory of Cape Town may at all times nominate two elders.

Constitution of general assembly.

8. And be it enacted that no rule or regulations of the said church whether contained in the schedule to this ordinance or to be afterwards framed shall have or possess any direct or inherent power whatever to affect in any way the persons or properties of any persons whomsoever; but all such rules and regulations shall be regarded in law in like manner as the rules and regulations of a merely voluntary association, and shall be capable of affecting the persons or properties of such persons only as shall be found in the course of any action or suit before any competent court to have subscribed, agreed to, adopted or recognized, the said rules and regulations or some of them in such manner as to be bound thereby in virtue of the ordinary legal principles applicable to cases of express or implied contract.

Force of rules and regulations.

Protection  
against legal  
proceedings for  
things done in  
church pro-  
ceedings.

9. And be it enacted that no person or persons composing, complaining to, or giving testimony before any duly constituted judicatory of the said church shall be liable to any action, suit, or proceeding at law, civil or criminal, at the instance of any member of the said church for or on account of any matter or thing written or spoken by any such person or persons *boná fide* and without malice in reference to or upon the occasion of any scandal, offence, or other matter, real or alleged, which by the rules and regulations of the said church for the time being should be reported to any such judicatory and which any such judicatory is empowered to investigate, nor shall any action, suit, or proceeding at law be instituted for the purpose of preventing any such judicatory from pronouncing in the case of any scandal or offence which shall be brought before it and proved to its satisfaction such spiritual censure as may in that behalf be appointed by the said church or for the purpose of claiming any damages or relief in regard to such censures if the same shall have been pronounced.

Actions by and  
against persons  
in whom  
church pro-  
perty vested.

10. And be it enacted that it shall be lawful for the person or persons in whom by the rules and regulations of the said church for the time being the possession or administration of any buildings, lands, funds, moneys, goods, or effects belonging to any congregation or presbytery, or to the general assembly shall respectively be vested to sue and be sued in all actions and suits relating to any matter or thing by any such officer or officers respectively possessed or administered as if the same were his or their private property, and in any criminal proceeding the property of any of the matters or things aforesaid may be laid in the person or persons who in any civil action or suit might sue or be sued in respect thereof.

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## SCHEDULE.

### *Laws and Regulations for the Direction of the Dutch Reformed Church in South Africa.*

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#### FIRST SECTION.

##### *General Regulations.*

Art. 1. To the Dutch Reformed Church belong all who upon a profession of their faith have been admitted as members, such as

have been baptized in the Dutch reformed churches and such as have been acknowledged in other countries as belonging to the reformed church and have settled in this country provided this have been made to appear by proper proofs and certificates of their baptism or membership.

2. These continue to belong to the reformed church as long as they have not voluntarily and distinctly declared themselves to have separated or for lawful reasons have been separated from it.

3. The direction of the reformed church is executed by consistories, presbyteries, and the general church assembly.

4. The inferior church courts have the right of sending overtures to the higher and in particular cases of asking their advice; while they on the contrary are obliged to comply with the orders and requirements of the higher courts, and in particular to forward with all expedition the communications and reports which are required of them.

5. An inferior church court considering itself aggrieved by the resolutions of a higher one has the right of complaint to a still higher one, in the meanwhile however being bound to obey the orders received unless the matter at its final decision could not again be brought forward in its entire state.

6. In all cases decided by the sentence of a higher church court the appeal must be made to the court next following in rank, but after being decided for the second time no new appeal is admissible.

7. The notice of cases prosecuted according to the preceding article in appeal must be taken in regular order, and no cases be brought before the supreme court which first ought to have been decided in the inferior ones, unless in the meanwhile no inferior court had been held and the nature of the case required a speedier settlement. All this however does not affect the right of the higher courts to take notice of cases even without appeal which concern the welfare of the church in general and come under its jurisdiction.

8. The interests of christianity in general and of the reformed church in particular, the maintenance of her doctrine, the increase of religious knowledge, the promotion of christian morals, the preservation of order and unanimity, and the cherishing of submission to rulers and the laws must ever be the chief aim of all to whom in various relations the direction of the church is intrusted.

9. All church courts have to conduct themselves agreeably to the rules and ordinances, general and particular, which have been already passed or may hereafter be legally passed.

10. In all church meetings the following rule of order is observed:

1. All presbytery and general church meetings are under certain restrictions held with open doors.

2. The meeting shall be opened with prayer and closed with thanksgiving, which except in consistorial meetings shall be done by the scribe while all the members stand.
3. The meeting shall commence at a fixed hour.
4. All members of church courts are obliged to attend the same unless prevented by lawful reasons; and in case of non-attendance they must give notice thereof in writing to the meeting.
5. After the opening of the meeting the president gives notice of the matters to be brought before it.
6. In bringing forward the cases the president observes that order which appears to him the fittest, and on every point gives the opinion first; he states distinctly the matters to be treated of, and during the treatment gives the necessary elucidations, and shall last of all give his vote.
7. It is earnestly recommended to the president, after in cases of importance he has gained the general sentiments, in order to come to a resolution, to make as short as possible a motion or *alterutrum*, in order that the members without further discussion may give their votes with a single word.
8. Members shall vote singly and no one shall remain without voting except for important reasons to be judged of by the meeting.
9. In all cases coming before a church court the majority of votes of the members present shall decide; but in complaints or disputes no decision shall take place unless at least two thirds of the members are present.
10. No one shall be permitted to speak before his turn nor until asked by the president. In case of an equality of votes the president shall in that capacity decide, except in courts where the president is consulent, in which courts he only gives his advice; and in such cases decision by lot shall be resorted to.
11. Every member of a church court is at liberty in the discussion of any matter to communicate his sentiments thereon.
12. Every member of the assembly shall address the chair, and when alluding to preceding remarks of other members shall not mention names.
13. When two or more members rise at the same time the præsides decides which shall first be heard.
14. It shall be optional for any member of a court to have his dissent from any decision recorded without stating his reasons, retaining the right notwithstanding of giving his reasons in writing subscribed with his name.
15. Members of church courts have the right of voting in the further discussion of a matter concerning which they have already entered their protest.

16. Matters once decided shall not be again discussed; observations if any are to be made on resuming the minutes and not after they have been extended.
17. No motions shall be made in presbyteries and higher church assemblies except in writing and shall be signed by the mover.
18. At a subsequent meeting the præses gives an account of what has taken place since the last meeting and the decisions of the previous meeting are resumed and signed by all.
19. No one shall be permitted either verbally or in writing to use insulting, invidious, or improper expressions or in any way to forget the respect due to a church court.
20. Motions of importance on which it may be requisite to report during the meeting shall be presented to the præses at the commencement of the meeting in order to lay the same before it as early as possible.
21. The præses proposes as members of commissions such of the members present as he may deem fit; and should his proposal not meet with general approbation the matter shall be decided by ballot.
22. None of the nominated persons can be discharged except for important reasons to be judged of by the meeting.
23. The scribe takes notes of everything that occurs or is resolved upon; afterwards extends the minutes and after they have been resumed and signed executes the despatches proceeding therefrom and signs the documents.
24. No one shall retire during the meeting without leave from the president.
25. Before the close of the meeting the president asks every member whether he have anything to propose.
26. At the close of each meeting the president gives notice what points are to be discussed in the following meeting.
27. To the scribe of higher church assemblies one or more members shall be joined for his assistance.

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SECOND SECTION.

*Concerning the General Church Assembly, and Synodical Commission in particular.*

Art. 11. The highest direction of the reformed church in this colony in church matters belongs to the general church assembly (synod).

12. The general church assembly is composed of all acting ministers in this colony and an acting or retired elder to be nominated by each consistory, with the exception of Cape Town, which may depute two elders.

13. The general church assembly is charged with the care of the general interests of the reformed church in this colony, and with regard to these in an especial manner with the care of everything which relates to the public worship and church ordinances.

14. The decisions in appeal of the general church assembly concerning matters treated in lower church courts are final.

15. The general church assembly projects, alters, enlarges, and improves church laws and ordinances which are signed by the moderators and made obtainable through the press.

16. The general church assembly assembles every fifth year in Cape Town on the second Tuesday in October, and is convened by a notice of the scriba sent three months previously to the respective churches.

17. Respecting the moderatorship of the general church assembly the following regulations are to be observed :

- a.* The credentials are called for and read by the scriba.
- b.* The members of the assembly take their seats according to the age of the churches to which the delegates belong.
- c.* After the credentials shall have been called for the president shall be chosen by the members present by ballot.
- d.* The meeting elects in the same manner a secundus, who acts as assessor of the president, and in case of indisposition occupies his place; after which remarks may be made upon the credentials.
- e.* As soon as the meeting shall have been declared by the president to be lawfully constituted the solemn opening takes place.
- f.* At the solemn opening and closing an appropriate sermon shall be delivered, this duty being performed by delegates from the presbyteries by turns; so that the presbytery whose deputy closes the first meeting opens the following, and so on; at the last sitting of the general church assembly those presbyteries being named whose delegates are to perform the duty in the ensuing meeting.
- g.* The president shall have the option at the opening as well as the close of delivering an address from the pulpit or the chair.

Art. 18. In order to prevent that by the lengthened period of time between the meetings the progress of such matters as can admit of no delay should not be hindered, which might be injurious to the interests of the church and church affairs in general, the respective presbyteries are charged and empowered with the treatment and settlement of such cases, but are bound and obliged to conduct themselves therein agreeably to the limitations of the general rules, and such resolutions of the synod as may exist for their guidance and instruction :

1. In case of difficulty or doubt the presbytery which it concerns shall be bound and obliged before they make a



commencement in the matter to correspond and consult on the subject with the synodical commission.

2. Every thing which is done by the presbyteries in consequence of this measure shall be subject to the approbation or disapprobation of the synod.
3. The presbyteries shall, however, retain the right and power when circumstances demand it to call for a synod even within the limited time with this understanding however that when the necessity thereof shall appear to the presbytery the scriba of the presbytery where the difficulty arises shall communicate with the scribas of the other presbyteries who shall then communicate their opinions on the subject to the acturius of the synod, and then the majority of presbyteries shall decide whether an extraordinary synodical meeting shall be held or not; he shall also consult with the synodical commission about the most proper time for the holding of the said special meeting and convoke the synod as is described in article 17.

*Synodical Commission.*

Art. 19. There shall be a commission of the general church assembly of the Dutch Reformed Church in South Africa which shall espouse the interests of the church when the synod is not assembled:

1. This commission shall watch over the execution of the church laws and resolutions and correspond with the government and ecclesiastical courts and persons.
2. The commission shall appoint days of thanksgiving and prayer according to the circumstances of the time and further execute and complete whatever the synod has intrusted or may intrust to them with respect to matters properly belonging to the sphere of that assembly.
3. The commission shall, however, refrain from making new laws, altering the existing ordinances, or introducing new regulations, but is qualified to make proposals to the synod for that purpose.
4. The commission shall report to the synod all their proceedings, and submit the same for the approbation of that body.
5. This general synodical commission shall consist of the president of the last synod, or his secundus, the scriba, and one delegate from each presbytery, to be annually elected by such presbytery.
6. The commission assembles only in urgent circumstances, and at such place where their presence is most required, and where they can best carry on their proceedings.
7. All church courts are obliged to comply with the requisitions of the general synodical commission, and to give all such explanations as they may desire.

8. When any ecclesiastical body or persons shall deem that they have reasons of complaint on account of the conduct of this commission, they shall have the right of submitting their reasons of complaint to the general church assembly, in the meanwhile obeying, unless the matter in its entire state could not again be brought forward; in which case the commission on the motion of the party aggrieved shall be obliged to bring the matter before the general church assembly, and if necessary cause a synod to be convoked.

Art. 20. Proposals to the general church assembly may be sent in not only by the presbyteries but by each consistory and minister separately, but no proposals shall be accepted (except in particularly urgent cases) unless they have been sent at least two months before to the scribe of the synod, who is obliged six weeks before the meeting of the assembly to send a statement of all points for discussion to each consistory. In editing the proposals sent in, no alterations shall be made except in language and style.

21. An *actuaris synodi* shall be appointed from amongst the ministers, who shall act as such in the interval between the meetings of synod, communicating and consulting with the præses of the last general church assembly if necessary, the *actuaris* being charged,—

- a. With transcribing during the sitting of the general church assembly from the proceedings of the assembly each resolution that has to be printed, and preparing it in due form, that such resolutions may be read to the assembly and signed by the moderators on the last day of its sitting and before the breaking up of the assembly.
- b. With conducting the correspondence and keeping an account of matters relating to the synod.
- c. With the care of the synodal papers and books, besides the synodical repertory.
- d. With framing and continuing a systematical registry in an alphabetic form of the "*acta synodi*," kept under the title of the synodical repertory.
- e. Besides this he shall to prevent accidents by fire or otherwise as *archivarius* take under his charge all the synodal papers, documents, &c., watch over them and preserve them carefully, by placing them altogether in a well-locked chest employed for that purpose, and that again for further protection and safety in a well-secured church building.
- f. He shall commence and continue a general registry of all that are baptized in and all members belonging to the reformed church of this colony.
- g. He is especially enjoined to let no papers go out of his hands, even to such as are entitled thereto, except upon a receipt being given, and only for a limited time.

- h.* He will have to render an account to the next synod of all that has taken place in the mean time, allow his books, papers, &c., to be examined, and take care that the necessary parts of the archives be at hand during the synod, there being for that purpose a smaller portable chest, of which the actuarius shall keep the keys.
- i.* His necessary expenses shall be refunded out of the synodal funds.
- k.* He is (*ex officio*) member of the synodical commission. On the decease of the actuarius and archivarius synodi the synodical commission shall demand from the heirs of the deceased actuarius the books, papers, &c., belonging to that office and nominate and appoint as his successor one of the ministers, subject to the further approval of the synod.

Art. 22. There shall be a permanent scriba nominated by the general church assembly from among the ministers. The scriba shall be charged,—

- a.* With the duties of scriba during the general church assembly and the meetings of the synodical commission.
- b.* With the executing of all the necessary despatches which do not require to be made public through the press.
- c.* With sending to the archivarius at the farthest within three months after the breaking up of the general church assembly and one month after the meeting of the synodical commission the proceedings of these assemblies.
- d.* In case of the decease of the scriba or the occurrence of unexpected circumstances or lawful hinderances in performing his duty, the actuarius synodi shall act till the next general church assembly, when another scriba shall be elected.

23. There shall be a quæstor synodi, who is a member of the meeting, and who shall be charged with the following duties:

- a.* The quæstor of the synodal fund will have to keep an accurate registry of all moneys paid and received on account of the fund.
- b.* He shall render an account to the synod of all his transactions as quæstor, and submit his accounts to be examined by auditors.
- c.* His books, on being approved, shall be signed by the auditors, with the addition of the day and year on which it took place.
- d.* He shall for that purpose keep in a book preserved carefully apart all accounts and original lists of moneys collected and remitted to him by the quæstors of the presbyteries.
- e.* He shall deposit the moneys in the savings' bank and give security to the satisfaction of the general church assembly for the due administration of all moneys received by him.

- f.* If the quæstors of the presbyteries do not transmit their lists and moneys in due time he is authorized to write to them and to report the defaulters to the synod.
- g.* The quæstor not being a delegate shall advise merely in matters belonging to his department. In case of the decease of the quæstor of the synodal fund or the occurrence of unforeseen circumstances or lawfull hinderances in performing his duty, the synodal commission shall demand from the heirs of the deceased quæstor or any others in possession of goods, papers, &c., of that fund such books, papers, moneys, &c. belonging thereto; and shall nominate and appoint another as his successor, subject to the further approval of the synod.

24. There shall be auditors for the examination of all accounts of receipt and expenditure relating to the funds of the synod, who shall do this during the general assembly, not, however, whilst a meeting is actually being held, but before or after. They shall produce their report thereon in the general assembly in such sitting as shall be fixed by the præses for that purpose; they shall be elected at each general church assembly, one from among the delegates of each presbytery.

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### THIRD SECTION.

#### *Presbyterial Government.*

Art. 25. For the regular administration of church government, the churches are divided into presbyteries. There shall be five presbyteries, namely :

- a.* The presbytery of Cape Town, to which shall belong the churches of Cape Town, Stellenbosch, Paarl, Somerset, D'Urban, Wynberg.
- b.* The presbytery of Tulbagh, to which shall belong the churches of Tulbagh, Malmesbury, Worcester, Clanwilliam, Piketberg, Wellington.
- c.* The presbytery of Swellendam, comprehending Swellendam, Caledon, George, Bredasdorp, Riversdale.
- d.* The presbytery of Graaff-Reinet, having the churches of Graaff-Reinet, Cradock, Beaufort, Somerset, Colesberg, and Swarteberg.
- e.* The presbytery of Albany, to which belong the churches of Uitenhage, Albany, Glenlynden, Balfour.

26. The presbyteries are charged with providing for the interest of religion, the preservation of good order, and the maintenance of the church laws within their bounds, the examination of subordinate spiritual teachers, the promotion of religious instruction the providing for the increase of churches the nomination of

ministers consent who on the occurrence of vacancies or in case of a suspension shall perform the duty; the making of church boundaries, the nomination of consistories in newly-established congregations, the making of church visitations, and corresponding with the proper authorities in matters relating to the presbyteries. They decide the differences arising in or between the consistories of congregations, and give judgment in case of appeal upon all matters which in the first instance have been brought before the local consistories.

27. Members of the presbyteries are the ministers of each congregation within the bounds together with an elder of that congregation, or by substitution any other member of the consistory nominated by that body. Emeriti ministers shall be entitled to attend the meeting of presbytery in order to assist with their advice, and shall sit amongst the delegates from that church where they were last stationed as ministers. Vacant congregations may have themselves represented by two elders, or by substitution by two or other members of the consistory.

28. Each presbytery has a præses, the office of præses being assigned according to age or the number of years that the ministers have been in the service of the churches; and in the nomination of the præses the scribe of the presbytery shall be passed over. The præses remains in office a full year, that is to say till the commencement of the next stated meeting, but shall have to restrict himself in cases which occur to the laws and regulations and the decisions of the previous meeting.

29. In future a commission shall be appointed annually by the presbyteries, to manage provisionally such cases as can admit of no delay. This commission shall consist of three members.

30. In every presbytery there shall be a quæstor and permanent scribe to be elected by the meeting. The quæstor is charged,—

- a. With the receipt and accurate registry of all moneys which are raised by each church within the bounds of the presbytery in behalf of the synodal and clergymen's widows' fund.
- b. With demanding at every meeting of presbytery an accurate account of the sums raised for the synodal fund by each consistory, as well as of moneys collected for the clergymen's widows' fund, and with rendering an account of the former sums at the farthest six weeks after the meeting to the quæstor of the synodal fund, and of the latter to the quæstor of the widows' fund.
- c. With the making of payments by order of the presbytery and the production of his books at every meeting of presbytery, in order to be examined and signed by the præses and two members of the meeting, and with sending an authentic copy to every general assembly to be laid before the auditors, who are charged with examining the

books of the quæstor synodi; besides that which is prescribed in the rule of order for the church courts the scriba is charged,—

- a. With corresponding with the scribas of the other presbyteries.
- b. With drawing up and forwarding to the general assembly at the termination of each meeting of presbytery a general report of the church visitation then held, with distinct notifications of whatever demands the provision or the attention of the general assembly.
- c. With drawing up and forwarding to the scriba of the general church assembly the points of discussion for the said assembly, and communicating to the præses of the commission of the general church assembly the name of the member deputed to that commission.
- d. With carrying into effect the communications of the præses of the presbytery keeping in view the regulation contained in Art. 28.
- e. With sending to the archivarius synodi at the farthest two months after the holding of the presbytery the original records of that meeting, together with all documents belonging thereto, in order to be preserved among the archives of the synod.
- f. In case of the decease of the quæstor of the presbytery or the occurrence of unforeseen circumstances or hindrances in the performance of his office, the præses thereof must provide for the due preservation of his books, papers, &c. relating to the offices of quæstor and scriba; whilst at the next meeting his successor shall be appointed.

Art. 31. The stated meetings are held once a year on the second Tuesday in October. The præses is authorized with the approval of the synodal commission to call special meetings, the reasons of such meeting being assigned when it is convened.

32. When boundaries are made they are submitted to government for approval, and the expenses of the commission are borne by the persons interested and on whose behalf such commission was appointed.

33. If difficulties should arise on the formation of new congregations the presbyteries in determining to which presbytery such new congregation shall belong must lay the matter for decision before the synod or synodal commission.

34. At every meeting of the presbytery proper inquiry shall be made by the præses as to the state of the churches belonging to that presbytery. For that purpose all the members of the presbytery ought to be present; the absent members shall give in writing their reasons for absenting themselves, besides which care shall be taken to send in the "resolution book," the written report of the state of religion and copies of the "registries of baptisms," "members," and "deaths," authenticated by members of the

consistory. After the opening of the meeting the præses, when the usual business is over, puts the following questions to the delegates on which the answers drawn up in writing by each consistory and signed by all the members of the consistory are handed in and read :

1. Are all the ordinary religious services observed in your congregation on Sundays and holidays ?
2. Are stated sermons at least once a month delivered on the catechism ? Is the history of our Lord's passion expounded at the usual season ? and are sermons given from time to time on the articles of faith ?
3. Are preparation and thanksgiving sermons also delivered before and after the Lord's Supper ?
4. Is the Lord's Supper administered four times a year ?
5. Is there also a regular catechizing held for instruction in Bible history, and in the doctrines of faith and morality, and when practicable in church history ?
6. Are members admitted at the appointed time, and when is the time fixed by you for that purpose ?
7. Is there also a proper discharge of the pastoral visitation of the congregation, and especially of the sick ?
8. Is a proper superintendence maintained by the consistory over the congregation, and do the elders assist the ministers therein ?
9. Are the members of the consistory irreproachable in doctrine and conversation ?
10. Are the deacons careful in collecting and preserving the alms and other receipts of the church and poor's fund ?
11. Is a proper account rendered of the collection and distribution ?
12. Does a retirement of elders and deacons take place regularly every year ?
13. Have minutes been kept of the proceedings of the consistory ? (Here the præses asks for a sight of the books.)
14. Of how many individuals does the congregation consist according to estimation ; how many of them are members ?
15. How many individuals have been confirmed after examination, and how many have been admitted with certificates since last year ?
16. Are no certificates received which are older than a year, nor any given out to persons who have removed longer than a year, except for special and satisfactory reasons in both cases ?
17. Are the baptized, confirmed, removed, and (as far as practicable) the deceased members carefully registered ? (Here he asks for the authenticated copies of those registers which remain deposited in the archives, and which the archivarius must get bound together as the general register of those baptized in and those who are members of the reformed church of South Africa.)

18. Are catechists found in your congregation, and do they perform their duty as they ought?
19. Is care taken that no lay-preachers ("oefenaars") perform divine service in the congregation without the consent of the minister?
20. Is there reason to complain of the state or the administration of the church buildings and property?
21. Is care taken that the duties as clerk, sexton, and other church officers are intrusted to properly qualified persons?
22. Are the clerks and sextons members of the church and of irreproachable conduct?
23. Are the reading and singing conducted with due reverence, to the real edification of the congregation and according to the instructions of the minister?
24. Is proper care taken that in each separate part of the public worship all obstacles to religious edifications are provided against?
25. Do the members of the consistory regularly attend the meeting?

These questions being answered, the presbytery (in accordance with Art. 30, b. c.) acts as circumstances may require.

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#### FOURTH SECTION.

##### *Church Government in the Congregation..*

Art. 35. In all congregations there shall be a separate consistory consisting of the officiating superintendents and deacons of that congregation.

36. The conditions and duties of consistories are fixed and described in the following manner :

1. The superintendents are either ministers or elders.
2. The members of a consistory hold annually at least four ordinary meetings. They hold special meetings as often as circumstances require.
3. The office of president of the consistory is held by the minister, and in congregations where there is more than one minister by the ministers alternately every six months, according to the length of their service in that congregation.
4. In every meeting of consistory whether stated or special the elder who has been longest in service, when no minister is present, presides.
5. Every consistory has if possible a permanent scribe, and where this cannot be found the office of scribe is performed by the president or a member of the meeting chosen by the majority.
6. Stated as well as special meetings are always called by the president; the special meetings with notification of reasons.



He is obliged to convoke them whenever one or more members of consistory, with a statement of the reasons, shall in writing demand the same.

7. Every consistory consists of at least one minister, whether the fixed minister or the consulent of the congregation, of two elders, and four deacons.
8. If the majority of the members of consistory be absent nothing shall be decided.
9. Every consistory has four members (besides a minister or ministers and deacons), twice as many elders as there are ministers members of that consistory. For every elder exceeding two, the number of deacons shall be augmented by one.
10. The consistory in a new congregation, with the exception of the minister or ministers, is appointed by the presbytery or a commission of the same. The members of consistory are as much as possible chosen from among the members of the newly-established congregation who have served elsewhere as members of consistory in the reformed church.
11. The consistory holds annually a combined meeting at least two months before the end of the year, to which meeting are invited, by being thrice published in the church and admitted as nominators and voters, all retired members of consistory who are members of that church, in order for the number of officiating elders and deacons whose period of service expires at the end of the year, and who therefore have to retire, to propose elders and deacons by ballot, and from the persons thus proposed to choose an equal number to be submitted to government. Persons entitled to vote shall not if absent be permitted to send in their votes. No previous agreement or arrangement whatever with any person as to the nominating and choosing of members of consistory should be made. When the votes are equal it shall be decided by ballot.
12. As elders and deacons members of the consistory are chosen, the most pious, intelligent, and respectable members of the congregation, not below five and twenty years of age for deacons, for elders forty, who are known for at least two entire years as members of the congregation, and who are not opponents of the existing ecclesiastical ordinances.
13. As much care as possible must be taken that no father and son, father-in-law and son-in-law, brothers and brothers-in-law be at the same time members of the consistory.
14. The persons nominated are without delay made acquainted therewith and, after the said information they are proposed to the congregation by an announcement during the time of public worship on three successive Sundays.
15. Such persons as refuse without important reasons, to be judged of by a meeting of consistory, to undertake the

- duty to which they have been elected shall render themselves liable to a brotherly admonition from the consistory, and the congregation shall be made acquainted with the refusal.
16. The age of sixty years, as well as a period of service of twelve years in whatever capacity, whether as elder or deacon or both together, shall be considered as a sufficient reason for such persons to be excused from further duty; in like manner a period of service of six years as a deacon shall be a sufficient reason of exemption from the further performance of that duty.
  17. Every member has a right to prove to the consistory any incompetency on the part of one or more or all of the persons announced.
  18. In case of such incompetency the consistory holds as soon as possible a combined meeting, and chooses as many other members as are necessary to come instead of those declared incompetent.
  19. Those who have been chosen and approved of by silence after proclamation on three successive Sundays are installed in presence of the congregation at the end of the year or so soon as possible in the beginning of the following year.
  20. Officiating members of consistory remain in their office till new members of consistory shall have supplied their place, and the office is considered to commence as soon as they have been installed.
  21. The period of service of each elder and deacon is limited to two successive years, after which he shall have to retire unless he be re-elected, but after having served four successive years he shall not be re-elected except he have been out of office at least for one year. At the nomination of new consistories it is decided by lot who are to retire in the first year after the election, and whose period of service on account of this limitation shall be computed for two years. Members of consistory re-elected shall be again installed.
  22. In case of insurmountable difficulties in the nomination or installation of successors for the retiring members of consistory the presbytery intervenes and acts according to the regulation with respect to a consistory which is to be formed. (Sub. No. 10.)

*General Rules with respect to the Duties.*

**Art. 37.** The official duties of members of consistory are—

1. To have the charge of what concerns the public worship.
2. To teach the congregation and fit them for a better than an earthly life.

3. To watch over the conduct and morals of the members and pupils of the congregation, to bring the wandering back, to strengthen the weak, in a fatherly manner to reprove the offending, and to exercise discipline with respect to them.
4. To provide for the poor and widows.
5. To attend to the affairs of the congregation and to take care that all things be done decently and in order in the congregation.
6. To see as far as practicable that no one of another congregation partake of the communion without first giving notice to and obtaining leave from the minister or one of the overseers of the congregation.
7. In case of a vacancy in the office of church clerk, sextons, and undertakers to appoint fit persons, and to submit them to government for approbation, such as receive salary from government.

Art. 38. The consistory appoints the hours for the usual public worship, keeps an account of its proceedings, provides for the proper keeping and registration of the archives and of all documents received, as also for the exact registration of baptisms, of new members, and of such as leave the congregation, which registers are annually compared by a member or by a commission of the consistory with the counter-book, and signed as "compared."

39. The consistory takes care that a proper report respecting the state of religion be sent to the presbytery; and also that the synod and clergymen's widows' fund moneys be regularly accounted for, agreeably to the following form:

The consistory of the reformed church at \_\_\_\_\_ hereby acknowledge that in the congregation within their bounds there has been raised for the synod fund during the year 18\_\_\_\_, the sum of £\_\_\_\_, being for

Baptisms at the usual time	- - - £
Do. out of the usual hours	- -
Seat rents	- - - -
Burial fees (where customary)	- -
For the clergymen's widows' fund	-
Marriages out of the usual time	- -
Confirmations ditto ditto	- -
Collections, &c. &c.	- -

Total, £

The \_\_\_\_\_ of the year \_\_\_\_\_.

Members of the Consistory.

40. The consistory takes care that there be brought to the meetings of presbytery the resolution book, besides authenticated copies of the registers of baptisms, members, and as much as possible of deaths.

41. On the occurrence of a vacancy in the office of minister the consistory conducts itself agreeably to the rules respecting vacancies.

42. The consistory remains charged with the care and direction of the church and the poor's fund, the parsonage and all church buildings, moneys, and funds. No sale or mortgaging of church property shall take place but by authority from the governor for the time.

*Particular Regulations.*

Art. 43. § 1.—Duties of ministers.

- a. They provide in the best manner with the previous knowledge and advice of the consistory for the pastoral work in the congregation.
- b. They are bound to preach statedly especially also on the catechism and the history of our Lord's passion, from time to time to preach on the articles of belief and to deliver the usual preparation and thanksgiving sermons before and after the Lord's Supper.
- c. They hold catechizing for old and young who have not yet made a profession of their faith as well on Bible history as on christian faith and morality, and if possible on church history.
- d. They shall hold stated and proper religious family visitation.
- e. They are obliged to visit the sick unless when lawfully prevented, and to repeat the visits as often as possible.
- f. To them is intrusted the direction of the ceremonies of the public worship with the previous knowledge and advice of the consistory.

§ 2.—Duties of elders.

- a. They are bound as much as possible by instruction, exhortation, example, and consolation to promote the welfare of the members.
- b. They are bound to assist the minister when requested in the pastoral work.

§ 3.—Duties of deacons.

- a. The deacons provide for the collection of the alms and for the support of the needy members of the church.
- b. They attend to whatever leads to the discovery, extension, or promoting of the funds and means for the support of the needy.
- c. One of the deacons, namely, the cashier of the church fund, is bound to conduct himself according to the following instructions for the cashier deacon:
  1. He shall pay no account without the advice of the consistory unless they had previously been agreed upon.

2. He shall pay no accounts without being provided with the necessary receipts, which he must produce at the first meeting in the year at the closing of the church accounts.
  3. These receipts shall then be put together and kept apart.
  4. No moneys shall be put out on interest without sufficient security and notarial bonds or mortgage.
  5. Money put out to interest must be for an unlimited time.
  6. He shall not be permitted to give any one money on interest but after having previously obtained the consent of the consistory.
  7. He shall be responsible for all moneys which he puts out or has put out without the previous knowledge and consent of the consistory.
  8. He takes care that there is always a sufficient sum of money in the chest at the disposal of the consistory.
  9. He keeps the great or debt book and takes care that the interest due be properly paid as well by him to the creditors as by the debtors to the church; in case of the refusal or delay of the debtor, he has the right without the previous knowledge of the consistory of calling in the capital, and of compelling them in the usual manner to the payment of their debt; all this, however, he shall report at the first following meeting.
  10. He is charged with the receipt and keeping of the moneys which must be raised in the congregation for the benefit of the synod and clergymen's widows' fund. He keeps a separate account thereof, and on making his reports puts the delegates to the presbytery in possession of the amount of the moneys in hand for the year ending with the last of September.
- d. The cashier deacon or a member of the consistory in his stead sits in the vestry of the church with which he is connected during two days in the last week of January of each year, in order to allow the members of the congregation insight into the church accounts, and the books in consequence kept; the hours during which he will sit are previously announced to the congregation.
- e. With respect to the alimentionation of the poor the deacons take care that none but those who have been at least one year and six weeks members of the congregation shall lay claim to any support from the poor's fund of such congregation, and that in case of necessity the allowance of alimentionation be continued for a year and six weeks to paupers passing to another congregation; and that on the decease of paupers the resolution of the governor and council in 1769 be observed. If, however, the consistory should experience opposition in the execution of the said resolution on the part of those interested they shall if it should be considered of importance to the poor's fund take proper legal advice upon the subject and act accordingly.

44. Every consistory has the right of making special domestic regulations, provided they are not contrary to existing church laws and regulations.

45. No minister shall preach in the parish of another, especially on the Lord's day, without giving notice to the minister of that parish, or in his absence to the consistory; and the moneys collected on such occasion shall be remitted to the church fund of the said parish; but on receiving notice not to proceed therewith he shall be obliged to comply with the requirement of such notification.

46. The baptizing of children and adults or the admission as members of any one from another congregation shall not be allowed to take place without a written permission from the minister of that congregation.

47. In vacant congregations the above shall not take place without notice thereof being previously given to and permission obtained from the consistory or consulent minister of such congregation, and after performance a due report thereof shall be forwarded to the said consistory or consulent.

48. When parents of illegitimate children are freed from church censure, baptism may be administered to their children without other sponsors; but if this on account of the continuance of their unchristian conduct cannot take place and they can obtain no other persons as sponsors such children shall then remain unbaptized till they shall be able to make a profession of their faith, and thus be entitled to receive baptism.

49. Children above seven years of age shall not be baptized, but must remain unbaptized till they shall have made a profession of their faith; and on this point no discretion shall be allowed to ministers.

50. Except in very urgent cases baptism shall be administered during the public divine service, and the fixing of the sum to be paid for such extra baptisms is left to the respective consistories. The poor shall pay nothing.

51. To the members of a newly-established congregation church certificates shall be granted gratis, but only by those churches to which they belonged before the erection of the new congregation, and from which they have thereby been separated.

52. Consistories are allowed the liberty of fixing a certain hour on any day besides Sabbath for the celebration of marriage, without payment of twenty-five rixdollars to the clergymen's widows' fund.

53. The consistory in every congregation provides a proper dwelling for the minister.

54. The members of a congregation shall not be permitted to take measures which must lead or might easily lead to a division of the congregation to which they belong, unless they have received permission for that purpose from the minister or ministers of the congregation in particular and from the consistory in general.

## FIFTH SECTION.

*Religious Instruction—Religious Instructors, their qualifications, and the supervision of Religious Instruction.*I. *Religious Instruction in general.*

Art. 55. By religious instruction is understood the instruction both of beginners and of the more advanced in scripture history, and the doctrines of faith and morality, especially of those who desire to be admitted as members of the reformed church; and this both by the ministers and under their superintendence by other fit and qualified persons; this instruction to proceed gradually and to be adapted to the capacity of the different learners, while particularly with the more advanced this instruction ought as much as possible to take place in public as well as privately; and it is recommended to the ministers zealously to aim at extending the knowledge of scripture history as well as of doctrine, whilst at the admission of members attention must be paid to the progress of the pupils in both. It is also most strongly recommended to impart to the learners according to their capacity some knowledge of church history.

II. *Religious Instructors and their qualifications.*

Art. 56. Religious instruction being one of the principal duties of pastors and ministers they are bound to apply themselves with all diligence to increase their congregation with well-informed and worthy members and to employ every means either personally or by other instructors placed under their inspection in order that the necessary instruction may be imparted at a seasonable time of life, or according to every one's situation and age, in the English as well as the Dutch language; the Heidelberg catechism and the "Abstract" ("Korte Begrip") being regarded as the fundamental books of instruction, which together with the formulas will through the press be made obtainable in English; besides which it will be at the option of the ministers to cause such other books proceeding from the bosom of the reformed church to be used by the instructors as they may judge necessary for the promotion of instruction in the reformed religion, and which if need be shall be approved of by the general assembly.

57. Where necessary ministers who are able shall preach in English, and are encouraged to do so, provided this can be done without injury to the Dutch congregation and after previous notice to the consistory respecting the use of the church for that purpose.

58. Among other qualifications in the subordinate teachers it is required that they should be members of the reformed church, and that they as such have been resident in the congregation at the least two years; that they have conducted themselves in an irreproachable and exemplary manner, and have at the least for

two years exercised and prepared themselves decidedly for giving religious instruction, under the efficient training and superintendence of some minister or another of their community.

59. Such instructors, catechists, or lay preachers (oefeninghouders) shall for the said purpose on the recommendation of the properly qualified church court within whose bounds they are undergo a suitable examination by the presbytery, and that both in sacred history, the contents of the scripture books, the doctrines of christian faith and morality, and on the principal points of the history of Christendom; trial shall also be made as to their talent for instructing, and being admitted they shall continue under the superintendence and direction of the ministers.

60. No one even after passing a satisfactory examination shall perform that work unless after approval he shall have signed the following declaration:

“We, the undersigned, having been examined by the presbytery of \_\_\_\_\_ and admitted to give religious instruction, declare in good conscience that we heartily embrace the doctrine which is contained in God’s holy word and the formulas of uniformity in the reformed church, promising to teach them faithfully in our instruction and to conduct ourselves in every thing in conformity to the rules for religious instruction, submitting to the judgment of the presbytery if anything contrary to the same be done by us.”

Nor even after signing unless he has received a licence to the following effect:

“The presbytery of \_\_\_\_\_ having examined N. N. a native of \_\_\_\_\_, \_\_\_\_\_ years of age, living at \_\_\_\_\_, declare him qualified to fill the office of religious instructor, and, after election to the said office by the consistory of a congregation entitled to give religious instruction in that congregation in conformity to the rules concerning the same.”

Which licence when received shall in every other church court in which it is produced be deemed sufficient qualification to be elected within its bounds if at the time there exists no reason to the contrary.

61. With regard to the ordaining of missionaries the following rules shall be observed. Missionaries ordained by our reformed church shall be so ordained for places beyond the frontiers of the colony only:

1. A missionary wishing to be ordained, whether he comes from another country or has qualified himself here, shall for the attainment of his object apply to one of the presbyteries.



2. The presbytery shall not admit such an application until the applicant shall have produced the following certificates:
  - a. If he comes from abroad his "leave of residence."
  - b. The certificate of his being a member of the christian reformed church.
  - c. His licence to act as a missionary.
3. The application having been laid before the presbytery and approved, the applicant must submit to an examination before the presbytery upon all the subjects mentioned in Art. 59, as well as upon the art of expounding and the pastoral duty, and give proof of his skill in the art of preaching, at which examination although it is conducted by the moderator each member of the presbytery will be at liberty if he chooses to ask the candidate any question, provided he does not interrupt the president but waits until an opportunity is given.
4. This examination having been concluded to the satisfaction of the presbytery he receives his qualification to administer the holy sacraments.
5. Those who have already been ordained as missionaries within the colony remain subject to the regulations under which they have been ordained, and those who are hereafter to be ordained shall make and sign the following declaration:

"We, the undersigned, missionaries for the propagation of christianity among the heathens of South Africa, professing the christian religion, and continuing in the profession which we formerly made as members, now also at the conclusion of this our present theological examination hereby repeat most solemnly the conscientious declaration that we heartily embrace the doctrine which agreeably to God's holy word is contained in the formulas of uniformity in the Dutch reformed church, promising to follow and teach the same faithfully in our religious instruction and also to conduct ourselves precisely in conformity to the rules relating to religious instruction in the reformed church establishment in this colony.

"And as the presbyterial meeting of the reformed church in this place have on our application and in their supreme judgment been pleased by their resolution to admit us in our relation as missionaries, not only to the administration of the word but also of the christian ordinances, baptism and the Lord's supper, we hereby declare and promise most solemnly that most carefully avoiding all collision and infringement with and upon the rights of established christian congregations, we will in the administration of these ordinances confine ourselves entirely to the practice of the reformed church, submitting ourselves in case of any transgression of the same and also of unhoped-for

immoral conduct to the judgment of the church court whose province it is to take cognizance of such matters.”

“I make the above declaration by means of this my signature, uprightly, as in the sight of God.”

6. This declaration being signed the presbytery proceeds to ordain the candidate, after which the president in the name of the presbytery, making a suitable address and invoking a blessing, delivers to him his licence.

*Form of the licence for missionaries to administer the holy christian ordinances, Baptism and the Lord's Supper.*

“Whereas N. N. has presented himself before the presbytery of the Dutch reformed church in South Africa, assembled at \_\_\_\_\_, requesting to be admitted as missionary to the administration of the holy sacraments amongst the heathens brought to christianity beyond the frontier, the said meeting, after the abovementioned person had performed all that is required in the rules on that head dated 11th November, 1842, had no hesitation to declare him, as is hereby done, qualified for that purpose under the restrictions determined in the rules just alluded to, this certificate serving him as a licence to do so.

Given thus in \_\_\_\_\_ on the presbyterial meeting of \_\_\_\_\_.

N. N., President.  
N. N., Scriba.

7. Such as have been confirmed and baptized by a missionary ordained by one of the presbyteries shall also be recognized as full members of the reformed church, and be registered as such on producing their certificates signed by the missionary, or in case of the decease of the missionary the registries of baptisms and members.

Art. 62. With regard to the examination of those who wish to be admitted to the ministry it shall be conducted according to the following

*Rules for examining.*

1. The examination consists in a trial as to the skill which any one who wishes to be admitted to the ministry possesses in every thing that is required for its proper discharge.
2. The object of the examination is to provide against any being admitted but such as possess the requisite knowledge, and also to give such as have prepared themselves with laudable industry, an opportunity to show their qualifications, and thereby gain themselves a favourable recommendation.
3. The examination must be undergone by all who after completing their studies desire to be admitted to the ministry in whatever language they intend to preach.

4. The examination is held *before the synod* by a committee to be appointed for that purpose, consisting of five members not connected with the candidate in the three first degrees of consanguinity.
5. No one who desires to be established as a minister in the reformed church of this colony shall be admitted to the examination unless he shall have finished his theological studies at the seminary hereafter to be established or at one of the foreign universities belonging to the reformed church.
6. In order to be admitted to the examination the following testimonials are required:
  - a. For those who come from abroad a certificate of having studied for three years at least in the faculty of divinity, and for those who have been educated here a certificate of having successfully attended for five years the lectures on the exposition of the Old and New Testament, doctrinal subjects, and christian morality, as well as church history.
  - b. A church certificate purporting that the candidate has been more than four years a member of the reformed church.
  - c. A testimonial from the professor of the university where he has finished his studies.
    1. Of diligent attention to all the above named lectures and the progress shown.
    2. Of having preached at least three times "sub præsidio."
    3. Of good moral conduct.
7. Every one that wishes to be admitted to the examination will have to report himself to the "actuaris synodi" at least three months before the holding of the synodal meeting, and at the same time to produce the documents mentioned in the preceding articles.
8. The actuaris synodi having found the testimonials satisfactory informs the applicant that he is admitted to the examination.
9. All the members of the committee appointed by the synod shall take part in the examination with a view to which the synod shall so divide the business that each of the members may examine more closely than the rest in one of the branches to be mentioned in Art. 11, but this decision shall never be made known to the candidate beforehand.
10. No previous trials shall be allowed to take place.
11. The subjects of the examination are :
  - a Expounding the scriptures.
    1. For expounding the Old Testament it is required to translate into Latin two chapters, each taken from a separate book, besides showing the sense or meaning on analytical principles.

2. For the new testament a similar translation and an explanation of two separate chapters by which also an opportunity may be given to show that the candidate is not unskilled in criticism.
  - b. Church history.
  - c. Doctrinal divinity and its history. In this branch he shall be principally interrogated on all the characteristic tenets of the reformed church.
  - d. Christian morality.
  - e. The art of preaching and the duties of the pastor and overseer's office.

The candidate shall show his abilities for preaching both by written composition and oral delivery. During the examination the synod determines how long the examination on any branch shall be continued.
12. A candidate being found competent shall declare on his solemn oath that he has not for the purpose of gaining a situation made any agreement or given any present, nor ever will make or give, and that he is not conscious that such has been or will be made or given by any one for him or on his behalf, and that he will never seek or accept any situation which he may suppose is presented to him through any bargain, promise, or any means whatever of previous agreement.
13. The candidate will, moreover, be obliged to make and confirm with his signature the following declaration and promise: "I, the undersigned, admitted by the synod of the reformed church in South Africa to the office of public preacher in the reformed church, hereby uprightly declare that both in doctrine and deportment I will carefully consult the interests of christianity in general and of the reformed faith in particular; that I faithfully embrace and heartily believe as agreeable to God's holy word the doctrine contained in the adopted formulas of uniformity of the reformed church; that I will diligently teach and maintain these doctrines, and that I will apply myself with all zeal to the advancement of religious knowledge, christian morality, order and harmony; binding myself by this my signature to all the preceding; and if I should be found to have acted contrary to any part of this declaration and promise to submit in every respect to the decisions of the proper church courts."
14. Upon this the candidate shall with a suitable address from the president be admitted to the ministry, and the following certificate signed by the president and scriba of the synod be delivered to him:
 

"N. N. having appeared before the synod of the reformed church in South Africa requesting to be admitted to an examination, in order to gain admission as a preacher, and

we having found that his church certificate as well as the testimonials delivered by the professors of sacred theology in ——— and especially as to his moral conduct were satisfactory, have made no difficulty in admitting him to an examination and according to the eleventh article of the rules for examining, have carefully questioned him in respect to all the branches mentioned in the said article, with such a result that we have admitted the said N. N. to the ministry, he having taken the solemn oath required by Art. 12, besides having solemnly made and subscribed, as required by Art. 13, the declaration of agreement with the doctrine which conformable to God's holy word is contained in the adopted formulas of uniformity of the Dutch reformed church."

15. Such as are thus admitted to preach the gospel shall bear the name of "candidates for the sacred ministry" (*sacri ministerii candidati*).
  16. Of this examination and its results with the addition of the particulars of the case notice shall immediately be given to her Majesty's government.
  17. After his admission the candidate may accept a call from any congregation, attention being paid to the directions given on that subject in the rules relating to vacancies.
  18. The candidate whether he be admitted to the administration of the gospel in this country or elsewhere in a lawful manner, or receiving a call, shall in order to be admitted to minister in the congregation to which he is called show his letter of appointment to the *actuarius synodi* and sign a declaration that he will uprightly persevere in the declaration and promise which he before signed. (See Art. 10.)
  19. The presbytery has authority to consecrate candidates to perform the duty as assistant preachers, or when they are going beyond the boundaries to propagate the gospel, provided they are able to prove that they are lawfully appointed to a community, and the presbytery shall cause the documents to be duly registered with the *actuarius synodi*.
- Art. 63. a.** The ministers of the reformed church who come out for this colony will on their arrival require to legitimate themselves with the *actuarius synodi*. The latter shall immediately report thereon to his Excellency the Governor. When entering upon their office they shall previous to their being presented to the congregation likewise show their testimonials, their licence, and their appointment to the president of the presbytery within whose bounds that congregation is situated.
- b.** The subscriber of the deed on legitimizing declares and certifies by his signature that he considers the doctrine which is contained in the formularies of uniformity of the reformed church to be in conformity with God's holy word.

- c. The installer of any minister that comes out must demand a certificate that the necessary documents have been shown also to the president of the presbytery.

### III. *Care of Religious Instruction.*

Art. 64. In places where religious instruction is given in the reformed doctrine in prisons or other edifices that religious instruction shall not be intrusted to such as do not belong to the reformed church, and these instructors having obtained legal permission from the church on exhibiting proofs of their ability shall be subject to proper rules and restrictions similar to what is above said of other subordinate instructors.

65. Such as have legal permission to hold religious meetings will have to discharge their duties as follows:

1. Under the term "religious meeting" is not understood any particular meeting in which a few friends come together to be useful to each other by reading God's word and other edifying books, by mutual conversation, singing psalms, and praying, to the advancement of the knowledge of the truth which is to salvation; but such assemblies in which at times fixed and previously announced one or more members of our church in the presence of a greater or less number of hearers hold forth on divine truths.
2. No such lay-preachers will be allowed to hold meetings within the bounds of another congregation without having first sought and obtained permission from the minister of the congregation.
3. Persons to whom liberty may be given to hold religious meetings shall promise as follows:
  - a. That they will guard against all expressions and statements which might give rise to party feeling and division in the community, and on the other hand will exert themselves to preserve the bond of affection and uniformity of faith, and be very careful to cast no reflections upon government or its administration, nor upon the minister or his doctrine and administration.
  - b. That they will confine themselves purely to the word of God and the formularies of our reformed church founded thereon, and that they will never give utterance to any thing opposed thereto.
  - c. That so far from drawing people away from attendance upon public worship performed in and amongst their congregation, they will on the contrary both by their teaching and example recommend the observance thereof, and will consequently never hold a meeting during the hours of public worship, or so as to infringe in any degree on such hours.
  - d. That when called upon to do so they will be at all times prepared to speak either with the minister or the minister

and elders, or with the consistory, and to be questioned about their meetings, and that admonitions being given they will with meekness receive and obey them.

4. Of the times and places at which meetings are held the consistory must receive proper notice.

Art. 66. It will be one of the principal duties of the ministers on suitable occasions in their spheres, and especially in their presbyteries, to call each other's attention to the state of religious instruction, to make communications on that subject, and to consult upon the best means of promoting it. They shall properly assist and train such as wish to qualify themselves for giving religious instruction as subordinate instructors.

67. The admission of members is committed to the ministers alone, who shall be therein accompanied by one or more of the elders.

68. In future no male under sixteen, and no female under fifteen years of age shall be admitted to the examination in order to become members of the congregation; and in doubtful cases it will be necessary for the applicants to produce from the baptismal register a certificate signed by the sexton or clerk of the church where they were baptized, which shall be given to them "gratis."

69. The confirmation or presentation of members shall take place in public. This presentation shall consist in their ministers, or one of the ministers in presence of the congregation, putting from the pulpit the following questions to those who are admitted:

1. Whether they heartily believe the doctrines which they have professed?
2. Whether they have determined by the grace of God, to abide by these doctrines to forsake sin, and to lead a christian life?
3. Whether they submit themselves to the superintendence of the church, and in case they should go astray to the discipline of the church. Whereupon the confirmation takes place with due solemnity and with a suitable address.

Art. 70. To members removing to some other place, the following certificate shall on their application be given.

(L. S.)

"We, the minister and elders of the reformed church at \_\_\_\_\_ hereby certify that N.N. is a member of the reformed christian church, sound in faith, blameless in walk, at least as far as is known to us. The reverend brethren and overseers of the congregation at \_\_\_\_\_ will therefore be pleased to receive our said \_\_\_\_\_ as such under their spiritual care and admit him to the communion of the holy sacrament.

"Given in our church meeting on the \_\_\_\_\_

"In name and by authority of the reverend consistory.

"A. B."

In cases where there exists a difficulty about giving the above attestation, a certificate of membership shall be given of the following tenor :

(L. S.)

“I, the undersigned, minister of the Dutch reformed church at ———— hereby certify that it appears from the registry of members of the said congregation that ———— after making a profession of his faith was admitted as member of the said congregation. “N. N.”

Art. 71. There must be written upon the certificate that it shall be presented within six months in the congregation to which the person is going, and that after a year and six weeks it will be no longer of any value.

72. Each time after the first notice of the approaching celebration of the Lord's supper, warning shall be given in public to those who have arrived from other places that they are to give in their certificates.

73. In case of long-continued or unusual absence from the congregation each minister must take care that his duty be performed to the satisfaction of the consistory and notice be given by the consistory to the president of the presbytery ; but this shall have no reference to a minister who is ill and has obtained leave of absence on account of his illness, in which case the consistory shall provide for the proper discharge of the duty.

74. When any presbytery may have reason to suspect that a minister within their bounds is unable on account of insanity, decay of intellectual powers or bodily weakness to discharge his duty properly as a minister, a commission chosen from that body and specially empowered for the purpose must at the place in question, both by hearing the consistory and if possible by conversation with such minister, convince themselves of his condition.

1. In case he is really found to be of unsound mind, notice shall be given by that presbyterial commission to the synodal commission, who shall then endeavour in a friendly manner to induce him to try relaxation for the space of half a year, and should these endeavours be ineffectual the synodal commission after providing themselves with a certificate from a medical man may suspend such minister in his office, his reputation and stipend being secured to him for the time just mentioned, and allow his duty to be performed by the other ministers of that presbytery.
2. When the half-year is elapsed the synodal commission shall again make inquiry whether he may be re-admitted to his ministerial charge, when in case the commission should not find themselves at liberty to do so the minister in question may be in the same manner again suspended for the period of one year in the exercise of his profession, unless it



- should appear after suitable inquiry that the hope of recovery has been entirely cast off. All this does not diminish the right of higher appeal from the arrangement herein specified.
3. When this latter period has elapsed in case of the unhopedor continuance of the minister's insanity or imbecility of mind or constant bodily weakness, discharge from his office *salvo honore et stipendio* may be solicited for him by the synodal commission.

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SIXTH DIVISION.—PARTICULAR RULES.

*First Chapter.—Church Officers.*

*Rules for the Church Clerks of the Reformed Church of this Colony.*

Art 75. Church clerks are nominated by the majority of the consistory on the presentation of the minister or ministers. They must be members of the reformed church.

76. The church clerks shall be bound as often as there is preached or catechized in the church to read and sing as shall be prescribed by the minister.

77. In order to receive the necessary instructions for this purpose they shall wait upon the minister at such time as he may think proper, or if the minister wishes this should be done by the sexton they must submit thereto.

78. They must be present in the church at the second ringing of the bell and begin with reading as soon as there are any hearers.

79. In case of the absence or sickness of the minister they shall read on Sundays a sermon and a form of prayer, according to the direction of the minister or elder.

80. The office of church clerk being viewed as united to that of visitor of the sick and catechist they shall in vacant congregations, and even where there is a minister by his order, be obliged to act in that capacity.

81. The church clerks make annually a copy of the registers of baptisms and members.

82. When they are prevented by sickness or other circumstances from discharging their duties in the public worship and have no substitutes they shall take care that another be appointed with the approbation of the minister.

83. The fees of church clerks arising from marriages and the granting of such certificates remain as is customary in the several congregations; with the exception, however, of such as are deemed by the minister or in his absence by the elder to be indigent, in which case such fees shall not be charged.

84. Church clerks wishing to resign their office must give at least three months' notice to the consistory.

85. The consistory has the right to suspend the church clerk when he does not discharge his duty in a proper manner.

86. The consistory may add to these regulations according as the interests of the public worship or those of the church clerk may require, subject to the regulations in the forty-fourth article under church government in the congregation.

87. The church clerks are not permitted to leave the town or village without leave asked and obtained from the minister, or in vacant congregations from the elders.

88. On entering upon his office the church clerk binds himself by subscribing these rules to the faithful observance of the same.

*Rules for the Sextons of the Reformed Church of this Colony.*

Art. 89. The sextons are nominated by the majority of the consistory on the presentation of the minister or ministers. They must be members of the reformed church.

90. The sextons shall be obliged weekly to clean the church, chairs, pews, ornaments, and all that relates thereto or whatever is intrusted to them by the churchwardens, and to have the church and vestry aired at least once a week; they must also have the path from the entrance to the church doors cleaned from time to time.

91. If it should please the churchwardens to examine the church property, of whatever description it may be, the sexton shall be obliged to open the stores or apartments in which the said property is kept and to give all necessary assistance for that purpose.

92. The sextons shall not be permitted to lend out any church property of whatever denomination without the previous knowledge of the church master or those who are intrusted with the care of the church buildings and property.

93. The sextons shall also take care that the palls and other woollen stuffs shall from time to time be aired and cleaned.

94. The sextons shall be at the service of the churchwardens in all church matters; they shall be in waiting at every church meeting and execute all their commands. When a meeting is appointed they shall inform the members thereof; they shall also be at the service of every member of the consistory in matters concerning the consistory. Moreover, they shall as church messengers execute the commands given to them by office-bearers of higher church courts.

95. The sextons shall be bound to keep registries of baptisms, confirmations, and if practicable of deaths, and also a registry of persons who pay seat rent to the church.

96. The sextons shall be obliged to notify in their registry of deaths where the deceased have been buried.

97. At the admission of members they shall give certificates *gratis* as to the time when such persons were baptized.

98. The sexton shall be obliged to deliver to the cashier deacon at such time as may be fixed by the consistory a specific account

of all church dues, income from vaults, palls, hearse, and all other revenues of the church or pertaining to the synod fund or that of the clergymen's widows' fund, with a list of all moneys due and in arrear.

99. The sextons shall point out proper seats in the church to all strangers of any distinction, and also to persons who are to be united in marriage; they must also watch against all disorder during public worship, in particular attend to the young, and after the service make known the unruly to the churchwardens, that they may be reprov'd.

100. The income of the sexton shall continue as it is at present fixed by the respective consistories.

101. The sexton shall be obliged to wait upon the minister on Saturday morning or at such other time as the minister may think proper, to receive the necessary orders and to execute them.

102. The sextons are *ex officio* undertakers, and conduct themselves according to the rules for the undertakers formed by each consistory.

103. The sextons shall not be permitted to leave the town or village without the previous knowledge of the minister, or in case of his absence and during vacancies of the president of the consistory.

104. The sextons shall be bell-ringers in the country parishes as long as the churchwardens shall deem proper, and conduct themselves in this respect according to the general custom of the church by ringing three times and in such manner as is customary or may be ordered.

105. Sextons wishing to resign their office must give at least three months' notice beforehand to the consistory.

106. The sextons shall at the end of every month account for all church moneys received by them.

107. The consistory has the right of adding to these rules in such a manner as the circumstances of time and place may require, subject to the regulations in the forty-fifth article under church government in the congregation.

108. The consistory has the right of suspending the sexton in his office or if need be of deposing him.

109. The sextons bind themselves on entering on their office by subscribing these rules to the faithful observance of the same.

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#### SECOND CHAPTER.

#### *Rules regarding the Administration of Church Government and Discipline.*

##### *General Directions.*

Art. 110. Church government is administered by consistories, presbyteries, and the general church assembly.

111. These different courts besides aiming principally at the maintenance of religion, especially of the reformed doctrine, and

the purity of morals with which they are charged, do, moreover, take cognizance of actions and conduct which are contrary to the church laws and institutions.

112. Any one considering himself aggrieved by the decision of a church court may appeal to the next superior court. No further appeal can take place.

113. Church courts carefully refraining from everything that belongs to the civil government or judicial affairs have especially to attend to the discharge of office and the conduct of all such whose doctrine and deportment as such officers exercise a more direct influence on the congregation.

114. As the administration of church government and discipline must consist in a religious and moral superintendence church courts must therein avoid as much as possible the tone and manner of the civil courts of justice, and the members thereof must consider themselves more as fatherly overseers than as judges.

115. The church courts shall on differences being brought before them use all endeavors to settle them in a friendly manner and to reconcile the contending parties, unless the interests of religion or the welfare of the congregation be likely to suffer thereby.

116. The church courts keep in view that their superintendence reaches not only over such misdemeanors as the civil power punishes but also over all other sorts of scandalous behaviour, all that is opposed to the promises solemnly made at baptism, on being admitted as members, or on entering the marriage state, that everything which may disturb good order in the church, delinquencies on the part of heads of congregations in the discharge of their offices, neglect in their important services, abuse of power, and peculation are especially punishable; whilst at the same time an especial difference must be made between solitary errors and constant immorality and habitual perverseness; and, lastly, that in all cases particular attention must be paid to aggravating and extenuating circumstances as well as to obstinacy in denying or resisting, or on the other hand to humility in confessing and submitting on the part of those who are to be reprov'd.

117. Each member of the congregation has a right to prefer complaints and the members of church courts are officially bound to bring to the knowledge of their courts such current reports coming to their ears, which if found to be well grounded must in the first place be dealt with before their courts without thereby losing the right of judgment thereon as members of the court; on such information the court will judge whether there are reasons to examine such charge more closely, either for the punishment of the guilty or for the preservation of the innocent person's honour.

118. Every one who wishes to bring a matter before the church court will have the same as all church courts to proceed therein according to the church laws and these rules.

119. The church courts will be at liberty to determine whether the cases brought before them shall be treated verbally or in writing.

120. No one practising in any court of justice shall be admitted in that capacity as agent before church courts, nor shall any documents be received which are signed by civil practitioners as such, but each one is required to sign for himself the papers which he delivers.

121. Commissioners to whom the investigation of any case is committed shall except in consistorial courts draw up a written report, in which besides a distinct statement and development of the case the evidence for and against must be brought forward in its full weight, without, however, at all expressing their opinion respecting the final determination of the case.

122. For procuring documents or summoning persons the church courts employ their ordinary officers (namely, the sextons), or if it can be done with less expense and without injurious publicity the officers of the church court of the place where any thing of the kind is to be done. Such officers may be reprov'd (ecclesiastically), suspended in their office, or removed from it on account of neglect and unfaithfulness in their duties; they are also responsible for all the expenses and injury occasioned by their neglect and unfaithfulness.

123. In the treatment of cases before church courts every one must abstain from all injurious, odious, and improper expressions, as also from everything that may be considered contrary to the respect due to a church court.

124. In the church courts all cases relating to church government are determined by the members present by a positive majority of votes, no decision being however made unless at the least two thirds of the members of the court be present.

125. The decisions of the church courts must briefly contain the grounds on which they rest and the articles of the church ordinances on which they are founded.

126. The church courts before which a case is brought shall only in particular cases and for important reasons allow a prolongation of the term fixed by the regulations.

127. Members of church courts may not sit to judge in cases in which either they themselves or persons related to them in the two nearest degrees by blood or marriage are concerned, nor in cases in which they have already as members of a lower court given a decision. In the abovenamed cases such members must absent themselves during the treatment of such case. If the court is hereby diminished to less than two thirds of its members the case shall be postponed to a subsequent meeting. In consistories the deficient numbers shall be called in by the court from among the last retired members of the congregation.

128. Church courts may cause the witnesses appearing before them to confirm their evidence by requiring an affirmative answer to the following question: "Do you promise as in the

presence of the Holy God that you will speak the truth unequivocally and uprightly, whether in the declarations which you make or in the answers which you are about to give?"

129. If a witness when summoned does not appear or is not inclined to give his evidence properly he will (if a member of the church) lay himself open to church censure.

130. Every one that is summoned before a church court must unless lawfully hindered present himself before it in person.

131. If any one is summoned before a church court on account of a charge against him notice thereof shall be given him in writing, the day and hour fixed when he must appear, and if after being summoned twice to two different sessions he does not appear or assign a lawful reason for his absence, no defence shall be waited for and judgment be given upon the charge laid against him according to circumstances.

132. The unavoidable expenses which the treatment of a case before a church court may have occasioned shall after the calculation of the same has been examined and approved by the court fall on him who by the decision has been declared guilty or in the wrong, unless there might be important reasons for causing the parties at issue to bear each his own expenses. Any one appearing as complainant in a church court shall be obliged when required to give security to the satisfaction of the meeting for the payment of the expenses in case by the final decision he might be adjudged to pay the expenses.

133. Every church court when required by the superior court must transmit all the documents or copies of the same which have served in a case which has been tried before them and concerning which higher appeal has been made, adding if they think proper a further development of the grounds of their decision.

#### *Mode of proceedings for the Consistory.*

Art. 134. The objects of church discipline for the consistories are all members of the congregation except ministers, candidates for the sacred office, missionaries, elders and deacons, and subordinate teachers.

135. The means of reproof which the consistory uses in the exercise of church discipline consist:

1. In a reproof adapted to circumstances by the minister in the name of the consistory, either in private or in presence of one or more of the elders.
2. In such a reproof from the full consistory.
3. In a denial of the use of the Lord's supper for a limited time.
4. In such a denial for an unlimited time.
5. In an entire excommunication with the use of the formula.

Except for serious public misdemeanors the last three means of reproof are not employed, until one of the others has been used in vain, and they are followed by the suspension or deprivation of such privileges and benefits as are connected with being a member.

136. Upon satisfactory proofs of amendment the consistory shall revoke the unlimited denial of the use of the Lord's supper.

137. When a charge is brought or information given against any one before the consistory they shall if they find reason for so doing appoint a committee to make inquiry about it and to communicate what they ascertain to the consistory.

138. If the consistory after hearing the report of the committee are of opinion that they are to proceed further in the affair they shall interrogate the accused, and if by his confession the charges appear well founded, admonish or reprove him as the case may require.

139. If any one, even in case of serious public misconduct, as mentioned in Art. 117, acknowledges the charges brought against him to be well founded and promises amendment with a declaration of sorrow, the consistory shall make use of the first three modes of reproof, unless the nature of the scandal given should demand a more serious censure.

140. If any one on being questioned about the things brought against him should entirely or in any material point deny the same, he may demand that those charges with the grounds adduced for them be delivered to him in writing within fourteen days.

141. After this notice a period of fourteen days shall be allowed the accused to defend himself before the consistory and to bring forward the evidence which he may deem necessary, as well as to give notice of the witnesses which he thinks ought to be heard for his vindication.

142. In case after this defence the guilt or innocence of the accused should be evident the consistory shall immediately come to a decision.

143. The decision shall be put in writing and entered in the minutes; it shall also be made known to the person accused, and if he desires it a copy of it be delivered to him.

144. When the consistory after the defence of the accused person deems a further inquiry necessary, this shall take place as soon as possible by obtaining evidence and hearing witnesses in presence of the complainant and the accused.

145. The consistory shall always hasten as much as possible the decision of cases.

146. When any one is found to bring a groundless complaint against a member on trifling suspicions or out of party-feeling, he shall according to circumstances be seriously admonished and reprovved.

*Manner of proceeding for the Presbytery.*

*I. In cases brought before it by appeal.*

Art. 147. Any one finding himself aggrieved by the decision of the consistory may appeal to the presbytery to which that consistory belongs.

148. For that purpose he shall within fourteen days give written notice of his intention to the president of the consistory, by means of a document on which the date of delivery must be notified, together with a request for a copy of the decision if he has not already received it, and which must then be delivered to him within a week afterwards.

149. Within four weeks after this notice or after receiving a copy of the decision he must prosecute his appeal to the presbytery or be deprived of his right to do so.

150. He must for that purpose deliver in to the president of the presbytery a paper containing the reasons of his grievance and everything that he thinks may tend to his advantage, with a copy of the decision annexed.

151. The president having received this document shall through the scribe hand it over to the consistory, to be reported upon without unnecessary delay, and the consistory shall join to their report all the documents relating to the affair.

152. This report and the documents shall be laid by the president before the ensuing meeting of the presbytery, whilst the scribe shall make mention of it in the convocation made by him.

153. In case the president of the presbytery should desire further explanation on points of importance he may demand it from the consistory or the person aggrieved within a fixed period, or he may summon both parties before the court.

154. The presbytery having come to a decision, copies thereof shall be provided for the consistory and for those whom the case concerns.

## II. *In cases which belong immediately to the Presbyterial Government.*

### A. *As regards Discipline.*

Art. 155. When charges are brought before the president of the presbytery or before the presbytery itself against the doctrine, discharge of office, or the conduct of missionaries, members of consistory, and other church officers, he shall place the same in hands of the commission of the presbytery to make inquiry on the subject.

156. When the commission by means of the documents handed over to them or which they have obtained in the best manner possible have gained information about the charge brought forward, they shall hear the accused, take down his confession or defence in writing, and then deliver the same to the next ensuing meeting together with all the documents relating to the affair, besides a proper report.

157. In case of confession the person accused shall within three weeks after his examination before the commission be entitled to deliver in to them in writing such explanations, additions, and alterations as he may still consider necessary for his justification



or defence, and the commission in their report as well as the court in their decision shall pay due attention thereto.

158. When the confession of the accused with what he may have further added thereto, after the report of the commission, is considered sufficient for the purpose of coming to a decision, the presbytery shall pronounce such decision on those grounds as the nature of the case according to church laws demands.

159. If a person being accused or being summoned before the commission does not appear and gives for it no satisfactory reason (to be judged of by the commission), he shall be regarded as a resister of the laws, and judgment be passed against him as such by the presbytery.

160. If the accused should deny the charge against him, either entirely or in any material point, the commission shall hear the witnesses in his presence and at the same time give the accused opportunity to put such questions to the witnesses through the president of the commission as may be considered necessary in his defence, and also grant him liberty to state everything that he may judge of service in the case and to bring forward the witnesses he may wish to be heard in his defence.

161. Of all this an exact report shall be made to the next ensuing meeting of presbytery, which shall afterwards pronounce judgment and give written notice to the parties concerned.

162. The presbytery is always authorized if they consider it necessary to summon before them the person accused, the complainant, and the witnesses.

163. Both the complainant and the person accused have a right to request of the presbytery that either of the two may be further heard *with limitations upon giving questions*.

164. The means of reproof of which the presbytery makes use are:

1. As regards missionaries :
  - a. Suspension in the office for a limited time.
  - b. Suspension for unlimited time.
  - c. Entire revocation of the deed of admission to the ministry and administration of the sacrament.
2. As regards elders and deacons and other inferior church officers :
  - a. Suspension in their office.
  - b. Entire removal from it with forfeiture of the rights and privileges united with that office.

165. The consistory having received intelligence of the suspension or deposition shall immediately provide that in the meantime the duty be performed by a properly qualified person. On the suspension or deposition of an elder or deacon one of the last retired elders or deacons shall be called in by the consistory to complete the period of service of the person suspended or deposed.

166. Any one being thus suspended in his office or removed from it on account of moral bad conduct must moreover be regarded as deprived as a member of the use of the Lord's supper, but on satisfactory signs of repentance and amendment this lastnamed degradation shall be cancelled.

### B. *Ecclesiastical Disputes.*

Art. 167. Disputes that arise in consistorial courts or between consistories and members of the congregation are brought immediately before the presbytery and judged by that court.

168. For that purpose application must be made in writing to the president of the presbytery, which president immediately causes the received charges to be forwarded by the scribe to those against whom the charges are to be brought, be reported upon within four weeks after receipt.

169. This report is forwarded to the complainant in order that he also may within four weeks state what he has to say in support of his case.

170. The second document of the complainants with all the additions passes again in the same manner to the defendant in order that he may reply to it a second time within four weeks.

171. The presbytery in their next ensuing meeting may come to a decision grounded upon the said documents, or they may place the same in the hands of a commission in order previously to hear their report.

172. If in the cases above mentioned the required document is not delivered in within the limited time the presbytery shall without waiting for it determine as they may see cause.

173. In the same manner as ecclesiastical disputes are determined in the preceding articles shall be treated all disputes which belong immediately to the court of presbytery and could not be decided amicably by their mediation.

### *Mode of procedure for the General Church Assembly (Synod) and Synodal Commission.*

#### *I. In cases which are brought before it by appeal.*

Art. 174. If any one appeals from the decision of a presbyterial court to the synod he must give notice within four weeks to the president of the presbytery, and may at the same time demand a copy of the decision if he should not have received one; and the scribe of the presbytery shall make the party opposed to the accused acquainted therewith.

175. He shall within four weeks after this or after the receipt of the decision deliver a writing to the scribe of the synod containing the course of the affair, the reasons of his grievance, and a request that his appeal may be accepted, and no more except the addition of a copy of the decision.

176. If the scriba of the synod should be of opinion that it does not admit of higher appeal, on account of the expiration of the fixed period or because the matter has been already decided by higher appeal, he shall nevertheless not reject the application for that purpose but leave it to be decided upon by the synodal commission, who finding the case to be so shall reject the application.

177. If the appeal be accepted and no synod is held that year, the synodal commission shall act as is appointed Article 148—155 with respect to the presbytery.

178. The scriba of the presbytery shall in this case send in as soon as possible to the scriba of the synod all the documents relating to the matter or authenticated copies thereof.

179. The scriba of the general church assembly shall lay all these documents before the general assembly, and in case no meeting of the assembly is held that year before the synodal commission.

180. The parties concerned will be at liberty on either side to lay their case before the general church assembly in a writing explanatory of the matter, which writing must be sent in to the scriba of the general church assembly at least four weeks before the meeting of the assembly.

181. From the documents sent in the assembly after having heard on the subject the written report of the commission appointed for that purpose shall determine whether they ought to confirm or alter the decision before come to.

182. Any church officer being suspended in his office by the presbytery and appealing to the synod shall pending the appeal continue to perform the duties of his office, unless in pronouncing judgment the presbytery had for important reasons declared that the suspension, notwithstanding appeal, should take effect; in which case during the investigation no change shall by any means be made in the suspension by the synodal commission.

## II. *In cases which belong immediately to the Synod.*

Art. 183. The general assembly, or if it does not meet that year the synodal commission, shall have the immediate management of charges against the performance of duty, the doctrine or the conduct of ministers or candidates, whether brought before them by information of one of the members or by special indictment; furthermore, cases in which are concerned one or more presbyteries, their members, or the members of the general assembly as such. Among the ministers "emeriti" are also included.

184. In case of a charge against the minister or a candidate the synodal commission having received the charge shall through the scriba of the synod forward it in writing to the accused, and prescribe to him the time (not less than six weeks) within which he will have to reply thereto.

185. In case of confession the accused will be entitled to join to his plea such explanations, additions, and alterations as he may

deem necessary to his vindication or defence; and the commission must pay due attention to the same, whether they proceed to a decision or wish to report the case to the next ensuing general assembly.

186. If the accused should deny the charge brought against him either altogether or in any material point the commission shall hear the witnesses, giving notice to the accused at the least six weeks beforehand of the place, day, and hour where and when that will occur, in order that he may be present and give timely notice of the witnesses which he may desire to be heard in his defence.

187. If, however, the offence to which the accusation relates should be of a scandalous nature and one that makes a great rumour the synodal commission, if they find at the commencement strong reasons for believing the complaint well founded, may suspend the accused provisionally in his office, giving notice thereof to the general church assembly.

188. Complaints against the doctrine of a minister or candidate must contain distinct evidence that he has contradicted or opposed the doctrine which according to God's holy word is contained in the received formulas of uniformity of the reformed church.

189. The modes of reproof which the synod may use are:

1. As regards candidates:

- a. Suspension from the ministry.
- b. Disqualification for a call to the ministry for a limited time.
- c. Disqualification for an unlimited time.
- d. Entire revocation of the admission to the ministry.

2. As regards ministers:

- a. Suspension for a limited time without loss of stipend further than the payment of the officiating ministers.
- b. A similar suspension with entire or partial loss of stipend.
- c. Suspension for an unlimited time with or without loss of stipend.
- d. Entire deposition.

Which last can take place only by the general assembly.

Art. 190. In case a minister is suspended in his office on account of charges brought forward or proved against him the duties in congregation shall be performed at his expense, and the general assembly or synodical commission shall stipulate what portion of his salary he shall give up for that purpose.

191. An entire deposition from office is immediately followed with the loss of stipend and emoluments.

192. In case of the suspension of a minister information shall immediately be given to the consistory of that congregation stating what measures have been taken for the due performance of the duties. In case of suspension with loss of stipend or deposition as,

determined in Art. 191 and 192, information shall immediately be given to government.

193. Whoever brings a case before the general assembly must at least six weeks before the opening of the synod give notice to the person against whom he brings the charge of his intention to complain, together with his reasons and grounds for so doing.

194. Both the complainant and defendant mutually support their case by means of an explanatory writing sent in to the scribe of the synod at the least four weeks before the opening of the general assembly.

195. The synod shall in their first meeting for each case brought before them nominate a commission to examine the documents received, and also if necessary to hear the witnesses and to make written reports thereon.

196. On the report of the commission the general assembly comes to a decision.

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### THIRD CHAPTER.

#### *Rules regulating to Vacancies and also to the calling and discharging of Ministers.*

##### *Of the occurrence and the filling up of Vacancies.*

Art. 197. A vacancy in a congregation arises by the decease, removal, the becoming emeritus, the voluntary resignation, the discharge, or deposition of a minister therein.

198. For every congregation a consulent is nominated, in order to officiate in case the congregation is entirely vacant and in other cases to be mentioned hereafter.

199. The presbytery nominates the consulent for all congregations within its bounds, studying therein the interests and wants of the particular congregations.

200. The presbytery in the appointing of consulents may make such alterations as circumstances may require.

201. Notice shall be given to the consistories and the nominated consulent of such nominations and of any alterations made by the presbytery with respect thereto.

202. In case of the decease of a minister the consistory shall give immediate notice thereof to the consulent, and the latter together with the consistory to government.

203. Preaching and other pastoral duties are performed in vacant congregations by the consulent.

204. The consulent shall arrange with the consistory how often he shall repair to the vacant place for the purpose of preaching and performing pastoral duty.

205. In the consistory the consulent supplies in every respect the place of the incumbent (*pastor loci*); no meeting of the consistory shall be held but in his presence or with his consent.

206. The consulent for these his usual labours cannot during the year of grace demand any thing from the vacant congregation besides his travelling and lodging expenses which are borne by that congregation, after the year of grace he shall receive for his service such remuneration if any not exceeding £37 10s. per annum, as may please government to grant. In case there is no widow or children the said remuneration shall be enjoyed from the day on which he commenced the office of consulent in the congregation.

207. When a congregation becomes vacant the church books and papers generally in charge of the minister shall be taken over by the congregation of the consistory, and kept in a box or press with two different locks of which one key shall be kept by the consulent, and the other by the elder who has been the longest in office, which keys together with the press or box in which the church books and papers are kept shall with a proper inventory be delivered to the minister appointed for that congregation in the first meeting of the consistory after his instalment,

208. All the emoluments of a vacant parish after the parsonage shall have been quitted by the widow or children go to the benefit of the church fund of that congregation.

209. The presbytery should it deem it necessary takes care that service be performed for indisposed or suspended ministers.

210. In case of a minister becoming insane the regulations are observed which are prescribed on that subject by Art. 75, fifth division.

*Of the filling up of Vacancies and the calling of Ministers.*

Art. 211. Vacancies shall be filled up with all possible speed.

212. On giving notice to the government (according to Art. 202), the consistory where government pays the salary requests permission to call a minister.

213. The call shall take place six months at the utmost after the vacancy occurs.

214. On permission being received the combined consistory proceed to the calling of the minister by an absolute majority of votes, and from a number of three candidates first nominated by them under the presidency of the consulent, except where there is still a remaining minister, the consulent, however, not having the right of voting. In calling such a meeting Art. 36, No. 11, must be kept in view.

215. A minister or candidate being called shall immediately acknowledge to the consistory of the congregation to which he is called the receipt of the letter conveying the call, and must at the utmost six weeks after the receipt declare positively whether or not he accepts the call, he being otherwise considered to have declined it.

216. The consistory having received intelligence that the elected minister has declined the call must as soon as possible, and at the farthest six weeks afterwards, make a new call.

217. The presbytery at their approbation of the call according to the rules of the church shall take notice whether it has been conducted agreeably to the church laws and ordinances relating to the lawful manner of calling.

218. No one shall be called as minister in any congregation unless on the day of the call he has attained the age of at least two and twenty years.

219. The person elected having declared his willingness to accept the call (or a minister being appointed without a call) shall be announced to the congregation on three successive Sundays, in order to ascertain whether any one has a lawful charge to advance against him.

220. Charges against the person called must be delivered in writing to the consistory, and on being found by them of importance shall after the third announcement be sent in to the synodal commission, which examines and decides upon the matter, and in case the charges are considered well founded gives information to government.

221. The announcement having taken place without opposition or the charges being judged unfounded, the call with all the documents pertaining thereto is presented by the consistory to the president of the presbytery or to the scribe, if the præses himself should be the person called, for approval; and being found correct is ratified by the authority of the church ecclesiastically approved (*herkelyk goedgekeurd*), and submitted to government.

222. In case the præses or scribe of the presbytery should on account of informality in the call find a difficulty in granting ecclesiastical approval they shall neglect no means of coming to a decision thereon as speedily as possible.

223. The congregation provides for the conveyance of the newly-called minister with his family and goods. If, however, he should remove within two years reckoned from the day of his instalment to that of his departure he may be called upon to refund these expenses.

#### *Of the Discharge and Instalment of Ministers.*

Art. 224. In case a minister removes to another congregation the consulent is commissioned in the name of the presbytery to discharge such minister.

225. The discharge takes place in a meeting of consistory and under the presidency of the consulent, who then in the name of the presbytery takes upon himself the pastoral charge of the congregation.

226. To the minister thus discharged is given a certificate adapted to the case according to the following formula:

“The consistory of the reformed church of \_\_\_\_\_ having seen and found correct all the necessary documents relating to the call of Ds. \_\_\_\_\_, minister in this place, to be pastor and teacher in the congregation of \_\_\_\_\_

hereby discharged him in an honourable manner from all connections with their meeting and congregation, and heartily wish that in his new connections he may labour with the greatest benefit to the cause of christianity, and still experience the richest blessings of God to his temporal and eternal happiness.

“The consistory of the reformed congregation of ——  
“In the presence of me, deputy of the presbytery.”

227. If a minister who has had a call should die after his discharge and before his instalment in another congregation he shall be considered to have died as minister of the congregation which he was about to leave, in case his decease occurred during the month in which he was discharged; but in the opposite case he is considered to have died as minister of the congregation to which he was called.

228. In the same manner as Art. 227 directs in regard to a minister who is removing shall be conducted the discharge of a minister pronounced emeritus or otherwise honourably discharged, a certificate being at the same time delivered adapted to the case according to this formula :

“The consistory of the reformed congregation of —— having seen and found in order all the documents relating to the retiring as emeritus of Ds. ——, minister of this place (or having understood the intention of Ds. ——, minister of this place, to resign his office amongst us), hereby discharges him in an honourable manner from his office as pastor and teacher in this congregation, and earnestly wishes that his retirement from active service may be useful and satisfactory to him and that he may always experience the richest blessings of God to his temporal and eternal happiness.

“The consistory of the reformed congregation of ——  
“In presence of me, deputy of the presbytery.”

229. In case of a minister being deposed the requisite notice shall be given to the consistory and consulent of the congregation.

230. The instalment of one that is called must take place at the utmost three months after intelligence is received of his appointment.

231. If the person called should be prevented by circumstances from complying with the regulations in the preceding article he must give notice thereof to the scriba of the general assembly, and through him to the government, in order to obtain a prolongation of the fixed period.

232. A minister who is called must previous to his being installed deliver the certificate of his discharge to the consistory of his new congregation.

233. The instalment takes place in the name of the general assembly by the consulent; the preaching of the installation sermon may be given up by the consulent to another minister.



234. The installation of candidates is effected by the imposition of hands; in that of ministers this does not take place. To the former the ministers, members of the presbytery, are convened by the president of the presbytery.

235. The consulent gives immediate notice of the instalment to the presbytery, and if the person installed was a candidate that notice is immediately transmitted by the scriba of the presbytery to the actuarius synodi, in which notice besides the time of the installation the names must also be expressly mentioned both of the installer, and of those by whom the imposition of hands is accomplished.

236. The actuarius synodi in the name of the general assembly grants to the candidate when installed as minister qualification in form, signed by him as such, for the discharge of all the functions of the sacred office according to this formula:

*Certificate of Installation.*

The Rev. Mr. \_\_\_\_\_ having shown to the actuarius synodi his certificate of admission to the ministry granted to him in the name of \_\_\_\_\_ dated \_\_\_\_\_ and he having on the \_\_\_\_\_ signed the laws of the reformed church of South Africa, it having further appeared that he (in consequence of a call from the congregation at \_\_\_\_\_) has been appointed by Government to be minister of the congregation at \_\_\_\_\_, and intelligence having been sent by the reverend scriba of the presbytery at \_\_\_\_\_ that the instalment with imposition of hands by the Rev. \_\_\_\_\_ took place on the \_\_\_\_\_ in the congregation at \_\_\_\_\_; therefore, by virtue of the determination of synod, in the rules on vacancies, Art. 240, this certificate of instalment is presented to the Rev. Mr. \_\_\_\_\_ by the undersigned, in the name and on behalf of the venerable synod of the reformed church of South Africa.

The synod trusts that the newly installed will discharge his gospel ministry in all its departments of preaching, catechizing, ministration of baptism and the Lord's supper, and whatever else pertains thereto agreeably to God's holy word and the ordinances of the reformed church of South Africa; that he will do this as becomes a faithful pastor and teacher, who also edifies by conversation and deportment, so that with the blessing of the Lord the happy effects of the gospel may be advanced.

The synod trusts that the congregation to which he has been given as pastor and teacher will show him that respect and affection and that confidence which he deserves for his work's sake, and in that hope they breathe out towards both the most fervent wishes and prayers.

Given on the \_\_\_\_\_

237. If the newly installed minister has come from some other place, the president of the presbytery immediately declares him member of the presbytery.

238. On the arrival, instalment, and entrance of ministers all needless expenses shall be avoided on the part both of the congregation and of the minister.

*General Regulations.*

Art. 239. The presbyteries shall transact *with the utmost speed* all business relating to vacancies and their filling up together with the instalment and the discharge of ministers, so that if no questionable points present themselves therein the president and scribe in the name of the presbytery may at once perform what is necessary in these cases.

240. The general assembly has the privilege of hereafter changing these and all other rules in such a manner as shall be found necessary.

FOURTH CHAPTER.

*Rules relating to the Expenses of Church Courts.*

*General Regulations.*

Art. 241. Church courts (requiring to make investigation or to decide upon differences or complaints in church matters) find themselves charged with a part of that pastoral care which is committed to them agreeably to the church rules in accordance with the original ordinances of the Christian church.

242. For the fulfilling of the obligations connected with this charge those courts ought not therefore to expect any recompense; but they have a lawful right to compensation for the expenses which they must necessarily incur on account of this part of their duty.

243. On this principle, church courts and their delegated committees avoid everything whereby the discharge of their office would resemble the ordinary civil processes more than the existing rules may absolutely require.

244. They ought also as far as it can be done with the maintenance of good order to avoid incurring expenses, especially such as would be occasioned by special or extraordinary meetings.

245. In estimating the expenses and in examining the accounts of the same the church courts ought to proceed on the principle prescribed on this subject, and therefore not to fix a higher sum if on a consideration of the circumstances a less sum should be deemed sufficient to cover the expenses incurred.

*Particular Regulations.*

Art. 246. The meetings of consistory both ordinary and extraordinary are attended by each member without remuneration.

247. An allowance (honorarium) proportioned to the amount of business and the state of the church funds is agreed upon by

the consistory and adjudged to the scriba of the consistorial meeting, provided he is not a member thereof.

248. The expenses for the higher church courts are ordinary or contingent.

*a.* The ordinary expenses are :

1. The allowances to the scriba and quæstors.
2. Daily allowance to the members of the meeting.
3. Travelling expenses to the meeting of members living in the country.
4. Petty expenses of the meeting, as writing materials, postage of letters.

*b.* The contingent expenses are the travelling and daily expenses of the synodal commission and of special meetings, the making of translations, &c.

249. The accounts of the delegates of special meetings must be proportioned to those of the ordinary meetings. If the case should be otherwise, the meeting will be at liberty to make an estimate and proportion them accordingly.

250. *a.* The allowances (honorarium) of the actuarius synodi shall be £20 per annum; of the scribas and quæstors of the presbyteries, £10 per annum, and of the permanent scriba of the synod, £10 per annum.

*b.* The travelling expenses of the delegates are fixed at six pence per mile going and six pence per mile returning, the distance being reckoned from the church to which the delegates belong.

*c.* The daily allowances to the delegates shall be for every day during the meeting, in the meetings of presbytery, three shillings per day, and in those of higher church courts, six shillings.

251. Delegates from that church where the meeting is held shall bring in no bills for travelling or daily expenses; elders in the country districts where the meeting of presbytery is held have the right of demanding the daily allowance unless they reside in the village.

252. Elders who accompany their ministers to any meeting must not bring in separate bills for travelling expenses, it being supposed that they come up together with the minister.

253. No delegates but such as attend the meetings to the very conclusion shall lay claim to travelling expenses for their return, except in case of illness or urgent necessity, of which it rests with the meeting to judge.

254. For the copying of documents four pence may be reckoned for each page in folio containing not less than twenty-five lines, and each at least twelve syllables, except those documents or dispatches which the scribas are obliged to make officially.

255. The messengers or officers of the various higher church courts receive for each day three shillings.

256. To witnesses who are summoned before church courts may be allowed if they wish it six pence per mile for travelling expenses going and returning, whilst their lodging expenses ought to be estimated on reasonable and economical principles.

257. To meet all the abovenamed expenses the following sums shall be levied in each congregation and accounted for according to the regulations prescribed amongst the duties of the consistory (Art. 39):

- a. For each seat in the church nine pence.
- b. For each individual baptized at the usual time nine pence; out of the usual time three shillings.
- c. On the admission of each member two shillings.
- d. On the interment of each corpse in the churchyard of the reformed community (where it is customary) nine pence.

The poor and indigent are, however, exempted from these payments.

258. In the yearly report which the consistory delivers to the presbytery shall be expressly noted the number of hired sittings in the church.

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#### FIFTH CHAPTER.

##### *Rules for the Ministers' Widows' Fund.*

Art. 259. The general funds established for the support of widows and orphans of ministers residing within the bounds of the synod of the reformed church in South Africa

260. Is raised:

- a. From entrance moneys.
- b. From the annual contributions of the ministers.
- c. From special fees on occasion of confirmations, marriages, &c.
- d. From voluntary gifts which the congregation may assign to it.
- e. From legacies and donations.

261. All officiating ministers of the reformed church, and who shall be admitted by the general assembly are bound to contribute from their private purse to the funds of the ministers' widows.

262. They pay at the farthest one year after their being installed in the congregation a sum for entrance money proportioned to their age, so that

Ministers above 22 and below 25 years, for entrance,	£25	0	0
"    "    25    "    30    "    "	30	0	0
"    "    30    "    35    "    "	35	0	0
"    "    35    "    40    "    "	40	0	0
"    "    40    "    45    "    "	45	0	0
"    "    45    "    50    "    "	50	0	0
"    "    50    "    "    "    "	60	0	0

263. Ministers are obliged besides to contribute a monthly sum of five shillings, to commence from the day on which they are installed in the congregation.

264. The special contributions of this fund consist in the following :

1. For performing a marriage ceremony out of the usual time, for each couple one pound seventeen shillings and six pence sterling (£1 17s. 6d.)
2. For the admission of members out of the usual time, one pound seventeen shillings and six pence sterling (£1 17s. 6d.)
3. For the granting of extracts (except to paupers) from the marriage registers two shillings. Of all which accounts shall be rendered to the quæstors of the presbyteries at the ordinary meetings of presbytery, and by them to the quæstor of the widows' fund.

265. The ministers of the reformed church bind themselves at their legitimation to the strict observance of these regulations, as also that they shall regularly pay to the quæstors of the presbyteries their contributions, reckoning to the last day of the month of December of each year, which quæstors shall account for the same, besides the remaining moneys received by them for that fund, three weeks after the close of the meeting to the quæstor of the widows' fund.

266. No minister once having become a subscriber to the widows' fund may withdraw from the stipulated contributions, even although he might be deprived by death of his consort or have been declared emeritus.

267. Any minister who may neglect to pay his contributions at the fixed time forfeits each time a fine of one pound sterling, besides the interest accrued thereon, but in case of being guilty of such neglect three successive years he forfeits his entrance money and all contributions up to that period and is erased from the list of subscribers. The synod, however, retains to itself the right and power in case of the decease of a minister under these circumstances to grant to his widow the enjoyment and participation of the fund, provided she make application for that purpose and pay up the arrears of her deceased husband.

268. The capital arising from entrance money and whatever besides may be laid up as capital from increasing contributions may not be touched.

269. To every widow shall be provisionally paid from this fund a sum of five hundred rixdollars per annum, unless by an unexpected increase of the number of widows the income of the fund should render a less allowance necessary, which shall be decided by the synod.

270. This sum of five hundred rixdollars shall not be increased but for widows of such ministers as have contributed for six years to the fund, and that in this proportional ascending ratio, that for every additional year of having contributed the sum of five hundred rixdollars shall be increased by fifty rixdollars, and thus increased to one thousand rixdollars; this being the maximum, above

which it shall not rise. Widows whose husbands have contributed more than six years enjoy annually £41 15 Rds. 550

More than 7 years,	-	-	-	45	0	—	600
„ 8 „	-	-	-	48	15	—	650
„ 9 „	-	-	-	52	10	—	700
„ 10 „	-	-	-	56	5	—	750
„ 11 „	-	-	-	60	0	—	800
„ 12 „	-	-	-	63	15	—	850
„ 13 „	-	-	-	67	10	—	900
„ 14 „	-	-	-	71	5	—	950
„ 15 „ and upwards,	-	-	-	75	0	—	1000

saving what is contained in Art. 292, unless by an unexpected increase, &c.

271. On the death of a minister's widow the annual allowance enjoyed by her shall pass to the surviving child or to all the surviving children arising from her marriage with the late husband, and that till the child or youngest of the children shall have reached the age of sixteen years, or have previously come to some settled state; in like manner when any minister who has contributed comes to die after the previous decease of his wife; with this reserve, however, in so far as the state of the fund may permit it without injuring the interests of the widow.

272. Six months after the death of the husband (Art. 275) the right of the widow to this fund commences.

273. No moneys from this fund are paid to a widow without a proper receipt accompanied by a certificate of her being alive signed by the minister and elder of the congregation to which she belongs, or in the absence of the minister by two members of the consistory, or two other creditable persons of the congregation, without any expense, however, to the fund.

274. In case the widow of a subscriber might re-marry her allowance ceases.

275. Every widow of a subscriber gives immediate notice to the managers of the fund of the day on which her husband died, with the addition of a certificate to that effect signed by the minister or the members of the consistory of that congregation.

276. On the death of a subscriber's widow the allowance is not paid farther than to the day of the widow's death, which day must be immediately notified by the minister or consistory of that congregation to which she belongs to the managers of the widows' fund.

277. The receipt and management of the fund remain intrusted to a special quæstor viduarum, with whom correspondence can be held on matters respecting the fund,—which quæstor shall be nominated from among the ministers of Cape Town, and who may communicate with the two other ministers in particular cases respecting the said fund,—and a co-administrator to be appointed by the synod or the synodal commission under approbation of the synod.

278. The moneys are put out in the most profitable and at the same time most secure manner, and the mortgage documents are preserved in an iron chest in a church building, or placed in of ore

the banks, of which one key remains in possession of the quæstor and one of the co-administrator.

279. The moneys are put out in the name of "the ministers' widows' fund of the reformed church in South Africa," and both the quæstor and co-administrator have the right of prosecuting the debtors according to law.

280. In case of the decease of the quæstor of the ministers' widows' fund the synodal commission shall demand from the heirs of the deceased quæstor of that fund the books, papers, moneys, &c., belonging thereunto, and nominate and appoint one of the Cape Town ministers as his successor, subject to the further approbation of the general church assembly.

281. No changes or additions may be made in these regulations except in a lawfully convened synod, and that after such proposals of changes or additions have been three months previously made known to the ministers interested in the fund. In voting on this subject the elders shall be passed over and no changes be adopted unless with the consent of two thirds of the ministers present.

*Regulations for the Quæstor of the Widows' Fund.*

- Art. 282. *a.* The quæstor as well as the co-administrator receives all the contributions, and together give bonds exceeding by three times the amount of the funds.
- b.* The quæstor shall keep a regular account of all receipts and expenditure.
- c.* He gives and takes proper receipts for all that he receives or pays out.
- d.* The quæstor pays the widows every quarter.
- e.* The quæstor in conjunction with the co-administrator gives the synod an account of the state of the widows' fund.
- f.* The widows apply to the quæstor who gives them a note for the receipt of the moneys due to them from the co-administrator.
- g.* The quæstor brings the necessary expenses in account against the fund.
- h.* No moneys are put out but under the direction of the quæstor and co-administrator.
- i.* The quæstor and co-administrator have the right of appointing an assistant on their own responsibility with an annual salary not exceeding £20.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 8th day of November, 1843.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

No. 8.—Sd. George Napier.]

[22d Nov., 1843.

Ordinance for improving the Public Roads of the Colony.  
[Repealed by Act No. 9, 1858.]

No. 1.—Sd. George Napier.]

Ordinance for creating a Police Superannuation Fund.

WHEREAS by the twenty-sixth section of Ordinance No. 2, 1840, entitled "An Ordinance for improving the Executive Police of Cape Town and the district thereof, for defining the powers and duties of the said Police in certain cases, and for promoting the peace and good order of the said Town," it is provided that certain moneys therein mentioned should form and constitute a perpetual fund, to be termed the police fund, and to be applied from time to time to the objects in the said section mentioned: And whereas it is expedient that the said police fund should no longer exist, and that another fund to be termed the "Police Superannuation Fund," should be created upon principles more calculated to raise the character of the police force of Cape Town, and induce men of good conduct to enter into it: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this ordinance the said twenty-sixth section of the said ordinance together with so much of the twenty-fifth section of the said ordinance as requires all fines, penalties, and forfeitures levied for or on account of offences specified in the said ordinance to be paid over to the treasurer-general of this colony for the time being, and so much of the twenty-seventh section of the said ordinance as is inconsistent with the provisions of this ordinance shall be repealed, and the same is hereby repealed accordingly.

Section 26 and parts of sections 25 and 27 of Ordinance No. 2 of 1840 repealed.

Superannuation fund created and trustees thereof.

1. And be it enacted that a fund to be called the police superannuation fund shall be created, and that the treasurer-general of the colony for the time being and the judge and superintendent of police of Cape Town for the time being shall be the trustees for the administration of the said fund.

Sources of the fund.

2. And be it enacted that all such sums as shall arise from such a deduction from the pay of the inspector of police for



the time being and of every sub-inspector, sergeant of police, and police constable for the time being as his Excellency the Governor shall direct, but not being a deduction at a higher rate than that of two pounds and ten shillings in the one hundred pounds in any one year, and all sums to arise from stoppages from the pay of any of the persons aforesaid on account of sickness, and all sums to arise from fines imposed upon any of the said persons for misconduct in his capacity as a member of the police force of Cape Town, and all sums to arise from fines imposed upon drunken persons and for assaults committed upon members of the said police force, and all sums to arise from the sale of worn or cast clothing supplied to the said force shall be paid and handed over to the said trustees to go and be applied to the fund hereby created.

3. And be it enacted that the sum of £610 18s. 3½d., being the amount of the police fund so discontinued as aforesaid, shall be paid and handed over by the treasurer-general to the said trustees to go to and form a part of the said fund hereby created.

Balance of  
police fund.

4. And be it enacted that the said trustees shall from time to time as they shall find opportunity and deem expedient lend out on the mortgage of immovable property in this colony or otherwise as they shall think proper whatever moneys belonging to the said police superannuation fund they may from time to time have at their disposal, and all bonds which shall be taken for any such moneys so lent out shall be taken payable to the treasurer-general of the colony and the judge and superintendent of police of Cape Town, both for the time being, in their capacity as trustees of the police superannuation fund; and all interest to arise from the investment of the said fund or so much thereof as shall not be needed for the purposes hereinafter mentioned shall be again invested for accumulation.

Investment of  
moneys.

5. And be it enacted that the said trustees shall yearly upon the 31st of December in every year frame and lay before his Excellency the Governor for the time being an account showing the amount and state of the said fund up to the said date.

Annual  
account of  
fund.

6. And be it enacted that it shall and may be lawful for the said Governor to authorize and direct the said trustees to pay from time to time from and out of the said fund

Rewards for  
extraordinary  
services.

such sums of money by way of reward to such members of the police force of Cape Town as shall by extraordinary services have merited the same.

Superannua-  
tion of officers.

7. And be it enacted that it shall and may be lawful for the said Governor to order that the inspector of police for the time being or any sub-inspector, sergeant of police, or police constable shall be superannuated, and thereupon to authorize and direct the said trustees to pay from and out of the fund aforesaid to the party superannuated such certain yearly allowance as the said Governor shall approve of and prescribe, but subject, however, to the following limitations and conditions,—that is to say, that when and as often as the party superannuated shall have served with diligence and fidelity for any term not less than fifteen and not more than twenty years his yearly allowance may be made equal to but shall not exceed one half of his yearly pay while in active service, which yearly pay shall be taken to be the average of his yearly pay for the three years next preceding his superannuation, and that when and as often as the party superannuated shall have served in manner aforesaid for the term of twenty years or upwards his yearly allowance may be made equal to but shall not exceed two thirds of his yearly pay while in active service, which yearly pay shall be taken to be the average aforesaid: Provided, always, that no inspector, sub-inspector, serjeant of police, or police constable who shall be under the age of fifty years shall be capable of receiving any such yearly allowance as aforesaid unless it shall be certified in writing by the judge and superintendent of police for the time being that such person from infirmity of mind or body is incapable of discharging the duties of his situation.

Pensions for  
injuries.

8. And be it enacted that it shall and may be lawful for the said Governor in case the inspector of police for the time being or any sub-inspector, serjeant of police, or police constable shall be disabled for the performance of his duty by reason of any wound or injury received by him in the actual execution of his duty, to authorize and direct the said trustees to pay from and out of the fund aforesaid to the party so disabled, whatever his age or time of service, such yearly allowance not exceeding the average of his yearly pay for the three years next preceding the time of his receiving the said wound or injury should he have served so long, and

if not such yearly allowance not exceeding the average of his yearly pay during his time of service as the said Governor shall approve of and prescribe.

9. And be it enacted that nothing in this ordinance contained shall be construed so as to entitle any inspector, sub-inspector, police sergeant, or police constable to claim as matter of right any part or portion of the said fund or any allowance whatever from or out of the said fund or to prevent any such person from being unconditionally dismissed. <sup>No claims upon fund as of right.</sup>

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 30th day of January, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

No. 2.—Sd. George Napier.]

Ordinance for amending the Ordinance No. 9, 1836, entitled "An Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded."\*

WHEREAS doubts are entertained in regard to the limits which according to the provisions of the Ordinance No. 9, 1836, entitled "An Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded," may lawfully be assigned to any municipality constituted and established under and by virtue of the said ordinance: And whereas it is expedient to remove the said doubts and to amend the said ordinance in other respects: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every matter or thing in the said ordinance contained repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed, and the same is hereby repealed accordingly. <sup>Laws repealed</sup>

\* Vide Ordinance No. 3, 1853. Made perpetual by Act No. 15, 1860.

Limits of  
municipality,  
how to be  
fixed.

2. And be it enacted that it shall and may be lawful for the committee in the said ordinance mentioned in framing and drawing up the municipal regulations for framing and drawing which such committee has been elected and appointed to fix the limits of the municipality at and by such convenient boundaries, whether beyond or within the extent in any direction of one mile from the certain central place in the first section of the said ordinance mentioned as the said committee shall choose and determine.

Limits already  
fixed.

3. And be it enacted that no limits fixed for any municipality in and by any municipal regulations duly published before the promulgation of this ordinance shall be deemed or taken to be illegal or invalid by reason that the said limits go beyond or fall short in any direction of the extent of one mile from the certain central place in the first section of the said ordinance mentioned.

What house-  
holders  
entitled to fix  
regulations.

4. And be it enacted that the meeting of resident householders in the eighth section of the said ordinance mentioned to which the municipal regulations framed and drawn up by the committee or any amendment of such regulations made under and by virtue of the tenth section of the said ordinance by the Governor of the colony for the time being by and with the advice of the Executive Council shall be submitted shall be a meeting of householders resident within the limits fixed by the said committee; and every other meeting of resident householders directed or contemplated by any succeeding section of the said ordinance shall be convened and composed of the resident householders within the limits fixed for the municipality by the municipal regulations for the time being.

Section 11 of  
Ordinance 9  
of 1836 re-  
pealed in part.

5. And be it enacted that so much of the eleventh section of the said ordinance as is comprised in the words following, that is to say, "that at any time within one month after the expiration of each and every year from the publication of any such regulations as aforesaid," be repealed, and the same is hereby repealed accordingly.

Qualification  
as householder.

6. And be it enacted that the paying of taxes to the amount of six shillings sterling per annum or any other amount shall from and after the promulgation of this ordinance cease to be a qualification of the resident householders in the first section of the said ordinance mentioned, and that in lieu and stead of such qualification the qualification in the forty-eighth section of the said ordinance mentioned shall

be substituted as if the same were in the said first section set forth and described.

7. And be it enacted that the being proprietor of a house within the municipality and the paying annually a sum of not less than one pound sterling in taxes shall from and after the promulgation of this ordinance cease to be a qualification to be elected a commissioner for the purposes of the said ordinance, and that henceforth any person being the proprietor of immovable property situated within such municipality of the value of not less than three hundred pounds and no other shall be qualified and eligible to be elected a commissioner for the purposes of the said ordinance. Qualification as commissioner.

8. And be it enacted that no commissioner heretofore elected in any municipality for the purposes of the said ordinance shall be deemed or taken to have been illegally or improperly elected by reason merely that he did not possess either the qualification in the forty-eighth section of the said ordinance mentioned or the qualification by the last preceding section of this ordinance substituted in its stead. Elections of commissioners already made.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 30th day of January, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

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No. 3.—Sd. George Napier.]

Ordinance for amending the Law relating to the Rights of Execution Creditors.

WHEREAS by the law of this colony all creditors whose writs of execution against the property of their debtor are lodged with the sheriff or other proper officer for executing such writs at any time before the proceeds realized in respect of the earliest or other of such writs shall have been paid over by the said sheriff or other officer to the party or parties

entitled thereto are entitled to rank *pari passu* upon such proceeds and to claim that the same may be distributed amongst them *pro rata*, as if the same had been levied under all the said writs collectively and without any distinction: And whereas this rule of law above mentioned is productive in practice of delay and inconvenience and it is expedient to modify the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this ordinance all other laws and customs heretofore in force within this colony in so far as the same are repugnant to or inconsistent with the provisions of this ordinance shall be repealed, and the same are hereby repealed accordingly.

Laws repealed.

What creditors entitled to benefit of executions already levied.

2. And be it enacted that from and after the promulgation of this ordinance no creditor lodging any writ of execution with the sheriff or any other officer of the law proper for the execution of writs shall be entitled to share in or receive any part of the proceeds levied under any writ or writs of execution previously lodged, unless such creditor shall have lodged his said writ within ten days from the day on which was or were lodged the writ or writs under and in virtue of which the levy in the proceeds of which such creditor or creditors claim to share was made.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 30th day of January, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

No. 4.—Sd. George Napier.]

[30th Jan., 1844.

Ordinance relating to Merchant Vessels arriving in the Ports of this Colony.

[Repealed by Act No. 16, 1857.]

No. 5.—Sd. George Napier.]

Ordinance to prevent the spread of the Horse Disease called Glanders.

WHEREAS there is reason to believe that a few farmers in this colony make use of glandered horses in treading out grain: And whereas such a practice may tend to spread disease amongst other horses fed with grain so trodden out: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this ordinance any person who shall knowingly make use of or knowingly permit use to be made of any horse or mare of any age or description whatever which shall have or be commonly deemed and taken to have the disease called glanders or to have the usual symptoms of the said disease in trampling or treading out any species of grain, and whether the animal and the grain or either of them shall or shall not be the property of such person, shall for every offence incur and become liable to a penalty not exceeding ten and not less than five pounds and in default of payment thereof to imprisonment with or without hard labour for any period not exceeding three and not less than one month.

Penalty for treading grain with glandered horses.

2. And be it enacted that the use in manner aforesaid of any such animal as aforesaid for the whole or any part of any one day shall constitute a separate offence, and that every day during which any one such animal as aforesaid shall be used as aforesaid shall also constitute a separate offence.

Each day's use a separate offence.

3. And be it enacted that the owner of every such animal as aforesaid which shall have or be commonly deemed and taken to have the said disease called the glanders or the usual symptoms of the said disease shall cause the same to be kept shut up in some stable, kraal, or other complete enclosure; and in case any such animal shall wilfully or by neglect be permitted and allowed by the owner thereof or his servants to be or go from and out of such enclosure as aforesaid unless in the actual and immediate charge of some person conducting the same by means of a riem, reins, or some such thing shall incur and become liable to a penalty not exceeding five pounds and not less than one pound, and in default of payment thereof to imprisonment with or without hard labour for any period not exceeding one month.

Glandered animals to be confined.

Penalty for having glandered animals on public roads, &c.

4. And be it enacted that if any person whether the owner of any such animal as aforesaid or not shall ride, lead, or drive or otherwise conduct any such animal upon or along any public road, street, or thoroughfare, or into any common pasture land or any outspan-place, such person shall incur and become liable to a penalty not exceeding five pounds and not less than one pound, and in default of payment thereof to imprisonment with or without hard labour for any period not exceeding one month, unless he shall prove to the satisfaction of the court before which the case shall be prosecuted that the said animal was not affected by the disease called glanders, or otherwise that the said animal was at the time and place charged in the act of being conducted to some particular place for the purpose of being examined or physicked or otherwise treated for the sickness or disease under which he may be labouring or in the act of returning from some such place, or otherwise that the said animal having first exhibited the symptoms of the said disease when absent from the owner's place or residence and at the time and place charged was in the act of returning or being conducted to the owner's or some other place in order to be duly secured and taken care of.

Glandered animals may be destroyed.

5. And be it enacted that it shall and may be lawful for any person who shall find any such animal as aforesaid without being in the charge of any person in or upon any public road, street, or thoroughfare, or on any common pasture land or outspan-place, or upon the place or ground of any such person to destroy any such animal: Provided, always, that every such person shall be bound before destroying any such animal to obtain the approval after inspection of some field-cornet or acting field-cornet, or otherwise of two persons qualified to serve as common jurors, or otherwise of three males of full age who shall not be the servants of the person so destroying the said animal or related to him within the second degree of consanguinity; and in case any person shall destroy any such animal without having obtained some such approval thereof as aforesaid he shall incur and become liable to a fine not exceeding five pounds, and shall also be bound to make good to the owner of the animal destroyed whatever damage if any he shall have sustained by the destruction of the same.

Application of penalties.

6. And be it enacted that any person or persons who shall give such information as shall lead to the conviction of



any such offender as aforesaid shall be entitled to receive one half of the penalty aforesaid and the other half of the said penalty shall be paid to the colonial treasury.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 30th day of January, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

No. 6.—Sd. George Napier.]

Ordinance for regulating Sales by Auction.\*

WHEREAS the law as contained in Ordinance No. 31, 1827, entitled "An Ordinance for abolishing the Office of Vendues and for imposing certain Duties on Licences to be taken out by all persons acting as Auctioneers and on Property sold by Auction," requires to be amended: And whereas the said law may be most conveniently amended by repealing the said ordinance and enacting other provisions in its room and stead: Be it therefore enacted by the Governor of the colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the first day of July, 1844, the said Ordinance No. 31, 1827, shall be and the same is hereby repealed, save and except in so far as the same repeals any former laws before that time in force in this colony and in so far as relates to or concerns the recovery of any duties imposed by virtue of the said ordinance or of any sum or sums of money due upon vendue notes or rolls or in any manner become due by reason of or in connection with any public sale which shall be unpaid and in arrear on the said first day of July, 1844.

Ordinance No.  
31, of 1827, re-  
pealed.

2. And be it further enacted that from and after the said first day of July, 1844, it shall be lawful for any person complying with the regulations hereinafter mentioned to exercise

Business of  
auctioneer to  
be under li-  
cense.

\* Vide Ordinance No. 13, 1844 and Act No. 5, 1858.

the trade or business of an auctioneer upon taking out a licence, which shall be in force for one year from the date thereof and no longer, from the commissioner of stamps in Cape Town or the distributors of stamps in the several districts of the colony within their respective districts on paper stamped to the value of three pounds sterling, and which shall contain the true name and residence of the person taking out such licence; and if any person shall exercise the said trade or business of an auctioneer without having a licence in force at the time when he shall so exercise the said trade or business or sell by way of auction as aforesaid he shall for every such offence incur and be liable to the payment of a fine not exceeding one hundred pounds sterling, to be recovered in any competent court, one half of which shall be paid to the informer and the other half to the colonial treasury.

Penalty.

Existing licences saved.

3. And be it enacted that every licence to exercise the said trade or business duly taken out by any person under and by virtue of the said Ordinance No. 31, 1827, and whereof the time for which the same purported to be in force shall not have expired on the day aforesaid from which this ordinance is to take effect shall be deemed, taken, and judged of and be of like force and effect for and during the said unexpired residue of the time for which the same was first granted as if the same had been originally taken out under this ordinance.

Duty on sales of immovable and of movable property.

4. And be it further enacted that from the said first day of July, 1844, a duty of and at the rate of four pounds sterling for every hundred pounds sterling of the purchase money shall be imposed on all movable property, and a duty of and at the rate of two pounds sterling for every hundred pounds sterling of the purchase money on all immovable property which shall be sold by auction in this colony.\*

Things to be deemed immovable property.

5. And be it enacted that when and as often as any machinery, implements, utensils, or other matters or things belonging to or intended for any trade or manufacture and whether the same shall be fastened to the ground or building upon or in which the same shall be placed or separable or separated therefrom as the case may be or any movable property whatever shall be put up and sold in one lot together with any immovable property (whether the immovable property upon or in which the same shall be at the time of the sale or not), then the whole of the said lot shall for the purpose of

\* Amended by Act No. 5, 1858.

the payment of auction duty and of transfer duty be deemed and taken to be immovable property and be chargeable as such.

6. And be it enacted that the several duties aforesaid shall be a charge upon the auctioneer after the knocking down of the hammer or other closing of the bidding at every sale by way of auction. Duty & charge against auctioneer.

7. And be it enacted that no such licence as aforesaid shall be granted by the commissioner of stamps aforesaid or any distributor of stamps to any person until such person shall have produced to such commissioner or distributor a certificate under the hand of the collector of taxes in Cape Town or the civil commissioner of this division as in the next succeeding section mentioned that such person has given the security in the said section described, and the said collector of taxes or civil commissioner as the case may be is hereby authorized and required to accept such security from every person desiring him so to do and thereupon to grant a certificate under his hand. Licence to be given after security found.

8. And be it enacted that every person about taking out such licence as aforesaid shall enter into a recognizance before the collector of taxes in Cape Town,\* if such person shall reside in Cape Town, and before the civil commissioner of the division in which such person resides, if he reside in the country, in the sum of one thousand pounds sterling with two sufficient sureties in the sum of five hundred pounds sterling each, which recognizance with the condition thereof shall be in the form in the schedule to this ordinance prescribed and set forth, and such recognizance shall be acknowledged in the presence of and shall be signed by the said collector of taxes or civil commissioner as the case may be. Amount for which security to be found.

9. And be it enacted that every person who shall have received such licence as aforesaid or otherwise the person who acted as his clerk at the sales in the account in the condition of the said recognizance mentioned and set forth shall make oath to the truth of every such account, and every person making such oath shall in case the same be false be deemed to be guilty of the crime of perjury. Accounts of sales to be upon oath.

10. And be it enacted that every such recognizance as aforesaid may be put in suit by the collector of taxes or civil By whom security may be enforced.

\* Ordinance No. 13, 1844, directs these recognizances to be taken before the civil commissioner of the Cape division.

commissioner as the case may be before whom the same was acknowledged or by the officer for the time being acting as such collector or civil commissioner, and in case of judgment being given against the defendant the licence granted upon such recognizance shall become void.

No auctioneer to have retail wine or spirit licence.

11. And be it enacted that no licensed auctioneer shall be competent to take out or hold the licence commonly called a retail wine and spirit licence nor to retail by virtue or under pretence of any such licence by him taken out or held any of the liquors mentioned in such retail wine and spirit licence, under the penalties by law imposed upon persons selling the same without a licence.

Relief from duty when sale fairly from want of title.

12. And whereas it may sometimes happen that sales at auction of property may be rendered null and void by reason that the person for whose benefit the same shall be sold had no title or no right to dispose of the same, be it further enacted that from and after the said 1st day of July, 1844, if any sale by auction of any estate, goods, or chattels shall be rendered void by reason that the person for whose benefit the same was so sold had no title to the same or no right to dispose thereof then in every such case it shall be lawful for the auctioneer who paid the duty for the property so sold or for the person for whose benefit the same was so sold to lay his complaint before the collector of taxes or civil commissioner within whose jurisdiction respectively such sale was made, who are hereby required and empowered to hear all such complaints and to examine all witnesses produced upon oath, and shall report the case for the information of the Governor of this colony for the time being in order that the party may be relieved of so much of his payment as shall appear to have been overpaid.

No duty payable on purchases made by exposor.

13. And be it enacted that in case the real owner of any property put up to sale by auction shall become the purchaser by means of his own bidding or the bidding of any other person on his behalf without fraud or collusion then the said collector of taxes and civil commissioner respectively shall make an allowance to such owner of the duties hereby imposed upon such bidding, provided notice be given to the auctioneer before such bidding both by the owner and the person intending to be the bidder of the latter being appointed by the former and having agreed accordingly to bid at the sale on behalf of the seller, and provided such notice be verified by the oath of the auctioneer, as also the

fairness and reality of the said transaction to the best of his knowledge and belief; and in case any dispute shall arise whether such purchase by the owner was not made by collusion or in order to lessen the full sum hereby appointed to be paid or concerning the fairness of such transaction, then and in such case proof thereof shall lie upon the person acting as auctioneer, and on failure thereof or in case of any unfair practice then no such allowance shall be made as aforesaid.

14. And be it enacted that it shall and may be lawful for any person appointed by his Excellency the Governor in that behalf to sell by public sale for or on account of the government of this colony any property, movable or immovable, belonging to the said government, without taking out any licence to exercise the trade or business of an auctioneer or entering into any recognizance or being bound to comply with any of the regulations of this ordinance anything contained in any of the former clauses of this ordinance to the contrary notwithstanding.

Sales for government may be made without licence.

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SCHEDULE.

Division of \_\_\_\_\_ (or Cape Town as the case may be.) Form of recognizance.

Before me (collector of taxes in Cape Town or civil commissioner for the division of \_\_\_\_\_), on the \_\_\_\_\_ day of \_\_\_\_\_ 18—, A. B., of \_\_\_\_\_, C. D., of \_\_\_\_\_, and E. F., of \_\_\_\_\_, acknowledge themselves to owe to our Sovereign Lady the Queen, that is to say, the said A. B. the sum of £1000, and the said C. D. and E. F. each the sum of £500, to be made and levied of their goods and chattels respectively.

The condition of the abovewritten recognizance is such that if the said A. B. shall by virtue of or in reference to these presents obtain a licence to exercise the trade or business of an auctioneer he shall render to the said collector of taxes (or civil commissioner as the case may be) an exact and true account in writing of the total amount of the money bid at each sale and of the several lots which have been there sold and the price thereof respectively, and for that purpose shall produce to the said collector of taxes (or civil commissioner as the case may be) all books kept by him relative to his said trade or business on the first day of every month (if to the collector of taxes in Cape Town, but if in a country division, then say, "on the first day of every quarter, to be computed from the first day of July, 1844,") and shall within three months from the date of every such sale make payment of all sums of money imposed upon him by way of duty by this ordinance; and shall (whenever thereto required by the said collector of taxes or civil commissioner as the case may be) truly and

justly declare under his hand whether or not he has in any specified period held any sale as such auctioneer as aforesaid; and if he shall so do as aforesaid then this recognizance to be void, but otherwise to be of full force and effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 28th day of February, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

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No. 7.—Sd. George Napier.]

Ordinance for the Discipline and safe Custody of the  
Convicts employed upon the Public Roads.

WHEREAS in pursuance of the provisions of Ordinance No. 8, 1843, entitled "An Ordinance for improving the the Public Roads of this Colony," certain convicts sentenced to hard labour are to be employed upon the said public roads: And whereas it is expedient for the maintenance of proper order and behaviour amongst the said convicts that certain rules and regulations in that respect should from time to time under due authority be established and that certain visiting magistrates should be appointed to the duty of inspecting such convict gangs and for upholding due regard to discipline under and in virtue of such rules and regulations: And whereas it is also expedient that the jurisdiction hereby vested in any resident magistrate should be exercised on the spot where any such convict gang may be stationed: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that from and after the promulgation of this ordinance it shall and may be lawful for the Governor of this colony for the time being from time to time as occasion may require to appoint any resident magistrate or justice of the peace to be the visiting magistrate or one of the

Visiting magistrates,  
appointment  
of.

visiting magistrates of any gang of convicts employed as aforesaid upon the public roads, and from time to time to revoke every such appointment; and every such appointment and every revocation of any such appointment shall be notified in the Government Gazette.

2. And be it enacted that it shall and may be lawful for the Governor of this colony for the time being from time to time to make rules and regulations specifying and prescribing the duties of such visiting magistrates as aforesaid, and from time to time to alter, amend, or revoke the said rules and regulations, and it shall be the duty of every such magistrate and he is hereby required to obey and conform to every such rule and regulation which shall be in force, provided the same be not contrary to law.

Duties of  
visiting magis-  
trates.

3. And be it enacted that when in the course of any visit to or inspection of any gang of convicts which it shall be the duty of any such visiting magistrate as aforesaid to visit and inspect it shall be proved to the satisfaction of any such magistrate that any convict belonging to such gang shall have been guilty of misbehaviour in any of the following respects,—1st, of a repetition of any misbehaviour theretofore punished by the superintendent of such gang; 2nd, of any flagrant act of disorder or breach of prison discipline; 3rd, of insolence in language or manner towards the superintendent of the gang,—it shall be lawful for every such magistrate as aforesaid and he is hereby empowered to order any such convict to labour during any number of hours extra his ordinary hours for labour not exceeding forty-eight, or to be placed in solitary confinement for any number of nights not exceeding twenty-four, or to be placed in solitary confinement and with or without spare diet for any uninterrupted period not exceeding fourteen days, or to receive personal correction by any number of lashes not exceeding twenty-five.

Offences spe-  
cific.

Punishments.

4. And be it enacted that any convict who shall without lawful cause desert from the station where he shall be placed by the authority of the Governor of this colony for the time being, but who shall voluntarily return to the said station at any time within forty-eight hours from the time of his departure, shall upon due conviction thereof before any resident magistrate be and become liable to suffer either in lieu of or in addition to any of the punishments in the last preceding section mentioned imprisonment and hard labour for any period not exceeding six calendar months, to commence and

Desertion with  
voluntary  
return, punish-  
ment of.

be computed from the expiration of the sentence or sentences of imprisonment which such convict was liable to undergo at the time of his desertion as aforesaid.

Sentences of  
magistrate to  
be enforced.

5. And be it enacted that it shall be the duty of the superintendent, overseers, and constables in charge of any such gang of convicts as aforesaid and they are hereby respectively required to cause every convict who shall by any such order as aforesaid of any visiting magistrate or resident magistrate be ordered to undergo any such punishment as aforesaid to undergo the same in manner and form as by the said visiting magistrate or resident magistrate directed, and for so doing such order or a copy thereof signed by the said visiting magistrate or resident magistrate shall be a sufficient warrant to each of the said persons respectively.

Offences speci-  
fied.

6. And be it enacted that in case any convict belonging to any such convict gang as aforesaid shall wilfully disobey any lawful order, or if he shall exhibit insolence in language or manner to any officer belonging to the station while such officer shall be on duty or to any constable or police officer while on duty, or if he shall be guilty of profane cursing and swearing or of any indecent behaviour, or if he shall without sufficient reason be absent at any hour appointed for muster or school or the services of the chapel, or if he shall use to any person intimidating language or threatening acts, or if he shall wilfully mismanage any of his allotted work, or if he shall wantonly destroy or injure any clothing, food, implements of labour, or any other matter or thing intrusted to him to use, the superintendent of the said gang shall be empowered in addition to any other penalties which he may be authorized to inflict to order the convict so offending to labour during any number of hours extra his ordinary hours for labour not exceeding twenty-four in the whole and three in any one day or to be placed in solitary confinement with or without spare diet for any number of nights not exceeding six or for any uninterrupted period not exceeding four days with or without spare diet, or to be kept on spare diet for any period not exceeding three days: Provided, always, that the said superintendent shall make a record in a book to be kept for that purpose of every case in which any punishment as last aforesaid shall be ordered by him, showing the name of the convict, the nature of the misbehaviour, and the punishment ordered, and shall submit such record for the examination of the magistrate upon the occasion of his then next visit;

•Punishment.

Record of  
offences and  
punishment.



and if any such superintendent shall wilfully neglect to make such a record as is herein directed or shall not make the same a true and *boná fide* record or shall neglect to submit such record for the examination of the visiting magistrate upon the occasion of his then next visit such superintendent shall for every such omission of his duty incur and be liable to a penalty not exceeding fifty pounds to be paid to the colonial treasury.

7. And be it enacted that any convict who shall desert from the station where he shall be placed and who shall not return thereto voluntarily and within forty-eight hours from the time of his departure shall upon conviction of such offence be liable to imprisonment with hard labour for any period not exceeding two years, to commence from the expiration of any period or periods of imprisonment which he shall have previously been sentenced to undergo and which at the date of such his desertion he shall not have undergone, and also to receive corporal punishment in any number of lashes not exceeding seventy-five.

Desertion  
without return.

8. And be it enacted that the court of the resident magistrate for the district in which the convict shall have originally deserted or that of the district in which the gang from which he so deserted shall be placed when he shall be brought to trial or of any district in which he shall have been after having deserted and before being retaken shall have jurisdiction in every case of the offence in the last preceding section mentioned, and may adjudge and condemn the party offending to such and so much of the punishments in the said section mentioned as such court shall see cause to adjudge thereon.

Jurisdiction to  
try cases of  
desertion.

9. And be it enacted that for the purpose of trying any such lastmentioned case or any such case as in the fourth section of this ordinance mentioned in the court of the resident magistrate for the district within which the gang to which the offenders belonged as aforesaid shall then be placed such court may be held at the spot or station where any such gang shall be stationed at the time of the said trial; and whenever such court shall be held at such lastmentioned spot or station the superintendent for the time being of the gang aforesaid shall in the absence of the clerk of the peace for the district have the same authority to prosecute for the said crime of desertion from punishment which the said clerk of the peace would if present have by law possessed.

Where court  
for trial of  
desertion may  
be held.

Prosecutor in  
cases of deser-  
tion.

10. And be it enacted that every person not being an officer in charge of or belonging to the gang from which the

Reward for  
apprehension  
of deserters.

convict shall escape who shall apprehend and secure any convict who shall have escaped from any such convict gang as aforesaid and shall cause such convict to be lodged in any of the public gaols or in custody of the superintendent of any convict station shall be entitled to receive out of the colonial treasury (over and above his just and reasonable expenses) such sum not exceeding three pounds sterling for each such convict as the Governor of this colony for the time being shall consider and authorize such person to have become entitled to by reason of any such apprehension.

Constables at stations.

11. And be it enacted that every superintendent, head-overseer, and sub-overseer duly appointed by authority of the Governor of this colony for the time being shall be deemed and taken to be a constable, and that it shall and may be lawful for the Governor of this colony for the time being and for any such visiting magistrates as aforesaid from time to time to nominate and appoint so many other persons as the said Governor or the said visiting magistrate shall deem necessary to be and act as constables at the several convict stations, and such persons shall be and they are hereby declared to be invested with all powers, authorities, and functions by law belonging to constables or officers of police: Provided, always, and it is hereby declared that every appointment made by any such visiting magistrate shall be subject to the approval of the said Governor and that every such constable shall be removable at the pleasure of the said Governor for the time being and may be suspended by any such magistrate until the pleasure of the said Governor for the time being shall be expressed thereon, and that no such visiting magistrate shall have any authority to appoint or suspend any such constable as aforesaid to or at any station other than the one of which he shall be the magistrate.

Apprehension of deserters.

12. And be it enacted that all such constables as aforesaid shall be and they are hereby authorized and required to use all lawful means in their power for retaining the convicts under their charge in safe custody; and that the crime of desertion from punishment as defined in the seventh section of this ordinance shall with reference to and for the purposes of the provisions of the ordinances hereinafter mentioned be deemed and taken to be a crime of equal degree of guilt with the crimes specified in the fourteenth section of the Ordinance No. 73, entitled "An Ordinance for explaining, altering, and amending the Ordinance No. 40," and that all

and singular the provisions made and contained in the twelfth, thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, and nineteenth sections of the said Ordinance No. 73, and in the first section of the Ordinance No. 2, 1837, entitled "An Ordinance for the more effectual prevention of crimes against Life and Property within the Colony," shall extend and apply and they are hereby extended and made applicable to every person who shall have committed or shall on reasonable grounds be suspected to have committed or shall attempt or clearly manifest an intention to commit the said crime of desertion from punishment.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 28th day of February, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

No. 8.—Sd. P. Maitland.

[June 27, 1844.

Ordinance for applying a sum not exceeding £172,179 10s. 3d. for the service of the year 1845.

No. 9.—Sd. P. Maitland.]

Ordinance for facilitating the Recovery of Land-rents in this Colony.

WHEREAS it is expedient to facilitate the recovery of land-rents belonging to the colonial government due and in arrear, and for that purpose to remove certain difficulties of a legal nature which now exist and generally to make such provision for the recovery of the said rents as may prove effectual and at the same time free as far as may be from delay and expense: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that from and after the promulgation of this ordinance all laws and customs heretofore in force in this

Previous laws repealed.

colony in so far as the same are repugnant to or inconsistent with any of the provisions of this ordinance shall be and the same are hereby repealed.

Notice to pay arrears.

2. And be it enacted that it shall and may be lawful for the civil commissioner of each division of this colony in every case in which any land-rent payable or belonging to the colonial government shall by the books of such civil commissioner's office appear to be due and in arrear to prepare or cause to be prepared a notice addressed to the person who shall by the books aforesaid appear to be the owner of the place or property in respect of which such land-rent shall have accrued due and to all others whom it may concern, and such notice shall in substance be in the form as in the first schedule hereunto annexed is set forth; and such notice shall be served by leaving the same with the person in actual occupation of the said place or property, or in case such person cannot be found at his usual place of residence then by leaving the same at the residence of such person with the wife of such person or any child or servant of such person who shall appear to be of the age of sixteen years or upwards; and it shall be the duty of the person employed to serve any such notice to have and preserve a copy thereof and to mark upon such copy as speedily as may be the time at which and the place and manner in which the original notice was served, by way of a memorandum to refresh if needful the memory of the person so serving the said notice.

Objections to notice of arrears

3. And be it enacted that it shall and may be lawful for the person so appearing as aforesaid to be the owner of such place or property or for any mortgagee, lessee, or other person having any interest therein at any time within thirty-one days from the day of the service of such notice as aforesaid to lodge at the office of the civil commissioner in writing any objections to the payment of any part of the amount claimed in the said notice as due and in arrear which may be disputed or denied, and if such objections shall be duly lodged within the time aforesaid but shall not be allowed by such civil commissioner, and if the party lodging the same shall within seven days after the lodging thereof, give security by way of recognizance to Her Majesty the Queen, and either with or without sureties as the said civil commissioner shall require, to pay the amount which such party disputes or denies together with the costs of the suit next hereinafter mentioned in case such suit shall be deter-

Action to follow objections for the trial thereof.

mined against the party so objecting as aforesaid and giving such security, the said civil commissioner shall forthwith cause proceedings to be commenced in some competent court for the recovery of the amount of rent in controversy and shall not resort to the remedy by distress and sale as in the next succeeding section mentioned.

4. And be it enacted that in case no such objections as aforesaid shall have been lodged, or if lodged and disallowed in case no such security as aforesaid shall have been given, and in case the amount of the land-rent mentioned in such notice as aforesaid shall not within the space of thirty-one days from the day on which notice shall have been served be duly paid and discharged, or in case such objections as aforesaid shall have been lodged and allowed but the residue or balance remaining after the allowance of the same shall not be paid and discharged within the said space of thirty-one days from the day of the serving of the notice, then it shall and may be lawful for the civil commissioner aforesaid in every case in which the person appearing as aforesaid by the books aforesaid to be the owner of the place or property in question shall be in the actual occupation of such place or property to place in the hands of the messenger of any resident magistrate's court within that civil commissioner's division an authority in writing empowering such messenger to seize and arrest all goods and chattels being in and upon the place or property aforesaid, which goods and chattels would be distrainable by law for rent in arrear, and such authority shall in substance be in the form set forth in the second schedule hereunto annexed ; and all goods and chattels so seized under or by virtue of any such authority as aforesaid shall be dealt with, treated, and considered to all intents and purposes as if the same had been attached under process of execution issued upon a judgment of the court of the resident magistrate of the district in which such seizure shall have been made, but no greater sum shall in any case be levied and raised than the sum mentioned in the said authority together with such usual costs and charges as would have been attendant upon the seizure and sale of the said goods and chattels had the same been attached under such process as aforesaid.

Recovery of rent by distress and sale in specified cases.

Restriction as to seizure and sale.

5. And be it enacted that in every case in which the person in actual occupation of any such place or property as aforesaid not being the owner thereof shall yet have entered into such occupation under or in pursuance of some contract

Distress may be levied on occupier under contract for ownership.

or agreement for becoming the owner of the same, the power of distress and sale in the last preceding section mentioned may be exercised by the civil commissioner aforesaid in manner and form as in the said section stated, precisely as if the person so in occupation under such contract or agreement were in law the owner.

Cases in which recovery of rent may be sought by action.

6. And be it enacted that in all cases in which neither the person appearing as aforesaid by the books aforesaid to be the owner of the place or property in question nor any such occupant as in the last preceding section mentioned shall be in the actual occupation of such place or property or in which although in such occupation no sufficient goods and chattels shall appear to exist whereof could be made in manner aforesaid the rent due and in arrear, or in which by reason of any difficulties to him appearing such civil commissioner as aforesaid shall decline to resort to the mode of proceeding in the last preceding section mentioned, it shall and may be lawful for such civil commissioner at any time after the expiration of thirty-one days from the day on which such notice as aforesaid shall have been duly served but not sooner, in case the rent in arrear shall still remain due and unpaid, to proceed according to law in some competent court for the recovery of the land-rent due and in arrear, or for such other and alternative relief as by reason of the non-payment of the said rent the colonial government shall be legally entitled to demand.

Persons who may pay rent and have remedies of the government for its recovery.

7. And be it enacted that any mortgagee, sub-lessee, or other person having any interest in any such place or property as aforesaid shall be entitled at any time before the execution of the decree of any such court as aforesaid to pay and satisfy the amount of land-rent in arrear with costs, and thereupon to be deemed and taken in case he shall not by reason of some stipulation or agreement be himself responsible for the said rent to have in regard to the amount so paid and satisfied the like rights and remedies against the real debtor as those which do or shall by law belong to the colonial government in regard to the recovery of its land-rents and its costs of suit.

Cases in which civil commissioner shall sell and not enter into possession for recovery.

8. And be it enacted that if in any such suit or proceeding as aforesaid a decree should be pronounced declaring the quitrent grant or lease of any such place or property and the right or title derived from, by, or under it to be cancelled, annulled, forfeited, and avoided for or by reason of non-

payment of the rent reserved and conditioned to be paid, then in case the place or property in question shall at the time of the pronouncing of such decree be under any mortgage either conventional or tacit (the hypothecation of government for the rent due and in arrear alone excepted), the civil commissioner shall instead of entering upon or taking possession of such place or property under such decree be bound and obliged to cause the said place or property and all right and title to and interest in the same existing by virtue of the quitrent grant or lease thereof to be sold by public sale (in case no mortgagee or other interested person shall previously to such sale pay off the land-rent due and in arrear with all costs and charges), and such civil commissioner shall after deducting from the purchase money the amount of rent due and in arrear together with costs and the charges of the said sale pay-over the surplus if any to the party or parties legally entitled to the same.

9. And be it enacted that every such sale as is in the last preceding section mentioned shall be held by the sheriff and shall be conducted in like manner as sales of immovable property seized or attached by such sheriff in execution of legal process.

Sales to be by the sheriff.

10. And be it enacted that whenever any such mortgagee as aforesaid shall be absent from the colony or shall not be discoverable the civil commissioner shall cause all such moneys as would be payable to such mortgagee if present to be paid into the guardian's fund to the credit of such mortgagee, there to be subject to the same provisions in all respects which are provided by Ordinance No. 105, bearing date the 5th day of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the colony.

Moneys payable to absent mortgagees.

11. And be it enacted that in every case in which any place or property in regard to which any arrear of land-rent shall be due to the colonial government shall be abandoned, deserted, or left derelict, and the person having or claiming title to the same shall after being duly summoned make default, it shall and may be lawful for the supreme or some circuit court as the case may be, upon proof to the satisfaction of the said court by affidavit or otherwise as to such court shall seem fit that a certain amount of land-rent is due and in arrear in respect of the said place or property and that such place or property has been and is abandoned, deserted, or left derelict, to decree in a summary manner that the right, title, and interest of the grantee or lessee of the

Where land is derelict.

said place or property and that of all other persons claiming by, through, or under him shall thenceforth be to all intents and purposes cancelled, annulled, forfeited, and avoided, and to adjudge and decree the said place or property to have reverted to the colonial government wholly free and unencumbered and in the same plight and condition as if the particular title under and by virtue of which such place or property was previously held had never been created; and as often as any such decree as last aforesaid shall be pronounced the civil commissioner shall take possession on behalf of the colonial government of the place or property in question, and the said government shall be at liberty to dispose of the same in whatever manner it shall seem fit: Provided, always, that nothing in this section contained shall be taken or construed so as to prevent the colonial government from claiming from any competent court a like decree of forfeiture of title for non-payment of rent in any case in which by law the said government shall be entitled to claim the same; and provided, also, that if in any case the place or property so abandoned or deserted shall be under mortgage at the time of any such decree as aforesaid, then the provisions in the eighth, ninth, and tenth sections of this ordinance contained shall be deemed and taken to apply to the same as fully as if the said sections were each of them herein again repeated.

In actions for recovery of rent what proof of title necessary.

12. And be it enacted that for the hearing and determining in any of the courts of this colony (except the supreme court and the court of the resident magistrate of Cape Town) of any suit, action, or proceeding for the recovery of land rent or for any other purpose relating to this ordinance it shall not be necessary for the civil commissioner to produce the original title deed of any such place or property as aforesaid or any duplicate thereof or any deed of transfer relating to such place or property; but on the contrary the entry or entries in the books of the civil commissioner purporting to contain the leading heads of the grant or lease or other instrument of title of such place or property shall *primâ facie* be deemed and taken to be admissible and sufficient evidence to prove the amount of the rent reserved and all other matters contained in such entry or entries of which the original grant or lease or other instrument of title might but for the present section be in law the best evidence: Provided, always, that it shall be competent for



any person defending any such action as aforesaid to produce and prove any such grant or lease or other instrument as aforesaid, and thereupon such deed so produced and proved shall in case of any discrepancy between the said entries and said deed be deemed and taken to be the best evidence of every matter and thing in the said deed contained.

13. And be it enacted that in the interpretation of this ordinance the term "civil commissioner" shall mean the officer for the time being acting as such, and that the terms "colonial government" and "government" shall mean respectively Her Majesty's local executive government within this colony, and that the term "land-rents due and in arrear" shall extend to and comprise quitrents, loanrents, and all other sorts of periodical payments to the colonial government arising out of lands and due and in arrear, as also the amount which would have been paid for stamped receipts had the said rents instead of being allowed to fall into arrear been regularly paid and stamped receipts as by law required been regularly given for the same; and that the term "owner" shall mean the person in whom whether in his individual or in some fiduciary capacity the complete *dominium* or legal right in any place or property held by any quitrent grant or lease or other title from and under the colonial government shall for the time being be vested, and that the singular number shall include the plural number and that the masculine gender shall include females as well as males.

Interpretation  
clause.  
"Civil com-  
missioner."

"Colonial  
government."

"Land-rents  
due and in  
arrear."

"Owner."

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SCHEDULE NO. 1.

To A. B., and all others whom it may concern.

Notice is hereby given that the sum of £———, being the amount of —— year's quitrent (or other rent as the case may be), up to the —— day of ——, in the year of our Lord ——, is now due and owing to government upon the place —— (here describe the farm or other property according to its title or other description), and that unless the said sum of £—— shall be paid to the undersigned within thirty-one days from the day of the service of this notice then such proceedings will be had and taken in regard to the said arrear as are by law, and especially by the Ordinance No. 9, 1844, entitled "An Ordinance for facilitating the recovery of Land-rents in this Colony," authorized and enjoined.

Dated this —— day of ——, in the year of our Lord ——.

\_\_\_\_\_  
Civil commissioner for the division of ——

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## SCHEDULE NO. 2.

To \_\_\_\_\_, messenger of the court of the resident magistrate of \_\_\_\_\_.

You are hereby authorized and required in pursuance of the provisions of the Ordinance No. 9, 1844, entitled "An Ordinance for facilitating the recovery of Land-rents in this Colony," to repair to the place \_\_\_\_\_ (here describe the farm or other property according to its title or other description), whereof \_\_\_\_\_ is the owner and occupier (or whereof \_\_\_\_\_ is in possession under a contract for the purchase thereof), and there to seize and arrest such goods and chattels being in and upon the said place as by virtue of the fourth section of the ordinance aforesaid may lawfully be seized and arrested and whereof can be levied and made the sum of £\_\_\_\_\_, being the amount of quitrent (or other rent as the case may be) due upon the said place \_\_\_\_\_, up to the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_; and for seizing and arresting the said goods and chattels and levying thereout the said sum of £\_\_\_\_\_, in manner and form as by the said ordinance is provided, this shall be your warrant and authority.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

\_\_\_\_\_  
Civil commissioner for the division of\_\_\_\_\_

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 4th day of July, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

No. 10.—Sd. P. Maitland.]

Ordinance for empowering the Governor to appoint in all cases the places at which Convicts sentenced to be imprisoned shall be confined.

Preamble.

WHEREAS in some cases convicts have from time to time been sentenced to undergo at Robben Island or some other particular place fixed in and by their several sentences, the certain terms of imprisonment with hard labour respectively

adjudged against them without any power having been given by the terms of such sentences to the Governor of this colony to vary the place of such imprisonment: And whereas it may happen that other convicts may hereafter be sentenced in a similar manner: And whereas it will be conducive to the proper management of convict discipline and labour that the said Governor should possess a discretionary power of altering from time to time the places at which all convicts sentenced to undergo imprisonment with hard labour by any of the colonial courts shall be confined, and to that end that provision should be made for effectually realizing the removal if the said Governor should see fit of all convicts sentenced or to be sentenced as aforesaid absolutely to Robben Island or some other fixed place: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that as well in regard to the power of the Governor of this colony for the time being, to remove or cause to be removed from Robben Island or other places of imprisonment within this colony all convicts sentenced to undergo imprisonment with hard labour by any of the colonial courts as in regard to all other legal effects and consequences whatsoever, all former sentences still unexpired and all future sentences pronounced by any colonial court for any crime or offence adjudging imprisonment with hard labour against the person convicted shall be held, taken, and construed precisely and to all intents and purposes as if fit and proper words had been originally inserted therein declaring that the place for undergoing such imprisonment with hard labour should be from time to time and at all times dependent upon the appointment of the said Governor.

Place of imprisonment dependent upon appointment of Governor.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 4th day of July, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

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No. 11.—Sd. P. Maitland.]

[4th July, 1844.

Ordinance to enable the Cape of Good Hope Trust and Assurance Company to be appointed by that name as Trustees and Tutors and to sue and be sued in the name of their Secretary.

[Expired 31st December, 1860.]

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No. 12.—Sd. P. Maitland.]

[31st July, 1844.

Ordinance to amend the Ordinance No. 8, 1843, entitled "An Ordinance for improving the Public Roads of this Colony."

[Repealed by Act No. 9, 1858.]

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No. 13.—Sd. P. Maitland.]

Ordinance for transferring to certain other Officers the Duties of the Office of the Collector of Taxes.

Preamble.

Ordinance No. 43 and Ordinance No. 6, 1844, repealed, in as far as inconsistent.

WHEREAS by reason of the intended abolition of the office of the collector of taxes in Cape Town it has become necessary to provide for the performance after the abolition of the said office of such of the duties heretofore performed by the collector of taxes in Cape Town as shall still remain to be discharged : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the first day of January, 1845, so much of the Ordinance No. 43, entitled "An Ordinance of His Honour the Lieutenant-Governor in Council for empowering the Collector of Taxes in Cape Town and the Civil Commissioners of the Country Districts to collect the several Taxes and Duties now or hereafter to be imposed and payable within the Colony, and so much of the Ordinance No. 57, entitled "An Ordinance for repealing certain Taxes and Duties and imposing certain others in lieu thereof," and so much of the Ordinance No. 6, 1844, entitled "An Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for regulating Sales by Auction," and so much of any former law or ordinance, if any as is repugnant to or inconsistent

with any of the provisions of this ordinance shall be repealed and the same are hereby repealed accordingly.

2. And be it enacted that from and after the said first day of January, 1845, all and singular the several duties and functions (except in the case hereinafter excepted) now imposed upon or exercised by the collector of taxes in Cape Town shall thenceforth be imposed upon and exercised by the treasurer-general of this colony for the time being or the officer for the time being acting as such treasurer-general and by no other person, as fully and completely to all intents and purposes as if the said treasurer-general or officer acting as such had been duly appointed by such style and title to be the collector of taxes in Cape Town; and all bonds, vouchers, or rights of action which shall upon the said first day of January, 1845, be vested in or recoverable by the said collector of taxes in his capacity as such collector shall thenceforth vest in and be recoverable by the said treasurer-general or officer acting as such and by no other person whomsoever: Provided that nothing herein contained shall be construed so as to require the said treasurer-general or officer for the time being acting as such to take or use in regard to any matter or thing herein referred to any other or additional style, title, or official designation.

Substitution of treasurer-general for collector of taxes in Cape Town

3. And be it enacted that the certain recognizance by the ordinance aforesaid No. 6, 1844, directed to be entered into before the collector of taxes in Cape Town by persons about to take out a licence to exercise the trade or business of an auctioneer shall from and after the said first day of January, 1845, be entered into before the civil commissioner of the Cape division or the officer for the time being acting as such, who is hereby authorized and required to act in that behalf in all respects as by the said ordinance the collector of taxes in Cape Town is authorized and required to do.

Recognizance by auctioneers, before whom to be taken.

4. And be it enacted that the form of the said recognizance in the schedule to the said lastmentioned ordinance set forth shall from and after the said first day of January, 1845, be changed by inserting the name and description of the civil commissioner aforesaid or officer for the time being acting as such (as the case may be) for the name of the collector of taxes in Cape Town as the person before whom the said recognizance is acknowledged, and by substituting in the condition of the said recognizance the treasurer-general of the colony of the Cape of Good Hope or the officer for the

Alteration in form of recognizance.

time being acting as such in the place or stead of the name of the collector of taxes as often as the last-mentioned name occurs in the said condition.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 28th day of August, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

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No. 14.—Sd. P. Maitland.]

Ordinance for the better Regulation of the Office of the Registrar of Deeds.

**Preamble.** WHEREAS it is expedient to make provision for authorizing all persons who may be desirous so to do to prepare or cause to be prepared by such persons qualified in the manner hereinafter provided as they shall select certain of the deeds now drawn or prepared exclusively in the deeds registry office of this colony and to regulate the fees to be hereafter charged and taken in the said office: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this ordinance it shall and may be lawful for the registrar of deeds for the time being or the officer for the time being acting as such and he is hereby required duly to register all fit and proper transfer deeds and deeds of hypothecation now exclusively prepared in the said office which shall be prepared or drawn by any advocate of the supreme court of the colony or any person authorized as in the next succeeding section of this ordinance mentioned but not by any other person or persons whomsoever, and the said registrar may require proof by signature or otherwise as he shall think fit that every such deed as aforesaid tendered for registration has been prepared by some person qualified as aforesaid.

Preparation of transfer deeds and deeds of hypothecation.

2. And be it enacted that it shall and may be lawful for any person desirous to be authorized to prepare and draw any such deeds as aforesaid and not being such advocate as aforesaid to apply to the Governor of this colony for the time being for such authority, and the said Governor may after the fitness of the person so applying shall be certified to him in like manner as in the case of persons applying for leave to practise as notaries public or in such manner as to him shall seem more efficient grant authority to such person to prepare deeds under the provisions of this ordinance, which authority shall be announced in the Government Gazette, and for every such authority the party applying for the same shall pay a fee of ten pounds sterling.

Conveyancers,  
not being  
advocates, to be  
authorized by  
the Governor.

3. And be it enacted that from and after the promulgation of this ordinance the several fees and charges in the schedule to this ordinance set forth shall be payable to the said registrar of deeds in regard to the several matters and things respectively in the said schedule mentioned, who is hereby authorized to demand and take the same and none other.

SCHEDULE OF FEES.

For the preparation of any deed of transfer or hypothecation of immovable property prepared in the deeds registry office,	-	-	-	-	£1	1	0
For the registration of any such lastmentioned deed prepared elsewhere,	-	-	-	-	0	10	6
For the registration of a notarial bond or obligation in the name of each debtor and each surety—for each debtor and surety respectively,	-	-	-	-	0	3	0
For a search of the books of transfer or debt registry for each letter searched,	-	-	-	-	0	2	6
For every registration, entry, or other act, to be made or done in the deeds registry office, not being any of the matters or things aforesaid,	-	-	-	-	0	1	6

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 28th day of August, 1844

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

## No. 15.—Sd. P. Maitland.]

## Ordinance to provide for the Enregisterment in the Land Registers of the Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820.\*

Preamble.

WHEREAS in consequence of the encouragement to emigration to the Cape of Good Hope offered by the government of his late Majesty King George the Third in certain letters dated Downing-street, London, 1819, certain parties of settlers arrived in this colony in and about the year 1820 and were located in the lower part of the division of Albany and at Glen Lynden in the division of Somerset, on certain lands which were surveyed for the said parties respectively: And whereas certain of the said parties consisted wholly or in part of individuals who paid in England certain deposits required by the said government, and thereby acquired certain rights to portions of the original locations so surveyed for the said parties: And whereas other lands were set aside by government, and certain exchanges of granted land were made for the better maintenance of some of the said parties, and surveys of the shares held by the said individual settlers their heirs or assigns, at the date of survey, effected for the purpose of enabling the proprietors thereof to obtain registry of the same in the land registers of the colony: And whereas the said proprietors have been and still are prevented from obtaining such registry by reason of the death, absence from the colony, mental incapacity, or insolvency of the former heads or nominal heads of their parties, to whom in most instances grants of the original locations were issued, or of other persons through or from whom the said proprietors have mediately or immediately derived just, lawful, and undisputed rights to the said subdivisions, or by reason that in many instances it has now become impossible to produce such legal evidence of the cessions of the said rights as would enable the supreme court or the circuit courts of this colony to declare and enforce the same, while at the same time the provisions of the Ordinance No. 97, entitled "Ordinance for enabling certain persons having respectively the just, lawful, and undisputed right to certain Lands and Houses, to procure the same to be enregistered as their property in the Land Register," could not properly be accommodated so as to meet

\* Expired 31st December, 1846, but revived by Ordinances No. 15, 1847, and No. 7, 1853, and Acts No. 24, 1856, and No. 7, 1859.



the exigency of the cases aforesaid, or if they could be so accommodated not without much and unnecessary expense: And whereas in many instances the head of the party cannot give transfer of the subdivisions which have been effected by reason that the said subdivisions include without distinction portions of land registered as his property together with portions of lands granted to others, or of ungranted crown lands allotted to the party: And whereas by reason of the issue and existence of certain title deeds to portions of the lands referred to the Governor of this colony is prevented from directing the issue of new title deeds of the said subdivisions in the names of the persons justly entitled to the same, and thus giving them registry in the land registers of this colony:

2. Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that from and after the promulgation of this ordinance, it shall and may be lawful for the Governor of this colony to publish by proclamation in the Government Gazette and in some one or more of such newspapers as shall be published in Graham's Town the names of such persons as shall after due investigation be recommended by the board of commissioners for lands as the persons entitled to receive grants of the aforesaid subdivisions, of locations, together with a description of the said subdivisions and also the particulars of all such grants of original locations and other lands as it may be necessary to cancel by reason of portions thereof being included in such aforesaid subdivisions, and thereupon to proclaim that unless objections showing cause to the contrary be lodged in writing at the office of the secretary to Government, in Cape Town, within six weeks from the day on which such proclamation shall be last published the title deeds therein mentioned will be cancelled and the subdivisions aforesaid granted accordingly.

3. And be it enacted that in case no objections are lodged in the office of the secretary to government as aforesaid at or before the expiration of the term of six weeks as aforesaid it shall and may be lawful for the said Governor to direct the said title deeds to be cancelled and the grants of the said subdivisions to be issued accordingly.

4. And be it enacted that in case any such objections as aforesaid shall be lodged as aforesaid the said objections shall be referred to the board of commissioners for lands for inves

Names of proposed grantees to be published.

Objections to grants.

Grants to be issued in absence of objections.

Consideration and disposal of objections.

tigation, and should the said board deem it necessary in any case to amend their previous recommendation a further publication of six weeks by proclamation in manner aforesaid of such amended recommendation shall be necessary before it shall be lawful for the said Governor to direct that any title deeds or title deed shall in conformity with such amended recommendation be cancelled or be issued as the case may be: Provided that if no objection be lodged within the said period of six weeks to any such amended recommendation it shall be lawful for the said Governor to direct the certain title deeds or title deed referred to in such amended recommendation to be cancelled or issued as the case may be in conformity therewith.

Proceedings  
when objec-  
tions disal-  
lowed.

5. And be it enacted that if after any such objections as are mentioned in the second section of this ordinance shall have been referred to the board of commissioners for lands the said board shall report to the said Governor that they do not see cause to amend their recommendation, or if any objections to the amended recommendation mentioned in the fourth section of this ordinance shall be lodged as aforesaid, the said Governor shall cause a government notice to be published in the Government Gazette and in one or more of the newspapers to be published in Graham's Town setting forth the particulars of any title deeds or title deed the cancellation of which shall have been objected to and a description of the several subdivisions which contain portions of the land described therein and also the names of the person or persons to whom it is recommended to issue title deeds of the said subdivisions respectively, and in the case of such of the said subdivisions as may be unclaimed or if claimed when the claims to the said subdivisions are not proved or have not been reported on then the name or names of the persons for whom the said subdivisions respectively have been surveyed, or a description of the title deed or title deeds if any the issue of which shall have been objected to accompanied by an announcement that the deeds aforesaid will be cancelled or issued as the case may be unless such cancellation or issue shall be restrained by the interdict of some competent court or judge to be duly sued out within three months from the date of such notice; and when and as often as any such notice shall be published then all persons who shall object to any of the matters or things embraced in such notice and by the same announced as intended to be done shall be bound to apply to some compe-

Objector may  
apply for  
interdict.

tent court or some judge having lawful authority for an interdict or order restraining all parties whom it may concern from proceeding to do the matter or thing which the person applying alleges ought not to be done; and unless the person so applying for such interdict shall obtain the same and shall within a period of three months from the date of the last publication of the said notice (if published on more days than one) lodge the said interdict or a copy thereof in the office of the secretary to government in Cape Town then it shall be lawful for the Governor of the colony to direct that the title deed shall be issued or the existing title deed shall be cancelled as recommended by the said board of commissioners for lands: Provided, always, that it shall and may be lawful for the said Governor upon cause shown to enlarge the time within which in any particular case such interdict may be applied for.

Interdict to be lodged with secretary to government.

6. And be it enacted that it shall be lawful for the supreme court or any circuit court of this colony to grant an interdict to any person or persons applying as aforesaid for the same in case it shall appear that the party so applying has some right to or over or in respect of the land of which a title deed is recommended to be cancelled and to the cancellation of which such party objects or to which any new grant is announced as intended to be made, and moreover that such party is likely to be prejudiced by the cancellation or issue as the case may be of any title deeds or title deed intended to be cancelled or issued respectively.

In what cases interdict may be granted.

7. And be it enacted that when and as often as any such interdict as aforesaid or any copy thereof shall be lodged at the office of the secretary to government in Cape Town as aforesaid a public notice of the lodgment of the same shall be forthwith given in the Government Gazette and in some one of such newspapers as aforesaid, and the said interdict or a copy thereof together with the claim or claims and all the proofs and documents relating thereto on which the recommendation of the board of commissioners for lands was founded shall be delivered or transmitted to or placed at the disposal of the person or persons or some one of them to whom the grant was recommended or whose claims shall be stayed by the said interdict, or their heirs or other representatives, for the purpose of enabling him or them to procure the removal of the said interdict, and the final determination according to law of all questions in dispute connected with the same.

Notice of interdict to be published.

Interdict to be  
conclusive of  
rights unless  
removed.

8. And be it enacted that when and as often as any such final determination as aforesaid shall have been made by any competent court in any suit or proceeding arising from or connected with any such interdict as aforesaid the cancellation of any old title deed or issue of any new title deed respectively shall be regulated in conformity with the judgment of such court and so as to secure as much as may be the rights of all parties as the same shall have been ascertained and declared by the judgment of such court; but in case it shall so happen that the person or persons whose claims are stayed or supposed rights affected by any such interdict shall not within a period of six months from the date of the publication of the notice in the last preceding section mentioned obtain a final determination of the matters in dispute in regard to the same and give notice of such final determination being had and come to to the secretary to government in Cape Town, then the matters so in dispute shall be considered as if decided in favour of the party who shall have obtained the interdict, and thereupon the consequences hereinbefore mentioned shall take place in the same manner as if a competent court had finally determined in favour of such party: Provided, always, that it shall be lawful for the Governor aforesaid to enlarge the time during which notice of any such final determination being had and come to may be given as aforesaid to the secretary to government.

Locations to be  
sold, if there  
be no applica-  
tion for grant.

9. And be it enacted that when there shall remain any subdivision or subdivisions of locations aforesaid to which no claim has been made or the claims to which shall not have been proved so as to enable the said land board to recommend the issue of the title deed or title deeds thereof to the claimant or claimants respectively or to any other person, it shall be lawful for the Governor of the colony to cause to be published in the Government Gazette and in one or more of the newspapers which shall be published at Graham's Town a notice describing the said subdivision or subdivisions, and declaring that unless a notice stating cause to the contrary be lodged in the office of the secretary to government in Cape Town within three months after such notice shall be last published the said subdivision or subdivisions will be sold by public auction for account of whom it may concern.

10. And be it enacted that if no such notice as aforesaid be lodged as aforesaid at or before the expiration of the said

three months then it shall be lawful for the said Governor at any time thereafter to cause the said subdivision or subdivisions to be sold in freehold by public auction; and in case of any such sale the proceeds after deduction of the expenses of sale shall be disposed of in manner following, that is to say: first, a sum equal to fifteen years' purchase of the annual quitrent fixed for settlers' grants and of such stamps as would have been required in respect of such annual quitrent for the said period shall be paid into the colonial treasury to account of the general revenue; secondly, the amount of loan from the Storm Fund if any with the interest thereon if any shall be paid into the said treasury to account of the said fund; and lastly, the remainder of the said proceeds if any shall be paid into the Guardian Fund in the name of the proprietor at the date of the said sale of the location surveyed for or other person justly entitled thereto or to any portion thereof, there to be subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the colony.

Application of  
proceeds of  
sale.

11. And be it enacted that in case such a notice be lodged as the second notice in the ninth section mentioned the said notice shall be referred to the land board, and if the said board shall be enabled thereby to recommend the issue of title deed to the party who shall have lodged such notice or to any other person the name of the person or persons so recommended by the said board and the description of the subdivision or subdivisions referred to shall be published by proclamation as in the second section of this ordinance provided; but if it shall appear to the said board that the said notice does not state any sufficient cause against the said sale and the party lodging it does not furnish sufficient proof to enable the said board to recommend the issue of title deed to such party or any other person then it shall be lawful for the said Governor to cause a notice to be inserted in the Government Gazette and in some one or more of such newspapers as shall be published at Graham's Town declaring that unless restrained by an interdict of some competent court or some judge having lawful authority to be lodged at the office of the secretary to government in Cape Town within three months from the publication of such notice the subdivision or subdivisions mentioned in such notice will

Proceedings in  
case of notice  
under section  
9.

Sale on rejection of claim.

be sold by public auction; and provided no such interdict be lodged as aforesaid then it shall be lawful for the said Governor to direct the said subdivision or subdivisions to be sold as aforesaid by public auction and the proceeds thereof disposed of as provided for in the tenth section of this ordinance; but in case an interdict shall have been so lodged as aforesaid then every matter and thing in relation to the said subdivision or subdivisions or to the title deed thereof or to the rights of any parties to or over the same shall be governed and directed by any order, judgment, or decree in the premises of any competent court.

Cancellations and grants under this ordinance liable to be affected on the same grounds as would affect decrees of court of the same nature.

12. And be it enacted that the cancellation of every title deed effected under the provisions of this ordinance and every title deed issued under the said provisions shall respectively be liable to be annulled, set aside, limited, qualified, and affected on every ground and by reason of every cause, matter, or thing (and shall not be annulled, set aside, limited, qualified, or affected on any ground or by reason of any cause, matter, or thing) on or by reason of which such cancellation would by law have been liable to be annulled, set aside, limited, qualified, or affected in case such cancellation of any old deed had been respectively decreed by some competent court in some suit or proceeding in which all persons not under some legal disability at the time of such suit or proceeding and having any right or title to or interest in any of the land affected by such cancellation or title deed were duly before the said court.

Proceedings as law, or applications under Ordinance 97 competent in fit cases, notwithstanding this ordinance.

13. And be it enacted that nothing in this ordinance contained shall be held or construed so as to prevent any person or persons whomsoever from proceeding in any manner in which he or they may be advised in any competent court in regard to any lands belonging or appertaining to any of the locations or extensions of the said settlers of 1820 or from applying to the committee nominated and appointed under Ordinance No. 97 in order to obtain enregisterment in any case to which the said Ordinance No. 97 shall be considered by such person or persons to apply: Provided, always, that no such proceeding as aforesaid in any such court (except as certain proceedings are by this ordinance contemplated and provided as aforesaid) and no application to the said committee shall in any case be commenced by any person or persons in regard to any locations or subdivisions mentioned in any such proclamation as in the second section of this

ordinance provided; and all persons having commenced or being interested in any suit or proceeding at law or any application to the said committee in regard to any title-deed or to any subdivision or subdivisions mentioned in any such proclamation shall be bound within six weeks from the date of the publication of such proclamation to lodge at the office of the secretary to government in Cape Town notice of the pending of such suit or application, which notice shall be deemed and taken to be an objection duly lodged as in the fourth section of this ordinance provided.

14. And whereas it is expedient to limit the time during <sup>Limitation.</sup> which the provisions of this ordinance shall be operative be it enacted that this ordinance shall take effect from and after the promulgation hereof, and that no such proclamation as is in the second section of this ordinance mentioned shall be issued after the 31st day of December, 1846.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 28th day of August, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) J. MOORE CRAIG,  
Acting Clerk to the Legislative Council.

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No. 16.—Sd. P. Maitland.]

Ordinance for fixing the Precedence of the Lieutenant-Governor of the Eastern Districts of the Colony.

WHEREAS it is expedient to fix by law the precedence of the lieutenant-governor of the eastern districts of this colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this ordinance the lieutenant-governor or officer administering for the time being the office of lieutenant-governor of the eastern districts of this colony shall within the limits of the

said districts have, hold, and enjoy the same precedence over all persons whomsoever as would by law belong to a lieutenant-governor in the actual administration of the government of the colony during the absence of the governor thereof from the colony.

GOD SAVE THE QUEEN!

Given at the Cape Good Hope, this 17th day of September, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) H. LYNAR,  
Acting Clerk to the Legislative Council.

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No. 17.—Sd. P. Maitland.]

[18th Dec., 1844.

Ordinance for removing certain doubts in regard to certain Ordinances heretofore promulgated in this Colony.

[Disallowed by the Queen.]

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No. 18.—Sd. P. Maitland.]

Ordinance for regulating the Payment of Transfer Duty in this Colony.\*

Preamble.

WHEREAS the proclamation of the then Governor the Right Honourable Lord Charles Henry Somerset, bearing date the 2nd day of January, 1818, has in some respects become inapplicable to the circumstances of the colony, and it is therefore expedient to repeal the same in order to make due provision for the regulation of the payment of duty upon the sale and transfer of immovable property within this colony: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that from and after the first day of January,

\* Amended by Act No. 15, 1855,—which wholly repeals the Schedule I annexed to this ordinance.—Further amended by Act No. 6, 1857 and Act No. 7, 1858.



1845, the said proclamation of the 2nd day of January, 1818, Repeal of former laws. except so far as the same repeals any former laws or proclamations and all other laws and customs heretofore in force in this colony touching and concerning the payment of such duty as aforesaid and the persons by whom and the dealings and transactions on or in respect of which such duty should be payable shall be repealed, and the same are hereby repealed accordingly.

2. And be it enacted that for and in respect of every sale Duty payable on sales. whether private or public of any freehold property or property held of government upon quitrent or other leasehold tenure (except as in the first schedule hereunto annexed is excepted) there shall be chargeable upon and payable by the purchaser a duty of four *per centum* upon the amount of the price of purchase money paid or to be paid for the said property.\*

3. And be it enacted that an equal duty to that aforesaid, Duty payable on change of proprietors by exchange, donation, legacy, &c. to wit, a duty of four *per centum* shall (except as in the first schedule hereunto annexed is excepted) be payable upon the value of any such property as aforesaid by every person becoming entitled to the same in every case in which it shall change proprietors by way of exchange, donation, legacy, testamentary or other inheritance, or generally in any manner whatsoever otherwise than through the medium or by means of purchase and sale.

4. And be it enacted that when and as often as any such Transactions constituting change of proprietors. property as aforesaid standing or remaining registered in the deeds registry office of this colony in the name of any one person whether alive or dead shall be removed from the name of that person and placed or registered in the name of any other person having legal right and title to the same, such removal shall be deemed and taken for the purposes of the last preceding section of this ordinance to be a changing of proprietors in regard to such property.

5. And be it enacted that whenever any such property as Presumption as to shares of joint owners. aforesaid shall be registered in the name of more persons than one as joint owners all the said persons shall be deemed and taken for the purpose of payment of duty upon or in respect of any sale or alienation by any of them to any other or others of them to have equal shares and interests in the said property, unless the particular share or interest of each shall

\* Reduced to 2 per cent. by Act No. 7, 1858.

be declared and set forth by and upon the title deed or other instrument recorded in the deeds registry office.

Duty on sale of  
loan-places.

6. And be it enacted that upon and in respect of every sale whether private or public of the opstal of any loan-place a duty of two and one half *per centum* shall be chargeable upon and payable by the purchaser upon the amount of the price or purchase money of the same.\*

Payment of  
duty to civil  
commissioner.

7. And be it enacted that except in regard to property situated in the Cape division the duties payable as aforesaid under and by virtue of this ordinance shall be payable to the civil commissioner of the division in which the property changing proprietors shall be situate, who shall grant a receipt for the same.

Oath of sale  
and of pur-  
chase.

8. And be it enacted that no such civil commissioner as aforesaid shall receive the amount of any such duty as aforesaid payable upon or in respect of any sale and purchase of any such property as aforesaid until the seller shall have taken and subscribed the form of oath set forth in the second and until the purchaser shall have taken and subscribed the form of oath set forth in the third schedule to this ordinance annexed, which oaths every such civil commissioner is hereby authorized and required to administer: Provided, however, that when any such seller or purchaser shall find it more convenient the necessary oath may be taken and subscribed before any justice of the peace (which oath every such justice of the peace is hereby authorized and required to administer), and such lastmentioned oath being produced and delivered to the civil commissioner as aforesaid shall be deemed and taken to be of the same force and effect as if it had been taken and subscribed before such civil commissioner himself.†

Payment of  
duty to trea-  
surer-general  
in Cape Town.

9. And be it enacted that all such duty as aforesaid payable upon or in respect of property changing proprietors situated in the Cape division (which division shall for the purposes of this ordinance comprehend Cape Town and the district thereof) shall be payable to the treasurer-general of the colony, who shall grant a receipt for the same: Provided, always, that the said treasurer-general shall in no case receive the amount of any such duty until he shall have received a certificate under the hand of the registrar of deeds specifying the amount of duty to be paid and requesting the said treasurer-general to receive the same; and provided,

\* *Vide* note to § 2.

† *Vide* Ordinance No. 6, 1845.

also, that the said registrar of deeds shall in no case grant any such certificate until the respective oaths directed by this ordinance (which oaths he is hereby authorized and required to administer) shall have been duly taken and subscribed before himself, or when taken before any justice of the peace shall have been produced and delivered to the said registrar of deeds.

10. And be it enacted that when and so often as it shall appear to the civil commissioner as aforesaid or to the registrar of deeds that any agent or other person acting for or on behalf of any such seller or purchaser of any such property as aforesaid has himself in his said capacity made and entered into the contract of sale or purchase, then it shall be lawful for such civil commissioner or registrar of deeds to demand and receive the oath of such agent or other person as aforesaid either in lieu of or in addition to that of his principal according as such civil commissioner or registrar of deeds shall under the circumstances of the case deem fit; and the oath to be taken by every such agent or other person as aforesaid shall be in the form set forth in the fourth schedule to this ordinance annexed and may be administered by the same persons by whom the other oaths aforesaid may as aforesaid be administered. Oath by agent.

11. And be it enacted that if in any case it shall be made to appear that the seller or the purchaser of any such property as aforesaid has died or departed from the colony without having taken and subscribed the necessary oath as aforesaid, it shall and may be lawful for the civil commissioner or the registrar of deeds as the case may be either to dispense with such oath altogether or to receive in lieu thereof the oath or oaths of such other person or persons as may under the circumstances of the case be in a condition to testify to the particular matters to be set forth in such oath. Exemption from taking oath.

12. And be it enacted that if any person having taken and subscribed before the registrar of deeds or any civil commissioner or any justice of the peace any of the oaths aforesaid shall knowingly or wilfully have made any false statement therein such person shall be deemed to be guilty of the crime of perjury, and upon conviction thereof shall suffer any punishment by law provided for that crime. Wilful false statement punishable as perjury.

13. And be it enacted that the duty chargeable upon every sale or exchange of any property as aforesaid shall be payable within the space or term of six months from the day of the Penalties on non-payment of duty after six months from sale.

date of such sale or exchange, from and after the expiration of which space or term of six months the persons purchasing or contracting to receive in exchange any such property as aforesaid shall be chargeable with certain further and additional duties proportioned to the length of time during which the payment of the original duty of four *per centum* shall have been delayed beyond the space aforesaid of six months, and which further and additional duties shall be chargeable as follows, that is to say, for and on account of

A delay not exceeding 10 days, 2s. per cent. for every day.

„ „ above 10 days and not exceeding 1 month, 2 per cent.

„ „ above 1 month and not exceeding 2 months, 3 per cent.

„ „ above 2 months and not exceeding 3 months, 4 per cent.

„ „ above 3 months and not exceeding 4 months, 5 per cent.

„ „ above 4 months and not exceeding 5 months, 6 per cent.

„ „ above 5 months and not exceeding 6 months, 8 per cent.

Penalty on non-payment of duty after twelve months from sale.

14. And be it enacted that in any case in which the duties in the last preceding section mentioned shall not be paid within the space or term of twelve months from the day of the date of the sale or exchange, upon or in respect of which such duties shall have accrued due then the amount of such duties together with a further sum equal to interest thereupon at the rate of ten per cent. per annum, computed from the day at which such period of twelve months shall have expired, shall thenceforth become chargeable upon or against the party in default.

Valuation in case of exchange, &c.

15. And be it enacted that for the purposes of ascertaining the value of all such property as aforesaid changing proprietors otherwise than through the medium or by means of sale and purchase and chargeable with duty under the provisions of this ordinance it shall be the duty of the civil commissioner of the division in which the property shall be situated to appoint some competent and disinterested person or persons to ascertain upon oath the just and fair value of such property; and the reasonable expenses of such valuation shall be payable by the person chargeable with the payment of the duty; and the amount at which such valuator or valutors shall value the said property shall be the amount upon which duty shall be chargeable: Provided, however, that nothing herein contained shall be held or taken to prevent any person who shall conceive himself aggrieved from bringing such valuation in review before any court having jurisdiction.\*

\* *Vide* as to §§ 15 and 16,—§ 10 of Act No. 7, 1858.

16. And be it enacted that when in any case of sale and purchase of any such property as aforesaid (not being a sale or purchase by public auction made *bonâ fide* and without collusion) it shall appear to the civil commissioner who is to receive the duty that the price or purchase money of the same is considerably less than its just and fair value, it shall be competent for the said civil commissioner to cause a valuation of the said property to be made in manner and form as in the last preceding section mentioned; and in case the value ascertained as aforesaid shall exceed the amount of the said price or purchase money by one third of the amount of such price or purchase money then the amount of such valuation shall for the purposes of this ordinance be deemed and taken to be the price or purchase money of such property; and duty thereupon together with the reasonable expenses of such valuation shall be paid by the purchaser; but in case such value shall not exceed the said price or purchase money to the extent of one third thereof, then duty shall be received upon such price or purchase money, and the expense of the valuation shall be borne by government: Valuation in certain cases of sale. Provided, however, Review of valuation. that nothing herein contained shall be held or taken to prevent any purchaser who shall conceive himself aggrieved from bringing such valuation in review before any court having jurisdiction.

17. And be it enacted that whenever any person requiring to have any transfer or change of name effected in the deeds registry office of this colony shall claim to be exempted from the payment of duty under and by virtue of any of the exemptions mentioned and contained in the first schedule to this ordinance annexed it shall be the duty of the registrar of deeds to require due proof of all facts and circumstances by reason or on account of which such exemption is demanded, and he is hereby empowered to administer when it shall seem to him necessary an oath to such person or persons as shall come before him to give evidence or make any statement touching the claim to any such exemption, and he may also require the production of any deeds or instruments connected with the case and tending to show whether or not such exemption ought by law to be allowed. Proceedings on claim of exemption.

18. And be it enacted that when and as often as any question shall arise between the registrar of deeds and any person claiming to be entitled to any such exemption as aforesaid regarding the right to such exemption or the extent Decision of questions in regard to exemptions by a judge in chambers.

of that right or generally any matter concerning the amount upon which any such person should justly and legally be chargeable with duty it shall and may be lawful for the chief justice of the colony or any other of the judges of the supreme court sitting in chamber to hear the said registrar of deeds and the said person (or any person or persons representing each respectively) as to the matter in question, and to examine the proofs if any which shall have been offered in support of the claim to exemption, and to call for such further proof as may be necessary, and in a summary manner to make if he shall so think fit such order in the premises as shall to justice appertain, which order shall be binding and conclusive: Provided, always, that every such judge as aforesaid may direct any such question as aforesaid to be brought by way of motion before the supreme court in order that the same may be heard and determined by the said court.

Duty on property burdened with "fidei commissum" calculated on the value of the interest in such property.

19. And be it enacted that all persons having a right to the limited enjoyment of property burthened with the entail *fidei commissum* shall except as in the first schedule hereto is excepted be chargeable and liable to pay the duty applicable to the species of property in question upon the value of their estates or interests in such property, to be calculated with reference to the value of the property and the duration or extent of their interest therein, and such duty shall be recoverable whether such persons shall or shall not seek to have their said estates or interests registered in their names in the deeds registry office.

Recovery of duties.

20. And be it enacted that all duties chargeable under and by virtue of this ordinance shall be recoverable by the proper officer to whom under and by virtue of this ordinance the particular duty in question shall be payable by action or suit in any competent court, and that no property liable to duty shall be transferred in the office of the registrar of deeds until the receipt of the proper officer for the payment of the duty shall have been produced to and deposited with the said registrar.

Validity of previous payment.

21. And be it enacted that all moneys heretofore paid and received as for or by way of transfer-duty payable or supposed to be payable in this colony shall be deemed and taken to have been duly and lawfully received and paid.

Recovery of overdue penalties and duties.

22. And be it enacted that all transfer duties and penalties heretofore incurred and still unpaid shall remain and continue recoverable in the same manner as if this ordinance had

never passed, but the same may be sued for in like manner as if such duties had been incurred under the provisions of this ordinance.

23. And be it enacted that if in any case of sale and purchase heretofore perfected the oaths by the said proclamation of the 2nd of January, 1818, prescribed or either of them have already been taken and subscribed such oaths or oath shall be deemed and taken to be of the same force and effect with the oaths or oath which should in the like case be taken and subscribed under this ordinance, and no other oath shall be necessary; but in all cases of sale and purchase in which no oath shall yet have been taken or administered the oaths to be taken and subscribed shall be those directed by this ordinance, and none other.

No oath under this ordinance necessary where former oath has been taken.

24. And be it enacted that in the interpretation of this ordinance the terms treasurer-general, civil commissioner and registrar of deeds shall respectively mean the officers for the time being acting as such, and that the term government shall mean the local executive government of this colony, and that the singular number shall include several persons as well as one person, and that the masculine gender shall include females as well as males.

Interpretation clause.

25. And be it enacted that this ordinance shall take effect and have operation from and after the first day of January in the year of our Lord 1845.

Time of taking effect.

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SCHEDULE NO. 1.

(*Vide* Schedule to Act No. 15, 1855.)

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SCHEDULE NO. 2.\*

*Form of Oath for Seller.*

I, A.B., do solemnly in the presence of Almighty God profess, testify, and declare that the sum of £ — is the full and entire purchase money for which I have sold (here describe the property) to C. D., and I swear that I sold the same to the said C. D. on the — day of — 18— and not before, and that I am not to receive any other valuable consideration for or

\* *Vide* Ordinance No. 6, 1845, substituting declarations in the place of these and other oaths.

in respect of the alienation of the said property; and I do further make oath that the said C. D. is the only person who has ever purchased the said property from me and that I never sold the same to any other person; and all this I swear without any evasion or mental reservation, in the plain and ordinary meaning of the words, to be the truth, the whole truth, and nothing but the truth.—So help me God!

(Signed) A. B.

Sworn, &c.

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#### SCHEDULE NO. 3.

##### *Form of Oath for Purchaser.*

I, C. D., do solemnly in the presence of Almighty God profess, testify, and declare that the sum of £ ——— is the full and entire purchase money given or to be given by me to A. B. for (here describe the property) bought by me from him, and I swear that I bought the same from the said A. B. on the ——— day of ——— 18— and not before, and that I have not, nor has any person to my knowledge on my account, given, nor is there by me or on my behalf to be given any other valuable consideration of any kind whatever for or in respect of the alienation to me of the said property; and all this I swear without any evasion or mental reservation, in the plain and ordinary meaning of the words, to be the truth, the whole truth, and nothing but the truth.—So help me God!

(Signed) C. D.

Sworn, &c.

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#### SCHEDULE NO. 4.

##### *Form of Oath for an Agent.*

I, E. F., do solemnly in the presence of Almighty God profess, testify, and declare that I have acted as the agent of A. B. (or C. D.) in the making of the sale (or purchase) of (here describe the property) sold by the said A. B. to the said C. D., and that I know of my own knowledge the amount of the purchase money thereof; and I do further swear that the said sale (or purchase) was made on the ——— day of ——— 18— and not before, and that the sum of £ ——— to be paid by the said C. D. to the said A. B. is to the best of my knowledge and belief the full and entire purchase money to be given and received by the said persons respectively in regard to the alienation of the said property by the one of them to the other of them; and that to the best of my knowledge and belief no further or other valuable consideration has been given or is to be given by or on behalf of the said C. D. to or on behalf of the said A. B., for or in respect of the



said property; and all this I swear without any evasion or mental reservation, in the plain and ordinary meaning of the words, to be the truth, the whole truth, and nothing but the truth.—So help me God!

(Signed) E. F.

Sworn, &c.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 26th day of December, 1844.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 1.—Sd. P. Maitland.]

Ordinance for creating certain Visiting Magistrates' Courts  
at Convict Stations in this Colony.

WHEREAS by the Ordinance No. 7, 1844, entitled "An Preamble. Ordinance for the discipline and safe custody of the Convicts employed upon the Public Roads," provision has been made for the appointment of certain visiting magistrates to inspect the several gangs of convicts employed upon the public roads of this colony: And whereas it is expedient for the saving in certain cases of time, expense, and trouble that the said visiting magistrates should be empowered to try the respective crimes and offences specified in the fourth and seventh sections of the said ordinance: Be it therefore, Creation of courts. enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that courts shall be and the same are hereby declared to be erected and established with jurisdiction as hereinafter defined in regard to the crimes and offences in the said fourth and seventh sections of the said ordinance mentioned and set forth; and such courts may adjudge and condemn all offenders in that behalf to such and so much of the

Place and manner of holding court.

punishments in the said sentences respectively mentioned as they shall see cause to impose or inflict; and such courts shall be courts of record and shall be holden by and before the visiting magistrate or visiting magistrates (as the case may be) of every convict gang respectively, and shall be holden respectively at the spot or station where the gang of which the magistrate or magistrates holding any such court shall be the visiting magistrate or magistrates shall be stationed at the time of the holding of the same.

Jurisdiction limited to persons in custody at a convict station.

2. And be it enacted that the courts aforesaid shall have and exercise jurisdiction in regard to the crimes and offences aforesaid only in cases in which the convict or alleged convict to be tried shall be in the custody of the superintendent of some gang of convicts at the spot or station where the said gang shall be stationed, and the court of the visiting magistrate or visiting magistrates of every such lastmentioned gang shall have such jurisdiction as aforesaid whether such gang be or be not the gang from which the convict or alleged convict is charged with having originally deserted or escaped.

Authority of superintendent of convict gang to prosecute.

3. And be it enacted that the superintendent for the time being of the convict gang in the last preceding section mentioned shall in the absence of any person specially appointed by the attorney-general of the colony for the time being to appear and act for him in the said court have the same authority to prosecute in all such cases as aforesaid as the said attorney-general would by law if present have possessed.

Jurisdiction without appeal according to rules of courts of resident magistrate in criminal cases.

4. And be it enacted that the said courts shall have and exercise the jurisdiction aforesaid without appeal and that the proceedings shall be carried on therein in such manner and form as shall for the time being be lawfully practised by the courts of the resident magistrates of this colony in regard to the hearing and determination of criminal cases, and that the judgment of the court of any such visiting magistrate or visiting magistrates as aforesaid in any such cases as aforesaid shall have and entail the same consequences precisely as if the same had been pronounced by the court of the resident magistrate held at the same spot or station under or in pursuance of the provisions of the said Ordinance No. 7, 1844.

Jurisdiction of court of resident magistrate unaffected.

5. And be it enacted and declared that nothing herein contained shall be deemed or taken to affect or impair any

jurisdiction by the said lastmentioned ordinance or otherwise now belonging to any of the resident magistrates' courts of this colony.

6. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof. Time of taking effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 6th day of January, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 2.—Sd. P. Maitland.]

Ordinance for fixing the mode of making out Jury Lists for Cape Town and the District thereof.

WHEREAS under and by virtue of the Ordinance No. 84, of 1831, entitled "An Ordinance for altering and amending the Law relative to the qualification of Persons liable to serve on Grand and Petty Juries, and to the mode of making out and returning Lists of the same," certain duties have been imposed upon the collector of taxes in Cape Town in regard to the preparation and making out of certain jury lists : And whereas in consequence of the abolition of the office of collector of taxes it becomes necessary to make other provision for the performance of the said duties : Be it therefore enacted by the Governor of the colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the said Ordinance No. 84, of 1831, as imposes upon or requires from the collector of taxes in Cape Town the performance of any manner of duty in regard of the making out and preparation of any jury list or lists whatever, and so much of the second section of the Ordinance No. 13, 1844, entitled "An Ordinance for

Preamble.  
Repeal of part of Ordinance 84, and of Ordinance No. 13, 1844.

transferring to certain other Officers the Duties of the Office of Collector of Taxes," as is repugnant to or inconsistent with the provisions of this ordinance shall be repealed and the same is hereby repealed accordingly.

Substitution of judge and superintendent of police for collector of taxes.

2. And be it enacted that the judge and superintendent of police in Cape Town shall be charged with and he is hereby authorized and required to perform all and singular the several duties in and by the said Ordinance No. 84, of 1831, imposed upon or required from the said collector of taxes precisely as if the term judge and superintendent of police were in the said ordinance substituted for the term collector of taxes whenever and as often as the lastmentioned term occurs in the said ordinance.

Time of taking effect.

3. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 6th day of January, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council.

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 3.—Sd. P. Maitland.]

Ordinance for repealing certain Ordinances regarding certain Tolls, in order to make other provision respecting the said Tolls.

Preamble.

WHEREAS it is expedient that the Central Board of Commissioners of Public Roads should be invested with the power of letting and regulating certain tolls now let and regulated under certain ordinances formerly made and promulgated in this colony, and that for such purpose the said ordinances 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 thereof, that the Ordinance No. 3 (local), bearing date the 29th day of December, 1826, and entitled "An Ordinance for the better regulation of the Turnpikes on the Road leading from Cape Town to Simon's Town, through the upper and lower Gates of the Military Lines, and for fixing the Tolls to be levied thereat," and the Ordinance No. 74, bearing date 24th day of May, 1830, and entitled "An Ordinance for creating a Toll on the new Road over the Hottentot's Holland Mountain," and the Ordinance No. 91, bearing date the 9th day of June, 1832, and entitled "An Ordinance for imposing a new Rate of Toll Duties at the Houw Hoek Pass," and the Ordinance No. 7 (local), bearing date the 18th day of December, 1833, and entitled "An Ordinance for erecting a Toll on the new Road through Howison's Poort," and the Ordinance No. 8 (local), bearing date the 7th day of January, 1834, and entitled "An Ordinance for regulating the Toll at Port Elizabeth," shall respectively (except so far as the same or any of them repeal any former laws or ordinances) be repealed, and the same are hereby repealed accordingly.

2. And be it enacted that notwithstanding the repeal aforesaid every contract or agreement which shall have been before the time of the commencement of this ordinance made or entered into under or by virtue of any of the ordinances hereinbefore mentioned and repealed for or in respect of the farming, letting, or hiring of any of the tolls aforesaid, and which contract or agreement shall at the time of the commencement of this ordinance still subsist, shall remain and continue in full force and effect until the same shall come to expire by effluxion of time or be otherwise lawfully determined, and that the rights and duties of the person farming, leasing, or hiring any of the said tolls shall be and remain wholly unaffected by the repeal aforesaid precisely as if the ordinance under or by virtue of which such contract or agreement was made or entered into had never been repealed.

3. And be it enacted and declared that from and after the expiration or determination of every such contract or agreement as aforesaid it shall and may be lawful for the Central Board of Commissioners of Public Roads nominated and appointed under and by virtue of the provisions of the Ordinance No. 8, 1843, entitled "An Ordinance for improving

Repeal of former laws.

Subsisting contracts unaffected by repeal.

Tolls placed under administration of central board of commissioners.

the Public Roads of this Colony," to assume and take upon them the management and regulation of all or any tolls to be thereafter legally taken and levied at the several and respective places in the respective ordinances hereby repealed mentioned and set forth, or at such and so many of the said places as shall be deemed expedient; and also that from and after such expiration or determination of any such contract or agreement as aforesaid every provision in the said Ordinance No. 8, 1843 contained, regarding the tolls to be erected, established, and appointed by the said board shall extend and apply to such one or more of any of the said tolls as may be continued and kept up by the said board, precisely as if no tolls had ever been before that time imposed or taken at any of the places aforesaid and as if the said board when as aforesaid assuming and taking upon them the management and regulation of any of the tolls aforesaid was then for the first time by virtue of the powers contained in and conferred by the said Ordinance No. 8, 1843, duly erecting, establishing, and appointing a toll-bar or gate at the spot or place where the particular toll in question had formerly been taken.\*

Sections of Ordinance No. 8, 1843, applicable to toll-bars already erected.

4. And be it enacted that for all the purposes of the fifty-fifth, fifty-sixth, and fifty-seventh sections of the said Ordinance No. 8, 1843, every toll-bar, toll-gate, toll-house, building, or work of any kind whatever already existing at any such spot or place as aforesaid shall from and after the time of the commencement of this ordinance be deemed and taken to have been erected and made under the authority of the said ordinance.\*

Time of taking effect.

5. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 15th day of January, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

\* *Vide* Act No. 9, 1858, § 14, &c.

No. 4.—Sd. P. Maitland.]

Ordinance for declaring certain Guano to be the Property  
of Her Majesty the Queen.

WHEREAS considerable quantities of the substance commonly Preamble.  
called “ guano ” have been found in and upon certain islands  
or rocks in the sea within the limits of this colony and its  
dependencies : And whereas it is possible that further  
quantities of the said substance may exist and be hereafter  
discovered at other places within the said limits : And  
whereas doubts exist whether the said substance being  
merely or mainly the droppings of unreclaimed birds of a  
base nature can in law, though a merchantable article, be  
deemed to be property or possessed of legal value : And  
whereas it is expedient that such doubts should be removed  
and that all of the said substance lying and being in and  
upon any place or territory within the limits aforesaid and  
not granted or belonging to any private individual should be  
declared to be the property of Her Majesty the Queen, and  
that provision should be made for preventing or punishing  
the unauthorized removal of the same : Be it therefore enacted  
and declared by the Governor of the Cape of Good Hope,  
with the advice and consent of the Legislative Council there-  
of, that all of the said substance commonly called guano which  
may now or at any time hereafter be found lying and being  
in or upon any island, rock, or other place not being the  
property of any private person or persons and within the  
limits of this colony and its dependencies shall be deemed  
and taken to be property and to belong to and be in the  
lawful possession of Her Majesty the Queen, her heirs and  
successors.

Guano within  
limits of the  
colony de-  
clared the  
property of the  
Queen.

2. And be it enacted that if any person or persons shall Penalties on  
removal of  
such guano.  
remove or cause to be removed from any such island, rock,  
or place as aforesaid without the leave of the Governor of this  
colony for the time being first had and obtained, or if any  
person or persons shall receive and have any of the said pro-  
perty, knowing the same to have been so removed without  
such leave as aforesaid, every such person shall for every  
such offence, besides paying and making good the full value of  
the property illegally removed, incur and be liable to a penalty  
not exceeding one hundred pounds sterling, whereof one

half shall be paid to any person who shall have given information touching the commission of the offence and the other half shall be paid to the colonial treasury; and in default of immediate payment of such penalty, the person condemned to pay the same may be imprisoned with or without hard labour until he shall pay the same, but so, however, that he shall not be detained for any period exceeding three months; but it shall be competent for the Governor in any case in which it shall appear to him to be just and proper so to do to remit the whole or any part of any such penalty as aforesaid.

Removals constituting separate offences.

3. And be enacted that every trip or voyage in which any vessel, boat, or raft shall receive and remove from any such island, rock, or place as aforesaid any of the said property in order that the same may be put on board any other vessel or delivered or discharged in any other manner whatsoever shall be deemed to be a separate offence on the part of every person manning, navigating, or conducting such vessel, boat, or raft; and in case any such property as aforesaid shall happen to be removable and shall be removed otherwise than by water carriage then every separate instance or occasion upon which any of the said property shall have been in any manner carried away shall constitute a separate offence on the part of every person carrying the same away, and in regard to persons receiving the said property knowing the same to have been removed without leave every act of receiving any quantity of the same at any one time shall also constitute a separate offence.

Prosecution of offences.

4. And be it enacted that all offences committed in contravention of this ordinance may lawfully be prosecuted in the court of any resident magistrate in this colony.

Effect of leases.

5. And be it enacted that nothing in this ordinance contained shall be held or construed so as to impair or affect the right if any which any person or persons may now by law possess or claim in regard to the substance aforesaid and the removal of the same under and by virtue of any lease or contract with the local government of this colony relative to any island or other place on which such substance shall be found; but every such lease or contract shall be construed and the rights of the respective parties thereto shall be ascertained and determined precisely as if this ordinance never had been passed.



6. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof. Time of taking effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 30th day of January, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 5.—Sd. P. Maitland.]

Ordinance for authorizing the appointment of a Vestry and Churchwardens for St. Paul's Church, Rondebosch.

WHEREAS it is expedient that the inhabitants of Rondebosch Preamble. in the Cape district and the parochial limits thereof, and holding communion with the united church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with St. Paul's church at Rondebosch, and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said united church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of trustees as at present instituted should cease and determine:

1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that on and after the promulgation of this ordinance, and annually afterwards on the same day a general meeting of the inhabitant householders Annual election of vestry.

of Rondebosch aforesaid and of the parochial limits thereof holding communion with the united church of England and Ireland as there by law established shall be holden at Rondebosch, fourteen days' notice whereof shall be given by the officiating minister of the said church for the time being by promulgating during divine service and by notice posted on the doors of the church or by advertisement in the Government Gazette, for the purpose of electing a vestry, and it shall and may be lawful for the inhabitant householders as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons not exceeding eight in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

**Auditors of accounts.**

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid to be auditors of the accounts of the said vestry.

**Qualification of members of vestry.**

3. And be it further enacted that every inhabitant householder being a member of and holding communion with the church aforesaid and within the parochial limits thereof shall be eligible to be a member of the said vestry: Provided, always, that no person shall be entitled to vote at such election or be eligible to be chosen a member of the vestry or an auditor of the accounts thereof so long as (legal demand having previously been made) any just claim had upon him by the said vestry as such shall remain unsatisfied.

**Preparation and inspection of lists of persons eligible.**

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided then by the officiating minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

**Mode of election.**

5. And be it further enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitant householders aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestry-men and auditors.

6. And be it further enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman, and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Appointment  
of chairman.

7. And be it further enacted that four members of the said vestry or three members besides the chairman shall form a quorum and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this ordinance.

Quorum of  
vestry.

8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this ordinance and also to take such order for the management of the said church as shall to them seem expedient, provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this ordinance or to the customs and usages of the united church of England and Ireland as there by law established.

Power to make  
rules, orders,  
and by-laws.

9. And be it enacted that the trustees of the church aforesaid shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control, and the office and duties of the said trustees shall thereupon cease and determine.

Delivery of  
deeds, papers,  
&c., by trustees  
to vestry.

10. And be it enacted that the said vestry so from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise all the same powers and rights and duties respecting the said church and the care and government thereof, and the administration of the grounds, funds, rents, and revenues thereof and all other matters and things relating to the same as are now possessed and exercised by the trustees together with such other laws and rights and duties as are hereinafter specified.

Transfer of  
powers of trust-  
ees to vestry.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel

Power to com-  
pel payments,  
enter into con-  
tracts &c.

payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this ordinance, and in their own names to make and enter into, perform, and execute or compel performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Power to sue  
and defend  
suits.

12. And be it further enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent court of this colony as they shall deem necessary in performance of the trust reposed in them against any person in the name of the vestry of St. Paul's church at Rondebosch, without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal or the going out of office of any individual member thereof.

Actions against  
vestry not com-  
petent against  
individual  
members.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust or shall arise or accrue to any person whatsoever against the said vestry shall be brought by such person in manner and in name aforesaid and not against any individual member of the said vestry.

Accounts, with  
report of audi-  
tors at annual  
meeting.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter all moneys received and paid by them under and by virtue of the provisions of this ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid and published if requisite for general information.

Appointment  
and duties of  
churchwar-  
dens.

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon as conveniently may be choose out of their own number two persons to be churchwardens who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof and for preserving to all persons their rights in the pews and sittings thereof, and providing the said church (by order and at the charges of the said vestry) with necessary

and customary furniture for the performance of divine service and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the united church of England and Ireland, so far as the same may be applicable to this colony.

16. And be it further enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church or congregation; and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same; and the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and account of the vestry.

Account and appropriation of collections.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

Continuance in office of churchwardens.

18. And be it further enacted that in case any member of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying or desiring to resign or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid the same notice shall be given thereof

Proceedings in case of vacancies.

and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Letting of pews  
and sittings.

19. And be it enacted that all the pews and sittings in the said church with the exception of a reasonable proportion of free sittings reserved for the poor shall and may be let by the vestry by the year or for any shorter period to any person desiring to take the same, at a rent to be affixed to them respectively by the vestry and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hinderance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the time whereon and in the manner in which the same shall be made payable: Provided, always, that nothing in this section shall be construed to interfere with the claims of any person at present holding sittings in the church.

Proceedings in  
case of arrear  
in payment of  
pew-rents.

20. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew, forthwith to quit and give up possession thereof, and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive the said vestry from recovering the amount of such rent in arrear by action in any competent court.

Burials.

21. And be it further enacted that no burial shall take place within or under the said church; but the burials of all persons according to the rites and ceremonies of the church of England shall take place in the burial-ground consecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose; and the vestry shall have the right to demand and receive reasonable fees for the permission to bury in the burial-ground of the said church.

Monuments  
and vaults in  
burial ground.

22. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the burial-ground belonging thereto or vaults to be dug and made in the said

burial-ground upon payment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof.

23. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vault in the said burial-ground by and with such permission as aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons or his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglect to repair the same it shall and may be lawful after a general notice of such intention to remove the same. Ownership in vaults and monuments.

24. And be it enacted that this ordinance shall be deemed and taken to be a public ordinance and shall be judicially taken notice of by all judges, magistrates, and others without being specially pleaded, and shall commence and come into operation as law from and after the promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 27th day of February, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 6.—Sd. P. Maitland.]

Ordinance for substituting Declarations in the place of certain Oaths and for the suppression of voluntary and extra-judicial Oaths and Affidavits.

WHEREAS it has been found that to reserve the imposition of oaths as much as may be for judicial proceedings and such other weighty and important affairs as obviously require a Preamble.

recourse to the most solemn and effectual means of eliciting truth has a direct and salutary tendency to establish and preserve a proper reverence for the nature and obligation of an oath : And whereas all oaths imposed merely for the protection of the public revenue and matters of a like nature are at variance with the principle aforesaid, and by weakening amongst the people generally the force of the religious sanction fail in a great measure to secure the objects contemplated by their enactment : And whereas it is expedient that such oaths should be abolished and that declarations should be substituted in their room and stead : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of any of the ordinances hereinafter mentioned and of any former law or usage heretofore in force in this colony as is repugnant to or inconsistent with any of the provisions of this ordinance shall be and the same is hereby repealed.

Repeal of  
repugnant  
laws.

Substitution of  
declaration for  
oaths in cer-  
tain cases.

2. And be it enacted that in the room and stead of every affidavit or affirmation required by the Ordinance No. 60, entitled "An Ordinance for preventing the mischiefs arising from the printing and publishing Newspapers and Papers of a like nature by persons not known, and for regulating the printing and publication of such Papers in other respects, and also for restraining the abuses arising from the publication of blasphemous and seditious Libels," and that in the room and stead of the oath referred to and directed in the eighth section of the Ordinance No. 7, 1834, entitled "An Ordinance for regulating the Trade in Gunpowder within this Colony," and that in room and stead of the several respective oaths referred to and directed in the ninth section of the Ordinance No. 6, 1844, entitled "An Ordinance for regulating Sales by Auction," and that in room and stead of the several and respective oaths referred to and directed in the Ordinance No. 18, 1844, entitled "An Ordinance for regulating the payment of Transfer Duty in this Colony," and that in room and stead of the several respective oaths referred to and directed in the Ordinance No. 11, 1844, entitled "An Ordinance to enable the Cape of Good Hope Trust and Assurance Company to be appointed by that name as Trustees and Tutors and to sue and be sued in the name of the Secretary," and that in the room and stead of any oath which by any official regulation in any department of or under



the executive government of the colony might but for the passing of this ordinance be required to be taken by any person for the purpose of verifying any account, entry, or return or for any other purpose whatever, there shall respectively be made and subscribed a declaration in the form set forth in the schedule hereunto annexed, but to the same effect nevertheless as the oath, affidavit, or affirmation which would but for the passing of this ordinance have been in the same case taken or made; and every such declaration shall be made by and before the same persons respectively by and before whom the particular oath, affidavit, or affirmation in the room and stead of which such declaration shall be made would but for the passing of this ordinance have been made or taken.

3. And be it enacted that in any case when a declaration shall be substituted for an oath, affidavit, or affirmation by virtue or in pursuance of the provisions of this ordinance any person who shall wilfully and corruptly make and subscribe any such declaration knowing the same to be untrue in any material particular shall be deemed to be guilty of the crime of contravening the provisions of this ordinance, and shall upon conviction thereof suffer such punishment as shall be by law provided for the crime of perjury.

Punishment of perjury on false declaration.

4. And whereas voluntary and extra-judicial oaths have been occasionally administered by resident magistrates and justices of the peace in regard to matters wholly unconnected with any suit, inquiry, or proceeding at law and not in any wise pending or at issue before such magistrates or justices: And whereas the practice of administering such oaths is one productive of injurious consequences and which should be totally suppressed: Be it therefore enacted that it shall not be lawful for any magistrate or justice of the peace or other person authorized to administer an oath to administer or cause or allow to be administered any oath, affidavit, or solemn affirmation touching any matter or thing whereof such magistrate, justice, or other person hath not or doth not believe himself to have jurisdiction or cognizance under and by virtue of some law or ordinance in force at the time being.

Prohibition of extra-judicial oaths and affidavits.

5. And be it enacted that nothing in this ordinance contained shall extend or apply to any oath, affidavit, or solemn affirmation which now is or hereafter may be taken or made in the course of any proceeding in any court of justice or in the course of any proceeding under Ordinance

Exceptions from application of ordinance.

No. 97, 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 Registry," or in the course of any proceeding under Ordinance No. 6, 1843, entitled "An Ordinance for regulating the due collection, administration, and distribution of Insolvent Estates within this Colony."

Time of taking  
effect.

6. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

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SCHEDULE.

I, A. B., do solemnly and sincerely declare that (here set forth the effect of the oath, affidavit, or solemn affirmation for which the declaration shall be substituted); and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6, 1845, entitled "An Ordinance for substituting Declarations in the place of certain Oaths and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

Declared, &c.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 10th day of March, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

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No. 7.—Sd. P. Maitland.]

Ordinance for authorizing a Sum of Money to be raised in Shares for building a Church at Fort Beaufort.

Preamble.

WHEREAS several persons being desirous of erecting a church at Fort Beaufort for the celebration of divine service according to the rites of the united church of England and Ireland

as by law established and being ready and willing to raise and provide by way of loan for that purpose a certain sum of money as hereinafter mentioned at a public meeting of the said persons holden at Fort Beaufort on the 15th day of November, 1843, a committee of management was appointed for carrying their intention into effect: And whereas His Excellency the Governor has agreed to grant from the treasury of this colony as a donation towards the building and completing the said church to the persons who shall undertake and become bound for completing the same the sum of one hundred pounds: And whereas the Society for Promoting Christian Knowledge hath agreed to grant the sum of one hundred pounds and the Society for the Propagation of the Gospel in Foreign Parts hath agreed to grant the sum of one hundred pounds as donations toward the building of the said church: And whereas several other persons have agreed to subscribe certain sums of money by way of donation for furthering the building and completing the said church: And whereas at a public meeting of the persons interested in the said church holden pursuant to notice thereof on the 17th December, 1844, it was agreed and resolved by the said persons that in order to raise a sum of money amounting together with the said sum of money agreed to be granted by His Excellency the Governor from the colonial treasury as aforesaid and the said sums of money agreed to be granted by the Society for Promoting Christian Knowledge and by the Society for the Propagation of the Gospel in Foreign Parts and the said other donations to the sum of eight hundred pounds, being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of, that is to say one hundred shares at five pounds each: And whereas the following persons have agreed to take shares in the said loan as aforesaid, that is to say: Charles Holliday and John Vaughan, four shares each; Robert Bovey, John Blakeway, William Ayton, William Gilbert, and George Gilbert, three shares each; John Holliday and Bradshaw Daniel Bell, two shares each; William Parrot, Meent John Henry Borchers, George McKay, the Rev. Herbert Beaver, Philip Norton, William Andrews, William Nelson, Charles Blakeway, David Mills, Stephen Humphreys, the Rev. James Barrow, the Rev. John Heavyside, Charles Burton, Richard Ralph, Thomas Foden, John North Annan, George Broster, and Ezekiel Hams, one share each:

Authority to  
raise money on  
loan by shares.

1. And whereas the said persons have made application that an ordinance may be passed to sanction and confirm the plan adopted at the last-mentioned meeting and to provide for carrying the same into effect: Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this ordinance hereafter agree to take shares in the said loan to raise and provide in manner and for the purpose aforesaid such a sum of money as together with the said sum so to be granted from the colonial treasury and the said sums so to be granted by the societies for Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts and the said donations shall amount to the requisite sum for building and completing the said church, and it shall and may be lawful for such persons to become shareholders in the said loan and to take such shares therein (not exceeding by any one person the number of ten shares) as such persons have already agreed or shall hereafter agree to take in the said loan until the whole number of one hundred shares shall have been disposed of.

Sale and trans-  
fer of shares.

2. And be it enacted that no share shall be transferable by any holder thereof or any right or interest therein until all the calls thereon shall have been paid as hereinafter mentioned, but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: Provided, however, that no sale of any such share shall take place by any public auction, but shall be by private contract only, and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Interest on  
shares.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the first day to be fixed by the trustees after the said church shall be erected and completed and open for divine service therein, and not sooner.

Right of share-  
holders to vote.

4. And be it enacted that all shareholders in the said loan shall at all public meetings of the shareholders have the right of voting in the election of trustees and in all matters

relating to the erection of the said church and the management of the funds thereof until the said loan shall have been wholly repaid and discharged according to the number of their respective shares, that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares to two votes, the holder of four or five shares to three votes, the holder of six or seven shares to four votes, and the holder of eight, nine, or ten shares to five votes.

5. And be it enacted that on the completion of the said church a part of the whole number of sittings shall be appropriated to the use of the public as free sittings, and that the number of free sittings shall bear the same proportion to the whole number of sittings as the sum raised by donations shall bear to the whole sum raised by shares and donations together.

6. And be it enacted that on the completion of the said church and after the proper number of pews and sittings shall have been set apart and allotted for the use of the minister and the churchwardens and public aforesaid, all shareholders shall have a right to become each the renter of one pew in preference to any other persons who possess no shares, and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six according to the number of their shares, the holder of the greater number of shares to have the prior choice, and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided, however, that it shall and may be lawful for the trustees at their discretion upon the application of any shareholder whose family may require a greater number of seats in the said church than six to permit and allow such shareholder to choose two adjoining pews.

7. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number and description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof, and no second choice shall be afterwards made by any holder of the same share or any of them except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Free sittings.

Preference of shareholders in renting pews.

Subscription by shareholders to selection of pews.

Rights of  
shareholders in  
pews.

8. And be it enacted that upon any shareholder having duly made choice of a pew the said shareholder, his heirs and assigns shall and may for ever afterwards possess and occupy the same without the hinderance or disturbance of any person whatever, so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable and shall continue to hold the share or shares in respect of which the said pew was chosen or the same shall have been paid off by the trustees by virtue of any of the provisions of this ordinance.

General annual  
meeting.

9. And be it enacted that a general meeting of the shareholders shall be holden on the first Wednesday of May in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this colony twenty-one days at least before the same is to be holden, and it shall and may be lawful for the trustees or the auditors or either of the auditors to be elected as hereinafter mentioned at any time to call a general meeting of the shareholders upon giving the like notice thereof.

Election of  
first trustees  
and auditors.

10. And be it enacted that as soon as conveniently may be after the passing of this ordinance a general meeting of the shareholders shall be holden at Fort Beaufort, notice whereof shall be given by the said committee of management by advertisement in one of the public papers of this colony twenty-one days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors, and it shall and may be lawful for the said shareholders or the greater part assembled at such meeting to elect out of the said shareholders any number of persons not exceeding nine to be trustees and two other persons to be auditors of the accounts of the said trustees.

Continuance  
in office of  
trustees.

11. And be it enacted that the trustees so elected by the shareholders and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as herein-after mentioned shall continue in office until the first Wednesday of May next after the said church shall be erected and completed, and that upon the said first Wednesday of May and yearly afterwards on the same day three of the said trustees shall go out of office and three other trustees shall be elected in stead of them by and out of the shareholders in manner aforesaid until the whole of the first appointed and preceding trustees shall have been relieved ;

and the order of their so going out of office shall if necessary be determined by ballot amongst them.

12. And be it enacted that two persons not being trustees shall be elected by and out of the shareholders yearly on the first Wednesday of May to be auditors of the accounts of the said trustees.

Auditors of accounts.

13. And be it enacted that the said committee of management shall upon the election of trustees as aforesaid and upon their acceptance of the said office deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said church in their custody or power and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid or securities for the same in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.

Delivery of books, papers, &c., by committee of management to trustees.

14. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions and of all such sums of money as shall at any time hereafter be granted to them from the colonial treasury as aforesaid or from the societies for Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts or shall arise from payments made by the shareholders in respect of their said shares or otherwise, and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid or in aid of the funds of the said church, and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the burial-ground belonging thereto or for digging vaults in the said burial-ground or otherwise, upon trust in the first place and until the said church shall be erected and completed, to cause the said church to be erected and completed according to such plan and specification thereof as shall be approved of and adopted by them, and from and after the erection and completion of the said church upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say: in the first place, to pay thereout the cost of all necessary repairs and expenses in and about the said church, for repairing, keeping up, and maintaining

Powers and duties of trustees as to trust funds.

the same ; secondly, in payment of the interest together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares in an equal rate, when and as the funds at their disposal shall enable them so to do ; and lastly, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan at a rate of not less than five shillings sterling upon each share until the whole of the said loan shall be paid off and discharged.

Power of trustees to compel payments, make contracts &c.

15. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this ordinance, and in their own names to make and enter into, perform and execute, and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power of trustees to sue and defend suits, &c.

16. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent court in this colony as they shall deem necessary in performance of the trust reposed in them against any shareholder or other person whatsoever, and all such suits and actions shall and may be brought by them in the name of "The Trustees of Saint John's Church at Beaufort" (being the name given to it by His Excellency the Governor), as the case may require, without specifying the christian or surnames of the trustees ; and no action shall abate by reason of the death or removal or going out of office of any trustee.

Actions against trustees in execution of their trust not competent against individual trustees.

17. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, or which shall arise or accrue to any person whatsoever against the said shareholders jointly, shall be brought by such person against the said trustees in manner and in the name aforesaid and not against any individual trustee or trustees, shareholder or shareholders.



18. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as together with the donations and sums of money to be granted from the colonial treasury, and by the societies for Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts as aforesaid they may deem necessary for carrying on the building and completing the said church as aforesaid : Provided, however, that no such call shall at any one time exceed one-third part of the amount of the said shares and that the whole of such calls shall not exceed the amount of five pounds in respect of each share.

19. And be it enacted that the trustees shall cause all calls to be made by them to be advertised in one of the public newspapers of this colony together with the time and place appointed by them for payment thereof twenty-one days at least before the said time.

20. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees if they shall think fit to declare and pronounce the share or shares of such shareholder to be forfeited and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided, however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do instead of pronouncing and declaring his share or shares to be forfeited as aforesaid.

21. And be it enacted that the trustees shall keep an account wherein they shall enter all money received and paid by them under and by virtue of the provisions of this ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account together with any report of the auditors or either of them thereon shall be laid before the shareholders for their inspection at their general annual meetings.

Lodgment of moneys in bank.

22. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding ten pounds open and keep an account with any person or persons not being trustees who shall be appointed by the shareholders for that purpose at any general meeting or in any bank, and every other sum of money exceeding ten pounds so received by the said trustees shall be forthwith paid into the hands of the person or persons or bank so to be appointed by the shareholders for that purpose, to be placed to the credit of such account; and all cheques or orders for payment of any such money thus deposited shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees or by two of them for themselves and their co-trustees.

Penalty on improper retention of money.

23. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding ten pounds part of the church fund longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid to the person or persons or bank appointed as aforesaid or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money part of the church fund shall and may be removable by the said shareholders from his said office, and shall moreover forfeit and pay for the benefit of the church fund double the amount of the fund so retained and employed, and which shall and may be recovered by the other trustees by action in any competent court.

Final account.

24. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection, and no further call shall be afterwards made upon the shareholders in respect of their shares.

Death, resignation, or removal of trustee.

25. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one dying or desiring to resign or being removed as aforesaid, and the same notice shall be given of the time and place of the said meeting and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall

be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any time received by him.

26. And be it enacted that as soon as the said church shall be erected and completed the care and government of the said church shall be thenceforward and until the said loan shall have been wholly paid off in manner hereinbefore provided, together with the interest thereon as aforesaid, committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders without any new election in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent then one of the trustees elected by them; and all the members of the said vestry shall have an equal right of voting in matters belonging to it, except that in case of an equality of votes the president shall likewise have a casting vote.

Constitution of vestry.

27. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

Duty of vestry.

28. And be it enacted that there shall be two churchwardens chosen yearly on the first Wednesday of May by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof and for preserving to all persons their rights in the said pews and sittings.

Election of churchwardens.

29. And be it enacted that before any choice of pews by the shareholders shall take place there shall be set apart and allotted by the vestry a pew sufficient to hold six persons for the minister and another sufficient to hold four persons for the churchwardens; and there shall also be set apart in some convenient part of the said church the due proportion of free seats for the use of poor persons.

Minister and churchwardens' pews.

Free seats.

30. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall call together the shareholders of each class according to their number of shares for the purpose of exercising their right in the choice of pews, and the rents of all such pews as shall be chosen by shareholders shall be fixed by the vestry according to the number of sittings therein.

Choice and rent of pews.

**Vacant pews.**

31. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose the trustees shall give notice of all the pews and seats which are then vacant by affixing the same in writing upon the door of the said church and otherwise as they shall see fit ; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are then vacant or will become vacant at the commencement of the next year.

**Letting of pews.**

32. And be it enacted that all the pews and seats in the said church except the pews set apart for the minister and churchwardens and the said free seats and the pews chosen by shareholders shall and may be let by the trustees by the year or for any shorter period to any person desiring to take the same, at a rent to be affixed to the same respectively by the vestry and payable at such times and in such manner as shall be appointed by the trustees ; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hinderance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

**Proceedings on non-payment of pew-rent**

33. And be it enacted that it shall and may be lawful for the trustees whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew forthwith to quit and give up possession thereof, and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the purpose of this ordinance without any other form or proceeding whatever ; and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew : Provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent court.

**Burials.**

34. And be it enacted that no burial shall take place within or under the said church ; but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which hereafter may be consecrated and allotted to the said church for that purpose.

35. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monuments to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground upon the payment to the fund of the said church for such permission by the person or persons desiring to erect or place any monument in the said church or enclosed ground about the same or in the said burial-ground or to dig and make any vault in the said burial-ground of such a reasonable fee as shall be affixed by the said vestry for such permission according to the terms and extent thereof.

Monuments  
and vaults.

36. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or enclosed ground about the same or digging and making any vault in the said burial-ground by and with such permission aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever.

Property in do.

37. And be it enacted that on the first Wednesday in the month of May next after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Wednesday in May and yearly afterwards on the same day by and out of the resident inhabitants of Fort Beaufort and of the parochial limits thereof being members of and holding communion with the united church of England and Ireland as by law established a like number of persons, who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and two other persons to be auditors of the accounts of the said vestry; and the trustees last in office aforesaid shall upon the last-mentioned vestry entering upon their said office surrender and give up to the said lastmentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and to the administration of the funds thereof and all sums of money in their custody, possession, or control arising from and belonging to the church fund.

Election of  
new vestry.

Powers of new  
vestry

38. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church and the care and government thereof, and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry or either of them, constituted and elected by such shareholders as aforesaid under and by virtue of any of the provisions of this ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church.

Public ordi-  
nance.

39. And be it enacted that this ordinance shall be deemed and taken to be a public ordinance and shall be judicially taken notice of as such by all judges, magistrates, and others without being specially pleaded.

Time of taking  
effect.

40. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 25th day of March, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 8.—Sd. P. Maitland.]

[7th April, 1845.

Ordinance for removing an objection to the validity of a certain Jury List.

[Temporary. Lapsed.]

No. 9.—Sd. P. Maitland.]

[15th April, 1845.

Ordinance for providing a proper Jury to serve in the Circuit Court for the District of Swellendam.

[Temporary. Lapsed.]

No. 10.—Sd. P. Maitland.]

Ordinance for punishing the Concealment of the Birth of Children.

WHEREAS the concealment by mothers of the birth of their children is a highly suspicious and reprehensible proceeding : Preamble.

And whereas such concealment is not by the law of this colony deemed to be a crime : And whereas it is expedient that such concealment should be constituted and declared to be a crime : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that if any woman shall be delivered of a child and shall by secret burying or otherwise disposing of the dead body of the said child endeavour to conceal the birth thereof every such woman so offending shall be deemed to be guilty of the crime of concealing the birth of her child, and being convicted thereof shall be liable to be imprisoned with or without hard labour for any term not exceeding five years. Definition of offence of concealing child-birth.

2. And be it enacted that upon the occasion of the trial of any person charged with the commission of the said crime it shall not be necessary to prove whether the child died before, at, or after its birth. Penalty.

3. And be it enacted that if any woman tried for the murder of her child shall be acquitted thereof it shall be lawful for the jury by whose verdict she shall be acquitted to find in case it shall so appear in evidence that she was delivered of a child, and that she did by secret burying or otherwise disposing of the dead body of such child endeavour to conceal the birth thereof (but it shall not be necessary to prove whether the said child died before, at, or after its birth); and thereupon it shall and may be lawful for the court to pass upon her any such sentence as might have been lawfully passed upon her if she had been convicted upon an indictment for the crime of concealing the birth of her child. Proof of time of child's death not necessary.

3. And be it enacted that if any woman tried for the murder of her child shall be acquitted thereof it shall be lawful for the jury by whose verdict she shall be acquitted to find in case it shall so appear in evidence that she was delivered of a child, and that she did by secret burying or otherwise disposing of the dead body of such child endeavour to conceal the birth thereof (but it shall not be necessary to prove whether the said child died before, at, or after its birth); and thereupon it shall and may be lawful for the court to pass upon her any such sentence as might have been lawfully passed upon her if she had been convicted upon an indictment for the crime of concealing the birth of her child. Conviction of concealment on indictment for murder.

Time of taking  
effect.

4. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 14th day of May, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 11.—Sd. P. Maitland.] [14th May, 1845.

Ordinance for Repealing the 1st Section of Ordinance No. 4, of 1843.

[Repealed by Ordinance No. 15, 1845.]

No. 12.—Sd. P. Maitland.] [Aug. 27, 1845.

Ordinance for establishing the Roman-Dutch Law in and for the District of Natal.\*

No. 13.—Sd. P. Maitland.] [Oct. 7, 1845.

Ordinance for applying a sum not exceeding £161,527 13s. 5d. for the service of the year 1846.

No. 14.—Sd. P. Maitland.] [Oct. 16, 1845.

Ordinance for erecting a District Court in and for the District of Natal.

\* Natal was constituted a distinct Government by Letters Patent of 30th April, 1845, but the Legislature of this Colony continued to pass laws for "the district of Natal," until, by proclamation of 25th July, 1848, a separate Legislative Council was constituted.



## No. 15.—Sd. P. Maitland.]

Ordinance for repealing Ordinances No. 4, 1843, and No. 11, 1845, and for making other Provisions in their stead.

WHEREAS a certain ordinance was made and passed in this colony bearing date the 4th day of May, 1843, and numbered 4, 1843, entitled "Ordinance for establishing the validity of certain Writings Testamentary and Powers of Attorney executed without being witnessed as by law required and for other purposes:" And whereas a certain other ordinance was made and passed in this colony bearing date the 14th day of May, 1845, and numbered 11, 1845, entitled "Ordinance for repealing the first section of Ordinance No. 4, 1843:" And whereas it is expedient to repeal both of the said ordinances and to make other provisions in their room and stead: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the two certain ordinances aforesaid shall be repealed and the same are hereby repealed accordingly.

Preamble.

Repeal of former ordinances.

2. And be it enacted that every law and usage in force within this colony before and down to the first day of January, 1844, by reason whereof any wills or other testamentary writings or any powers of attorney were or might have been deemed or taken to be inoperative or defective unless the execution of the same were duly witnessed by seven or some other number of competent witnesses shall be and the same are hereby declared to be repealed in regard to all wills or other testamentary writings or powers of attorney made or executed upon or after the said first day of January, 1844.

Repeal of law requiring seven witnesses to execution of will or power of attorney.

3. And be it enacted that no will or other testamentary writing and no power of attorney made or executed upon or after the said first day of January, 1844, which will or other testamentary writing or power of attorney if made before the said first day of January, 1844, would in order to be valid have required to be witnessed by seven or some other number of competent witnesses shall be valid unless it shall be or shall have been executed in the manner hereinafter mentioned: that is to say, it shall be or shall have been signed at the foot or end thereof if a will or other testamentary writing by the testator or by some other person in his presence and by his direction, and if a power of attorney by the person executing the same or by some other in his presence and by his direction, and such signature shall be or shall have been made or acknowledged by the

Manner of attestation and number of witnesses.

testator or person executing the power of attorney as the case may be in the presence of two or more competent witnesses present at the same time, and such witnesses shall attest and subscribe or shall have attested and subscribed the will or power of attorney as the case may be in the presence of the person executing the same, and where the instrument shall be or shall have been written upon more leaves than one the party executing the same and also the witnesses shall sign or shall have signed their names upon at least one side of every leaf upon which the instrument shall be or shall have been written.

**Signatures on each leaf.**

**Exemption as to notarial instruments and instruments executed before 1844.**

4. And be it enacted that nothing in this ordinance contained shall be deemed or taken to extend to or affect any will or other testamentary writing or power of attorney made or passed or to be made or passed before any notary and witnesses, or any codicil made by virtue or in pursuance of any power reserved in that behalf in any such lastmentioned will or testamentary writing, nor any instrument whatever, testamentary or otherwise, made and executed at any time before the said 1st day of January, 1844.

**Time of taking effect.**

5. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope this 1st day of December, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 16.—Sd. P. Maitland.]

Ordinance to amend the Ordinance No. 7, 1843, entitled "Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their room and stead."

**Preamble.**

WHEREAS by the fifth section of the Ordinance No. 7, 1843, entitled "Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their room and stead," it is provided that the Governor of this colony

for the time being should have the right of filling up vacancies in the office of minister in congregations belonging to the Dutch Reformed Church in South Africa of which congregations the minister for the time being receives a salary from the colonial government: And whereas it is expedient that the said right should be vested in Her Most Gracious Majesty the Queen, her heirs and successors: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the fifth section of the said ordinance shall be repealed and the same is hereby repealed accordingly.

Repeal of  
Section 5 of  
Ordinance No.  
7, 1843.

2. And be it enacted that in every case in which a vacancy shall occur in the office of minister of any congregation belonging to the said Dutch Reformed Church of which congregation the minister for the time being receives a salary from the colonial government, Her Majesty the Queen, her heirs and successors shall have and possess and shall exercise in whatever manner she or they shall deem the best for the vacant congregation the sole and unrestricted right of filling up such vacancy by the appointment of whatever individual she or they may select from amongst the number of such ministers as shall by the rules and regulations of the said church for the time being be competent to be appointed to supply vacancies in the ministry thereof.

Appointment  
by the Queen  
of minister  
receiving  
salary from  
government.

3. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

Time of taking  
effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 1st day of December, 1845.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 17.—Sd. P. Maitland.]

[4th Dec., 1845.

Ordinance for determining the Qualification of Jurors in the District of Natal.

No. 1.—Sd. P. Maitland.]

Ordinance for the Regulation of the Post Office and Postage.\*

Preamble.

WHEREAS it is expedient that the present rates of inland postage on letters should be reduced to one uniform rate to be charged on every letter of a given weight with a proportionate increase for greater weights, and that official and other franking should be abolished, and that the Governor should be authorized and empowered to make certain rules and regulations touching and concerning the management of the post office and the rates of postage: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the Ordinance No. 25, 1826, entitled "Ordinance for the better regulation of the Post Office in the Colony of the Cape of Good Hope," and the Ordinance No. 56, 1829, entitled "Ordinance for altering and amending the Ordinance No. 25, entitled 'An Ordinance for the better regulation of the Post Office in the Colony of the Cape of Good Hope,'" and the Ordinance No. 3, 1834, entitled "Ordinance for altering and amending the Ordinances entitled respectively, 'Ordinance of His Honour the Lieutenant-Governor in Council, for the better regulation of the Post Office in the Colony of the Cape of Good Hope,' dated the 9th day of October, 1826, and the 'Ordinance of His Excellency the Governor in Council, for altering and amending the Ordinance No. 25, entitled 'An Ordinance for the better regulation of the Post Office in the Colony of the Cape of Good Hope,' dated the 9th day of February, 1829,'" shall except in so far as the same or any of them may repeal any former laws or ordinances or parts thereof be repealed, and the same are hereby repealed accordingly: Provided, always, that the repeal aforesaid shall not be construed so as to prevent or defeat the recovery of any postage due and unpaid at the time of the commencement of this ordinance nor so as to apply to any letters which shall then be lying undelivered in any post office in this colony, or to any offence or penalty committed or incurred in respect to the ordinances aforesaid or any of them before the time of the commencement of this ordinance, which postage, letters, offence, or penalty shall be deemed, taken, and judged

Repeal of former ordinances.

\* *Vide*, as to Postage beyond the Colony, Act No. 23, 1856; as to general Postage Regulations, Act No. 21, 1857, amending and in part repealing this ordinance, as to Prepayment of Letters to the United Kingdom, Act No. 15, 1858, and Act No. 2, 1859.

of as if the said ordinances hereby repealed were still in force and operation.

2. And be enacted that upon all letters transmitted by the post between places within this colony (not being letters sent to or from parts beyond the seas), there shall be charged and paid according to weight only and without reference to the distance or number of miles the same shall be conveyed the rates or duties following, that is to say :

On every letter not exceeding half an ounce, four pence.

On every letter exceeding half an ounce and not exceeding one ounce, eight pence.

3. And be it enacted that for every ounce which any letter shall weigh over and above the weight of one ounce there shall be charged and taken an additional sum of eight pence, and that every fraction above the weight of one ounce shall be charged as an additional ounce.

4. And be it enacted that it shall and may be lawful for the Governor to fix and limit from time to time by any proclamation to be by him in that behalf issued as occasion shall or may require what shall be the greatest weight of any inland letter to be forwarded by the post.

5. And be enacted that all post letters shall be posted, forwarded, conveyed, and delivered under and subject to all such orders, directions, and regulations and under and subject to all such conditions, limitations, and restrictions as to the form, size, dimensions, enclosures, or otherwise as the Governor shall from time to time direct and appoint.

6. And be it enacted that it shall and may be lawful for the Governor by such rules, orders, and regulations as he shall in that behalf from time to time establish to provide that all letters upon the service of Her Majesty the Queen whether civil or military shall be forwarded and received free of any charge of postage.

7. And be it enacted that it shall and may be lawful for the Governor to appoint so many post offices within the colony as he shall deem expedient and from time to time to change the same, and to establish offices for posting and delivering letters within the limits of any town as such limits shall for that purpose be fixed by the said Governor, and to fix the rate of postage which shall be charged and paid in regard to any such town delivery, and to fix the hours at which all post offices shall open and close and the hours at

Postage chargeable by weight.

$\frac{1}{2}$  oz. 4d.  
Up to 1 oz. 8d.

Each additional fraction of oz. 8d.

Limit of weight of letter.

Power in governor to regulate posting, delivery, &c.

Letters on H. M. service.

Establishment and change of post offices.

Town delivery.

which town delivering post offices shall deliver letters : Provided, however, that the rate of postage to be charged and paid in regard to any letter posted and delivered in any such town as aforesaid shall in no case exceed the rate of postage which would be charged and payable upon the same letter according to the scale of postage hereinbefore set forth.

Stamps and stamped covers.

8. And be it enacted that it shall and may be lawful for the Governor to provide or cause to be provided proper and sufficient dies or implements for expressing and denoting any rate or rates of postage for the time being chargeable and payable under the provisions of this ordinance, and when and as soon as such dies or implements shall be provided to announce by his proclamation in the Government Gazette that stamped covers for letters and stamps to be affixed to letters will be issued to the public by such persons or at such places as in the said proclamation shall be mentioned and set forth, upon payment of the amount denoted by the stamp or stamps required ; and that from and after some certain date to be in the said proclamation mentioned every letter posted in any town or place within this colony and enclosed in such a stamped cover as aforesaid or having such a stamp or such stamps as aforesaid affixed thereto and appearing on the outside of equal value or amount to the rate of postage which would be chargeable and payable upon such letter according to the scale of postage hereinbefore set forth shall in case no such stamps shall have been used before pass by the post free of postage.

Petitions to legislature, free.

9. And be it enacted that all petitions addressed to the Legislative Council shall pass free of postage, provided the same shall be directed to the clerk of the said council, as shall also any letter enclosed therein referring to the subject-matter of the said petitions.

Penalty on letters not prepaid.

10. And be it enacted that in all cases in which any inland letter shall be posted without any stamp thereon or on the corner thereof and without the postage being prepaid there shall be charged and paid on such letter a postage greater by one half than the postage which would have been chargeable and payable upon such letter according to the scale of postage hereinbefore set forth had the same been prepaid.\*

By whom payable.

11. And be it enacted that the postage of any such letter as is in the last preceding section mentioned shall be paid

\* *Vide* Act No. 21, 1857, § 2.

by the person to whom the letter is addressed on the delivery thereof to him, but if the letter be refused or the party to whom it is addressed shall be dead or cannot be found the writer or sender shall pay the postage; and in order to ascertain who such writer or sender is such letter may in case the name and address of the writer shall not have been written on the outside of the letter when posted be opened in the post office; and this enactment shall apply to every packet, newspaper, or thing whatsoever chargeable with postage and transmitted by the post.

Opening of letter to ascertain writer.

12. And be it enacted that on every post letter re-directed and forwarded (whether prepaid or posted with any stamp thereon or not) there shall be charged for postage from the place at which the same shall be re-directed to the place of ultimate delivery (in addition to all other rates of postage payable thereon) such a rate of postage as the same would be liable to if prepaid.

Re-directed letters.

13. And be it enacted that no letters shall be transmitted by any vehicle used for the public conveyance of passengers or goods unless in any post office bag which may be thereby conveyed, and any person who shall send or convey any letter by such vehicle except as aforesaid shall incur and be liable to a penalty not exceeding ten pounds.

Letters by public conveyances.

14. And be it enacted that every person employed to convey or deliver a post letter bag or a post letter who shall whilst so employed, whilst the same shall be in his custody, care, or possession, be guilty of any act of drunkenness, carelessness, negligence, or other misconduct whereby the safety of such post letter bag or post letter shall be endangered or who shall receive, convey, or deliver any letter otherwise than in the ordinary course of the post or who shall willfully misspend his time so as to retard or delay the progress or arrival of such post letter bag or post letter, such person being thereof convicted shall forfeit any sum not exceeding ten pounds.

Misconduct of post-carriers.

15. And be it enacted that it shall and may be lawful for the officer in charge of or for any person employed to receive letters in any post office in this colony and he is hereby required to grant a receipt for any letter delivered to or into such post office should the person delivering the same require such receipt: Provided, always, that no person shall be entitled to require such receipt unless he shall at the time of the delivery of the letter produce the same filled

Receipts for letters.

up and ready for signature, and pay at the same time a charge of six pence for such receipt; and provided, also, that the officer granting any such receipt shall before granting the same note or mark thereon the amount of postage paid upon the letter received when such postage shall be prepaid.

Ship letters  
between  
colonial ports.

16. And be it enacted that the postmaster-general may forward letters between places within this colony by any ships or vessels which he shall deem it expedient to employ for that purpose, and all letters so forwarded shall be considered as forwarded by the post between such places and be charged accordingly.

Letters to and  
from beyond  
sea.

17. And be it enacted that the postmaster-general and the officers in charge of the various post offices throughout the country may collect and receive letters to forward to places beyond sea and may forward the same accordingly, and may collect and receive letters brought from places beyond sea.

Rates payable  
on letters  
forwarded  
beyond sea,

18. And be it enacted that every letter posted to be forwarded by ship or vessel to any place beyond sea or received by ship or vessel from any place beyond sea in the post office of the town or place at or nearest to the harbour in which such ship or vessel shall be lying shall (unless exempted from the payment of postage by any of the provisions of this ordinance) be charged with a duty or rate of four pence postage without reference to the weight of such letter, but every letter posted to be forwarded beyond sea in any post office of the colony other than that of the town or place aforesaid and every letter received from beyond sea in any ship or vessel in such last-mentioned post office and to be forwarded to any other town or place within the colony shall pay in addition to the said sum of four pence such further rate of postage as under the provisions of the second section of this ordinance would be payable upon such letter considered as an inland letter.

and on letters  
received from  
beyond sea.

Time of pay-  
ment of  
postage of  
letters to be  
forwarded  
beyond sea.

19. And be it enacted that in regard to every letter posted in any post office in this colony to be forwarded beyond sea the rate of postage payable thereon as in the last preceding section mentioned shall be paid at the time of the posting of the same, and in case any such letter shall be posted without such postage being so paid it shall be returned to the sender or writer, who shall be liable to pay in respect of such return such rate of postage as would have



been payable upon such letter if posted to be forwarded from one place within this colony to any other place.

20. And be it enacted that every person being either the master of a vessel inward bound or one of the officers or one of the crew or a passenger thereof who shall knowingly have any letter in his possession (excepting such as may have been intrusted to his peculiar care) after the master shall have sent any part of his ship's letters to the post office or after demand for ship's letters made by a person authorized by the postmaster-general to demand such letters shall forfeit for every letter a sum not exceeding five pounds: Provided that nothing herein or in this ordinance contained shall alter or affect the ninth section of Ordinance No. 4, 1844, entitled "Ordinance relating to Merchant Vessels arriving in the Ports of this Colony," which section shall remain and continue in full force and effect.

Retention of letters by ship-master, &c.

21. And be it enacted that the postmasters stationed at or nearest to the several ports or harbours in this colony shall respectively pay to the master of any vessel arriving therein respectively or to any other person duly authorized by such master to receive the same the sum of one penny for every letter liable to pay postage which shall be by such master delivered to such postmaster; and such payments shall be charged by the postmasters making the same to their contingent account: Provided, always, that nothing shall be payable for or on account of any dispatch-box addressed to the Governor of this colony or anything therein contained.

Payment to shipmaster.

22. And whereas it is expedient to declare so much of the law as contained in the thirty-fifth section of an Act made and passed in a session of Parliament holden in the third and fourth years of Her Majesty the now Queen, chapter 96, as is applicable to this colony, and to enact certain additional provisions, be it accordingly declared and enacted that all letters of owners, charterers, or consignees of vessels arriving in any of the ports or harbours of this colony, or of owners, consignees, or shippers of goods on board such vessels shall have their letters by such vessels free of postage (except as hereinafter excepted), if to be delivered at the port or place of the ship's arrival; and if to be delivered at any other place within this colony then on payment of such rates of postage as the said letters would if prepaid have been liable to pay for conveyance thereof from the port or place of arrival to the place of delivery: Provided, always, that all such letters as

Letters of owners &c., free.

Weight of such letters. aforesaid brought by one vessel to any such person as aforesaid shall not collectively exceed six ounces in weight, and provided that the owner, charterer, or consignee shall be described as such on the address and superscription, and provided that in case of owners, shippers, or consignees of goods it shall also appear by the ship's manifest that they have goods on board the vessel; provided, also, that the persons hereby exempted shall be entitled to have and receive all their letters which come within the above conditions directly from on board the ship and without transmission of the same through the post office; but if, nevertheless, any such letters should be delivered from on board the vessel into the post office then such letters shall be chargeable with the gratuity to the master of the vessel as in the preceding section mentioned (in addition to the postage if any payable thereon), and may be detained until such gratuity shall be paid.

Power of Governor to alter gratuity.

23. And be it enacted that it shall and may be lawful for the Governor aforesaid by proclamation to alter, raise, or reduce as may from time to time be deemed expedient the rate of gratuity to be paid to masters of vessels conveying letters into any of the ports of this colony.

Transmission of newspapers.

24. And be it enacted that it shall be lawful for the postmaster-general and the several postmasters in this colony and they are hereby required to demand and receive for each newspaper or journal printed in the colony one penny to be paid on being put into the post office, provided such newspaper or journal be sent without cover or in a cover open at the sides; and it shall be lawful for the postmaster-general and postmasters throughout the colony to examine and search any packet sent without a cover or in a cover open at the sides in order to discover whether any other paper or thing whatsoever be enclosed with such printed paper permitted to be sent at the rates aforesaid, and in order to discover whether the said printed papers liable to stamp duty shall have been duly stamped; and in case any other paper or thing whatsoever shall be found to be enclosed or concealed in or with such paper as aforesaid, or in case there shall be any writing other than the superscription upon such printed paper or upon the cover containing the same the whole of such packet shall be charged with treble the postage of a letter; and in case any newspaper or other printed paper liable to stamp duty shall appear not to have been duly stamped every such postmaster is hereby required to stop the same and send it

Treble postage on newspapers, &c., written upon or having enclosures.

to the distributor of stamps in Cape Town: Provided, always, that no charge shall be made for the conveyance of the Government Gazette by post throughout the colony.

25. And be it enacted that every person who shall knowingly enclose or cause or procure to be enclosed in a newspaper to be sent by the post or under the cover thereof any letter or paper or thing (except such newspaper), and every person who shall wilfully print or cause to be printed any words or communication either upon any such newspaper after the same shall have been published or upon the cover thereof or who shall put or cause to be put any writing or marks either upon the newspaper or under the cover thereof other than the name and address of the person to whom it shall be sent, and every person who shall knowingly either send or cause to be sent by the post a newspaper in respect of which any one of the offences hereinbefore mentioned shall be committed, shall for every such offence forfeit a sum not exceeding ten pounds.

Penalty on wilfully printing upon, writing upon, and enclosing in newspapers sent by post.

26. And be it enacted that all printed newspapers and journals arriving from abroad addressed to any person residing in this colony shall be delivered at the post office of the port where the vessels conveying the same shall arrive free of postage, and if forwarded by the inland post shall be chargeable with one penny each on delivery thereof, provided the weight of the same does not exceed one ounce; and if the same shall exceed the weight of one ounce then at and after the rate of one half-penny for each additional ounce or fraction of an ounce.

Newspapers from abroad.

27. And be it enacted that in case any person to whom a printed newspaper brought into this colony shall be directed shall have removed from the place to which it shall be directed before the delivery thereof at that place, it may (provided it shall not have been opened) be re-directed and forwarded by post to such person at any other place within the colony free of charge for such extra conveyance; but if such newspaper shall have been opened it shall be charged with the same rate of postage as if it were a letter from the place of re-direction to the place at which it shall be ultimately delivered.

Re-direction of such newspapers.

28. And be it enacted that every newspaper published in this colony and intended for delivery within the colony, shall in all cases be put into a post office in the colony within seven days next after the day on which the same shall be published, the day of publication to be ascertained by the date

Posting of colonial newspapers within seven days after publication.

of such paper; and in case a paper shall be put into a post office after the expiration of such seven days, the postmaster-general may either detain the paper or forward it by post charged with full postage as a letter.

Power of Governor to abolish postage on newspapers.

29. And be it enacted that it shall and may be lawful for the Governor aforesaid whenever he shall deem it practicable and expedient so to do to reduce or abolish the charge of postage upon newspapers, provided that such reduction or abolition shall be announced by proclamation in the Government Gazette.

Seamen's and soldiers' letters.

30. And be it enacted that the following classes of persons may both send and receive letters not exceeding half an ounce in weight by the post at a postage of one penny for each letter, namely :

Every seaman employed in Her Majesty's navy whilst such seaman shall be actually employed in Her Majesty's service in this colony.

Every serjeant, corporal, drummer, trumpeter, fifer, and private soldier in Her Majesty's land forces whilst actually employed in Her Majesty's service in this colony.

But the letters of commissioned officers or warrant officers whether in the army or navy or midshipmen or master's mates of the navy are not included in this provision.

Conditions in letters addressed to such persons.

And with respect to letters sent from any place to this colony by any such privileged persons the following conditions shall be observed, that is to say, the postage of each letter shall be paid on the letter being put into a post office, and upon such letter shall be superscribed the name of the writer, and his class or description in the vessel, regiment, corps, or detachment to which he shall belong, and upon every such letter there shall be written in the handwriting of the officer having at the time the command of the vessel or of the regiment, corps, or detachment to which the privileged person belongs the name of such officer and the name of such vessel or of such regiment, corps, or detachment.

In letters received from such persons.

31. And with respect to letters addressed to any of the said privileged persons the following conditions shall be observed, that is to say, the postage of each letter if the same be posted within the colony shall be paid upon putting it into the post office, and it shall be directed to the privileged person, specifying on the superscription thereof the vessel or the regiment, corps, or detachment to which he shall belong, and the postmaster of the place to which such letter shall be

sent to be delivered shall not deliver such letter to any person except the person hereby privileged to whom it shall be directed or to some person appointed to receive the same by writing under the hand of the officer in command; and whenever any such letter shall have been sent to any such privileged person from parts beyond the sea every such letter shall be charged to the party receiving the same with a rate of two pence, and any letters received by the post under this enactment by any such privileged persons, which letters may have been re-directed, shall not be charged any postage on or in respect of such re-direction.

32. And be it enacted that every person not having at the time the command of the ship or vessel or regiment or corps or detachment to which any person belonging to Her Majesty's land or sea forces and who is privileged as aforesaid belongs who shall write his name upon a letter in order that the same may be sent at a lower rate of postage than by law established in regard to letters of persons not privileged shall for every such offence forfeit five pounds; and every person who shall wilfully address a letter to any such privileged person which shall be intended for another person or which shall be concerning the affairs of another person with intent to evade the payment of the rate of postage in regard to letters of persons not privileged shall for every such offence forfeit five pounds; and every person who shall with intent to evade any postage or any amount of postage falsely superscribe a letter as being the owner or the charterer or the consignee of a vessel conveying the same, or as the owner or the shipper or the consignee of goods shipped in such vessel, shall for every such offence forfeit ten pounds.

33. And be it enacted that except in the cases specified in this ordinance all privileges whatsoever of sending or receiving letters by the post free of postage or at any reduced rate of postage shall wholly cease and determine.

34. And be it enacted that no person shall post or cause to be posted or send or cause to be sent or tender or deliver in order to be sent by the post any letter containing any explosive or other dangerous material or substance on pain of forfeiting a sum not exceeding twenty pounds in addition to the punishment by law provided for any offence which such person may by or in consequence of any such act be held to have committed.

Abuse of privileges under former sections.

Cessation of all other privileges to send letters free, &c.

Prohibition of explosive substances in letters.

Post office  
money orders.

35. And whereas it is expedient that regulations should be made for enabling the public to remit small sums of money through the post office by means of money orders to be given by and upon the different postmasters of different towns respectively: Be it enacted that it shall and may be lawful for the Governor of this colony by proclamation to announce for general information the places where and the terms, conditions, and restrictions under which such money orders may be obtained: Provided, always, that any premium or poundage arising therefrom shall be considered as post office revenue, and applied accordingly.

Weights.

36. And be it enacted that all weights mentioned or referred to in this ordinance shall be deemed and taken to mean English standard weights avoirdupois.

Misconduct by  
persons em-  
ployed in post  
office.

37. And be it enacted that every person employed by or under the postmaster-general who shall contrary to his duty open or procure or suffer to be opened a post letter or shall wilfully detain or delay or procure or suffer to be detained or delayed a post letter shall be guilty of the crime of contravening this section of the present ordinance, and upon conviction thereof shall suffer such punishment by fine not exceeding fifty pounds or imprisonment not exceeding one year, or by both as to the court shall seem meet: Provided, always, that nothing herein contained shall extend to the opening or detaining or delaying of a post letter returned for want of a true direction, or of a post letter returned by reason that the person to whom the same shall be directed is dead or cannot be found or shall have refused the same or shall have refused or neglected to pay the postage thereof; provided, also, that nothing herein contained shall be construed so as to prevent any such person as aforesaid from being tried and punished for any other or greater crime or offence which he shall commit in regard to any letter or the contents thereof before or at or after the opening, detention, or delaying of the same.

Fraudulent  
retention, &c.,  
of letters, mail  
bags, &c.

38. And whereas post letters may sometimes by mistake be delivered to a wrong person and post letters and post letter bags may be lost in the course of the conveyance or delivery thereof and be detained by the finders in expectation of gain or reward: Be it enacted that every person who shall fraudulently retain or shall wilfully secrete or keep or detain, or being required to deliver up by an officer of the post office shall neglect or refuse to deliver up a post letter which

ought to have been received by any other person, or a post letter which shall have been lost, whether the same shall have been found by the person secreting, keeping, or detaining or neglecting or refusing to deliver up the same or by any other person, shall be guilty of the crime of contravening this section of the present ordinance, and upon conviction thereof shall suffer such punishment by fine not exceeding fifty pounds or imprisonment not exceeding one year, or by both as to the court shall seem meet.

39. And be it enacted that every offence against any of the provisions of this ordinance shall and may be prosecuted in the court of the resident magistrate in whose district such offence shall have been committed or in any other competent court, and all moneys recovered or received by way of penalties or forfeitures under any of the said provisions shall be paid to the informer if there be such or otherwise to the colonial treasury; and any person who shall be adjudged by any competent court to pay any such penalty or forfeiture as aforesaid who shall not forthwith pay the same may by order of the court adjudging the same be imprisoned with or without hard labour for any term not exceeding three months unless he shall sooner pay the amount of the penalty or forfeiture incurred and adjudged: Provided that it shall and may be lawful for the Governor wholly to remit or mitigate any such penalty or forfeiture as aforesaid.

Prosecution of offences.

40. And be it enacted that all penalties and forfeitures incurred by any person for any contravention of this ordinance shall be sued for within one year next after the penalty or forfeiture shall be incurred and not afterwards.

Limitation of suits for penalties.

41. And be it enacted that in every case where any crime or offence shall be committed in respect of a post letter bag or a post letter or any money, matter, or thing sent by the post it shall be lawful to lay in the indictment or plaint to be preferred against the offender the property or lawful possession of the post letter bag or of the post letter or of the money, matter, or thing sent by post to the postmaster-general.

Manner of describing property in plaint, &c.

42. And be it enacted that in the interpretation of this ordinance the term "Governor" shall mean the officer for the time being administering the government of this colony; and that the term "master of a vessel" shall include any person in charge of a vessel, whether commander, mate, or other person and whether the vessel be a ship of war or

Interpretation clause.

other vessel; and that the term "inland letter" shall denote a letter posted at some place within this colony and to be delivered at some place within the same; and every officer mentioned shall mean the person for the time being acting as such; and wherever with reference to any person, matter, or thing, or to any persons, matters, or things the singular or plural number or masculine gender only is expressed such expression shall be understood to include several persons, matters, or things as well as one person, matter, or thing, and one person, matter, or thing as well as several persons, matters, or things, and females as well as males, unless the subject or context be repugnant to such construction.

Time of taking  
effect.

43. And be it enacted that this ordinance shall commence and take effect from and after the 1st day of March in the year of our Lord 1846.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 7th day of January, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

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No. 2.—Sd. P. Maitland.] [Jan. 7, 1846.

Ordinance for creating a Deeds Registry Office for the district of Natal.

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No. 3.—Sd. P. Maitland.] [Jan. 7, 1846.

Ordinance for regulating the payment of Transfer Duties in the District of Natal.

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No. 4.—Sd. P. Maitland.] [Jan. 7, 1846.

Ordinance for fixing the Age of Majority within the District of Natal.



No. 5.—Sd. P. Maitland.]

[Jan. 7, 1846.

Ordinance for creating Field-cornets and Constables in and for the District of Natal.

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No. 6.—Sd. P. Maitland.]

[Jan. 7, 1846.

Ordinance for creating Justices of the Peace within the District of Natal.

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No. 7.—Sd. P. Maitland.]

Ordinance for regulating the manner of summoning for Land-rent in cases of Desertion of the Land.

WHEREAS it is expedient to amend the law relative to the manner of summoning persons having or claiming title to any place or property abandoned, deserted, or left derelict in regard to which any arrear of land-rent shall be due to the colonial government as well as all persons by whom any purchase money of lands or erven bought by them from the said government shall be due and owing to the said government : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all laws and customs heretofore in force in this colony in so far as the same are repugnant to or inconsistent with any of the provisions of this ordinance shall be and the same are hereby repealed accordingly.

Preamble.

Repeal of former laws.

2. And be it enacted that every person having or claiming title to any such place or property as aforesaid shall be and be deemed to have been duly summoned within the intent and meaning of the eleventh section of Ordinance No. 9, 1844, entitled " Ordinance for facilitating the recovery of Land-rents in this Colony," when and as often as one edictal citation granted by the supreme court and directed to the owner or supposed owner of the place or property in question and all others having or claiming title thereto shall have been published in the Government Gazette of this colony for some space of time to be fixed by the said court, not less than three weeks and not exceeding three months ; and if no person having or claiming title as aforesaid shall appear

Citation of debtors for land rent by edictal summons.

at the time and place in such citation limited and fixed for such appearance then all persons having or claiming title as aforesaid shall be deemed to have made default, and thereupon the same consequences in all respects shall attach as if default had been made after three or any other number of edictal citations had successively been granted and published in the usual and customary manner.

Edictal summons for debtor of purchase money.

3. And be it enacted that in every case in which it shall be necessary to summon by edict any person by whom any amount of such purchase money as aforesaid shall be due and owing for the recovery of such amount, such person shall be and be deemed to have been duly summoned to and for all intents and purposes of law when and as often as one edictal citation as in the second section of this ordinance mentioned shall have been published as in the said second section stated, precisely as if such purchase money were so much land-rent.

Non-application to Natal.

4. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

Time of taking effect.

5. And be it enacted that this ordinance shall commence and take effect from and after the date of promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 16th day of February, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

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No. 8.—Sd. P. Maitland.]

Ordinance for authorizing the appointment of a Vestry and Churchwardens for the Episcopal Church about to be erected at Graaff-Reinet.

Preamble.

WHEREAS it is expedient that the inhabitants of Graaff-Reinet and the parochial limits thereof being members of

and holding communion with the united church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the episcopal church about to be erected at Graaff-Reinet, and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said united church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the committee and secretary at present constituted should cease and determine: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Wednesday in the month next but one ensuing after the promulgation of this ordinance, and annually afterwards on the same day, a general meeting of the male inhabitants of Graaff-Reinet aforesaid and of the parochial limits thereof being of the age of twenty-one years or upwards and members of and holding communion with the united church of England and Ireland as there by law established shall be holden at Graaff-Reinet, fourteen days' notice whereof shall be given by the minister of the said church for the time being by promulgation during divine service and by notice posted on the doors of the church or by advertisement in one of the public papers of this colony for the purpose of electing a vestry, and it shall and may be lawful for the inhabitants as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons not exceeding eight in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Annual election of vestry.

2. And be it enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid to be auditors of the accounts of said vestry.

Auditors.

3. And be it enacted that every male inhabitant householder being of the age of twenty-one years or upwards and

Qualification of members of vestry.

a member of and holding communion with the church aforesaid and residing at Graaff-Reinet or within the parochial limits thereof shall be eligible to be a member of the said vestry : Provided, always, that no person shall be entitled to vote at such election or be eligible to be chosen a member of the vestry or an auditor of accounts thereof so long as (legal demand having previously been made) any just claim had upon him by the said vestry as such shall remain unsatisfied.

List of eligible persons.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided, then by the minister and churchwardens conjointly, and shall be open for inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

Manner of election.

5. And be it enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and as auditors.

Chairman.

6. And be it enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry ; provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman ; and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Quorum.

7. And be it enacted that five members of the said vestry or four members besides the chairman shall form a quorum and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this ordinance.

Power to make, alter, &c., rules.

8. And be it enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this ordinance, and also to take such order for the management of the said church as shall to them seem expedient ; provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this

ordinance or to the customs and usages of the united church of England and Ireland as there by law established.

9. And be it enacted that the said committee shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control; and the office and duties of the said committee shall thereupon cease and determine.

Cessation of committee.

10. And be it enacted that the said vestry as from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise the whole power and rights and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same.

Powers of vestry as to administration, &c.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this ordinance, and in their own names to make and enter into, perform and execute, or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

As to payment of money, contracts, &c.

12. And be it enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent court in this colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever; and all such suits and actions shall and may be brought by them in the name of "The Vestry of St. James' Church," without specifying the christian or surnames of the members of the vestry; and no action shall abate by reason of the death or removal or going out of office of any individual members thereof.

Manner of bringing actions by vestry.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust or shall arise or accrue to any person whatsoever against the said vestry shall be brought by such person in manner and in name aforesaid and not against any individual member of the said vestry.

Actions against vestry.

Accounts of  
vestry.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter money received and paid by them under and by virtue of the provisions of this ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid, and published if requisite for general information.

Churchwardens

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon as conveniently may be choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts, and matters, and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof, and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the united church of England and Ireland so far as the same may be applicable to this colony.

Charitable  
collections, &c.

16. And be it enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church or congregation, and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same; and the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Continuance in  
office of  
churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed when they shall deliver up to the said vestry all accounts of such charities

as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office, and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

18. And be it enacted that in case any member of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying or desiring to resign or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid, the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Vacancy in vestry.

19. And be it enacted that there shall be set apart in the said church two free pews, one to be allotted to the use of the minister and the other to that of the churchwardens, and such other pews as the vestry for the time being may deem necessary as free sittings for strangers and poor persons.

Free sittings.

20. And be it enacted that all the pews and sittings in the said church with the exception of those allotted and reserved as aforesaid shall and may be let by the vestry by the year or for any other shorter period to any person desiring to take the same, at a rent to be affixed to them respectively by the vestry and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

Letting of pews by vestry.

21. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to

Proceedings in case of arrear pew-rents.

give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive the said vestry from recovering the amount of such rent in arrear by action in any competent court.

**Pew-book.**

22. And be it enacted that the said churchwardens acting as aforesaid shall keep a book to be called the "Pew-book," wherein they shall enter or cause to be entered the name of every person applying for either a pew, sitting, or sittings in the said church together with the date of such application; and that on any pew, sitting, or sittings becoming vacant, either by death, resignation, removal, or in any other way, or in case of the erection of any new pew or pews or seats in any part of the said church, the churchwardens for the time being shall forthwith apprise the applicant whose name shall stand first on the pew-book of the vacancy so caused or of the new pew, pews, or seat so erected, and shall offer the said pew, seat or seats to such applicant on condition that he or she shall covenant and engage to pay the rent of the same affixed and made payable as hereinbefore mentioned; and that the said pew, sitting, or sittings so becoming vacant, or the said pew or pews, seat or seats so newly erected shall not be offered to any person whatsoever whose application for the same or any portion of the same shall bear a later date until it shall have been declined by every applicant preceding such person on the pew-book.

**Burials.**

23. And be it enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the church of England shall take place in the burial-ground consecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose.

**Monuments and vaults.**

24. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon payment to the fund of the said church for such permission of



such reasonable fee as shall be affixed by the said vestry for such permission according to the term thereof.

25. And be it enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vaults in the said burial-ground by and with such permission as aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglect to repair the same it shall and may be lawful after a general notice of such intention to remove the same.

Ownership in vaults and monuments

26. And be it enacted that this ordinance shall be deemed and taken to be a public ordinance and shall be judicially taken notice of by all the judges, magistrates, and others without being specially pleaded, and shall be of full force and effect after the promulgation thereof.

Public ordinance.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 16th day of February, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 9.—Sd. P. Maitland.]

Ordinance for the better Preservation of the Public Roads and the Prevention of Accidents and Injuries thereon.

WHEREAS the proclamation of His Excellency the Right Honourable Du Pré, Earl of Caledon, Viscount Alexander and Baron Caledon of Caledon, &c., &c., &c., the then Governor of this colony, bearing date the 23rd of June, 1809, for providing for the safety of travellers and other the like purposes,

Preamble.

has become in some respects insufficient to secure the ends intended, and it is therefore expedient to repeal the same and to make other provisions in its room and stead: And whereas the substance of the Ordinance No 79, of 1830, entitled "Ordinance for preventing the practice of riding or driving carelessly or furiously on the frequented parts of the Public Roads of this Colony," may with advantage, be incorporated in the provisions of this ordinance, and it is therefore expedient to repeal the same: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the proclamation aforesaid and the ordinance aforesaid shall respectively be repealed, and the same are hereby repealed accordingly.

Repeal of former laws.

Owner's name on wagon-plate.

2. And be it enacted that the owner of every wagon or cart shall paint or cause to be painted in one or more straight line or lines upon some conspicuous part on the right or off-side of his wagon or cart or upon some board or plate firmly affixed to such side the christian name and surname by which he is usually called and distinguished, together with the name of the district in which he resides, in legible letters not less than one inch in height, and shall continue the same thereupon so long as such wagon or cart shall be used upon any public road in this colony; and every owner of any wagon or cart who shall use or allow the same to be used on any public road without having his name and district of residence painted thereon as aforesaid or who shall suffer the same to become illegible or who shall paint or cause to be painted any false name or district of residence shall upon conviction forfeit any sum not exceeding forty shillings: Provided that nothing in this section contained shall be construed to extend to any wagon or cart on springs and used solely for the conveyance of passengers or other persons.

Penalty.

Misconduct of driver.

3. And be it enacted that the driver of any wagon or cart or other carriage which shall by the negligence or misbehaviour of such driver cause any hurt or damage to any person or cattle or to any other vehicle or to any goods conveyed in any other vehicle passing or being upon any public road; or of any wagon, cart, or other carriage which when meeting or being followed upon any public road by any other wagon, cart, or other carriage shall not together with the cattle drawing the same keep upon the left or near side of the road; or of any wagon, cart, or other carriage, which shall wantonly or unnecessarily prevent,

Side of road.

Obstruction.

hinder, or interrupt the free and rightful passage of any other wagon, cart, or carriage; or of any wagon, cart, or other carriage which upon any public road within four miles of Cape Town or in any town or village for which town or village no municipal regulations for the prevention of negligent, careless, or furious driving shall be provided, or on any public road within the distance of two miles of any town or village other than Cape Town shall drive or be driven so negligently, carelessly, or furiously as to injure or endanger the person or property of any other person; or of any wagon, cart, or other carriage which shall having the oxen or other cattle used for drawing the same unyoked or detached therefrom be left (unless by reason of accident or other unavoidable cause) standing upon any part of the road aforesaid between Cape Town and Simon's Town or any part of the new road aforesaid between Cape Town and its terminus at the Eerste River; or of any wagon, cart, or other carriage the oxen or other cattle belonging to which or any of them shall be suffered while attached thereto to lie down to rest upon any part of either of the two last-mentioned roads respectively, shall upon conviction forfeit any sum not exceeding forty shillings: Provided, always, that if the owner of any such wagon, cart, or other carriage shall be in or with the same when any contravention of this section shall be committed such owner and not the driver shall incur and be liable to the said forfeiture.

Furious driving.

Unyoking on certain parts of road.

Penalty.

4. And be it enacted that in case any wagon or cart being drawn by any number of oxen more than two shall be in motion upon any part of the public road between Cape Town and Simon's Town lying between Cape Town and the eighth milestone upon the said road or upon any part of the new road over the Cape Downs leading to or towards the interior lying between Cape Town and the fourth milestone from Cape Town upon the said road or upon any part of the road from Cape Town to and through the municipality of Green Point as far as where the said road intersects the limit of the said municipality farthest from Cape Town without having some person actually leading in the usual manner the foremost pair of oxen, or in case any such wagon or cart being upon any part of the road first in this section mentioned beyond the eighth milestone aforesaid or upon part of the road secondly in this section mentioned beyond the fourth milestone aforesaid which shall

Duty of leader of oxen.

Penalty.

not, while approaching closely to and passing any other wagon, cart, or carriage followed or while being passed by any other wagon, cart, or carriage that is proceeding in the same direction, have some person actually leading the foremost pair of oxen, any person of the age of sixteen years or upwards employed and engaged to lead the said oxen and who shall be found wilfully or negligently not leading the same shall upon conviction forfeit any sum not exceeding forty shillings.

Penalty on owner who has not employed leader.

5. And be it enacted that the owner of every such wagon or cart as in the last preceding section mentioned which shall be in motion aforesaid without such leading as aforesaid who shall not have employed and engaged some person of the age of sixteen years and upwards to act as leader in the usual manner shall upon conviction forfeit any sum not exceeding forty shillings: Provided, also, that when and as often as no person of the age last mentioned shall be discovered with or near such wagon or cart who shall confess himself, or shall be otherwise shown to be employed and engaged to act as such leader it shall be deemed and taken *prima facie* that no such person has been so employed or engaged, and the owner aforesaid shall be liable unless he shall prove that some such leader as aforesaid was actually engaged and employed, in which case he shall be acquitted.

Recovery of penalties.

6. And be it enacted that all fines, penalties, and forfeitures imposed by this ordinance shall be recoverable in the court of any resident magistrate without regard to the district in which the same shall have been incurred, and in case any offender shall not upon conviction pay the sum awarded such magistrate is hereby authorized to commit him to prison, there to be kept to hard labour should the said magistrate so order for any term not exceeding six weeks, unless the sum awarded shall be sooner paid or recovered: Provided, always, that it shall be competent for such magistrate notwithstanding such committal to prison as aforesaid to authorize by warrant under his hand the amount adjudged to be forfeited (together with such costs if any as may be awarded under and by virtue of the forty-first section of this ordinance) to be levied by distress and sale of the goods of the offender; and provided, also, that when and as often as any of the goods of the offender shall be within any district other than that of the convicting magistrate the resident magistrate of the district in which such goods

shall be shall endorse any such warrant as aforesaid, after which it shall and may be executed in like manner as if the same had been issued by the magistrate so endorsing it; and provided, also, that nothing in this section contained shall be construed so as to affect or impair the force and validity of the eighteenth or thirty-fifth or of the concluding clause of the thirtieth section of this ordinance; and provided, also, that the keeper of every public prison shall receive into his charge and custody the body of any person committed by any resident magistrate whether of the district in which such prison is situate or not to be imprisoned under the provisions of this ordinance for any contravention of the same.

7. And whereas it is expedient in order to prevent delay, inconvenience, and expense that magistrates should be created having in regard to such fines, penalties, and forfeitures as aforesaid a certain concurrent jurisdiction with such resident magistrates as aforesaid: Be it therefore enacted that it shall and may be lawful for the Governor of this colony from time to time to nominate and appoint in such places as he shall deem expedient so many fit and proper persons as he shall select, to be called and termed road magistrates, who shall severally and respectively have jurisdiction to try and determine all cases of offences alleged to have been committed in contravention of any of the provisions of the second, third, and fourth sections of this ordinance and all other offences created by this ordinance, in regard to which such road magistrates shall be expressly invested with jurisdiction, and to impose all fines, penalties, and forfeitures consequent thereon, and if it need be award imprisonment in as full and ample a manner as is hereinbefore provided in regard to the court of resident magistrates.

8. And be it enacted that every such road magistrate shall before acting as such take the oath of allegiance and the oath of office in the first schedule hereunto annexed set forth, which oaths respectively any resident magistrate or justice of the peace is hereby empowered to administer.

9. And be it enacted that every such road magistrate as aforesaid shall act in and exercise the jurisdiction aforesaid in a purely summary manner, that is to say, when and as often as any person or persons shall under and by virtue of the provisions in that behalf hereafter contained bring or cause to be brought before such road magistrate at any

Appointment  
by governor of  
road magis-  
trates.

Their jurisdic-  
tion.

Oaths of road  
magistrate.

Summary  
exercise of  
jurisdiction.

place where he shall happen to be any wagon, cart, or other carriage, or owner or driver thereof, and shall complain that any offence against the provisions of the second or third sections of this ordinance has been by it or by means of it committed such road magistrate shall record such complaint and shall forthwith hear and determine the same.

Record book of complaints, &c. 10. And be it enacted that every complaint shall if possible before but at all events as soon as may be after the determination of the case be recorded by the road magistrate by entering in separate columns in a record book to be kept for that purpose the name and residence of the person complaining, the name and residence if known of the owner of the wagon, cart, or other carriage, by or by means of which the alleged offence has been committed, the description of such alleged offence, and the day of the hearing of the same.

Judgment. 11. And be it enacted that every such road magistrate as aforesaid shall also record in a separate column in the said record book the judgment given by him in regard to any such complaint as soon as the same shall have been pronounced.

Execution of judgment. 12. And be it enacted that in every case in which any such road magistrate shall see cause in regard to any such complaint to convict the party offending, being the owner of the wagon, cart, or other carriage, it shall and may be lawful for him in case the fine, penalty, or forfeiture imposed shall not be paid forthwith or in case sufficient security for the payment of the same shall not be given to issue a warrant under his hand directed to any person whom he shall name therein, authorizing such person to seize and attach any property, matter, or thing being in or upon such wagon, cart, or other carriage, sufficient to satisfy the emergency of the warrant, or failing such to seize and attach so many of the oxen or other cattle belonging to or drawing the wagon, cart, or other carriage in regard to which such conviction shall have been had as may be deemed sufficient to satisfy the exigency of the warrant, and which number shall be specified in such warrant.

Form of warrant. 13. And be it enacted that every such warrant shall in substance and effect be agreeable to the form in the second schedule hereunto annexed mentioned and set forth.

Manner of proceeding on attachment of cattle. 14. And be it enacted that when and as often as any oxen or other cattle shall be seized and attached under any such

warrant as aforesaid they shall by the person named in the said warrant, be forwarded to the nearest public pound, the keeper of which is hereby required to receive the same, and at or as soon as may be after the expiration of ten days from the day of such seizure and attachment shall be publicly sold for ready money by the keeper of such pound (who shall not require any licence as an auctioneer in order to sell the same) to the highest bidder, provided that a notice of such sale shall be affixed by such pound-keeper at such pound and such other place if any as such road magistrate may order three days at least before the sale; and provided also that if the amount mentioned in any such warrant together with the reasonable expenses of seizing and sending such oxen or other cattle to the pound and the legal pound charges be sooner paid and satisfied to the road magistrate convicting, to be by him applied according to law, the said magistrate shall grant his order for the restoration of the said oxen or other cattle, which shall be restored accordingly.

15. And be it enacted that the keeper of every pound by whom any such oxen or cattle shall be sold as aforesaid shall forthwith pay and hand over to the road magistrate convicting or any person by him authorized to receive the same the amount which shall have been realized by such sale, deducting only his legal and usual charges in regard to similar cattle impounded for the same time for other causes; and if after the payment of such charges and the reasonable expenses of the persons mentioned in such warrant as aforesaid and the amount of the fine, penalty, and forfeiture imposed any surplus remain the same shall be paid upon demand to the owner of the oxen or other cattle seized and sold.

Application of  
proceeds.

16. And be it enacted that when and as often as any property, matter, or thing other than cattle shall be seized and attached under and under by virtue of the provisions in that behalf in the twelfth section of this ordinance contained, the same shall be sold publicly and for ready money by the person to whom the warrant aforesaid shall be directed or by some other person approved of by the road magistrate issuing the same to the highest bidder at such place as such magistrate shall direct for the sale thereof: Provided that a notice of every such sale shall be affixed at such place or places as the said magistrate shall deem requisite seven days at least before the day appointed for such sale, which shall not be earlier than the fourteenth day from the day of the seizure;

Manner of  
proceeding on  
attachment of  
property other  
than cattle.

and provided, also, that the person conducting such sale shall pay and hand over to the road magistrate, to be applied as in and by the forty-second section of this ordinance is directed the whole amount of the proceeds realized thereby less such fee or charge not exceeding seven shillings and six pence as the said magistrate shall deem reasonable and allow, and any surplus shall upon demand be paid to the person convicted; and provided, also, that if such last-mentioned person shall pay or cause to be paid at any time before such sale as aforesaid the amount of the fine imposed together with a fee of three shillings and six pence for the person who shall have made seizure the property seized shall be restored.

Imprisonment of driver on non-payment of fine.

17. And be it enacted that in every case in which the driver of any wagon, cart, or carriage shall be convicted by any road magistrate of contravening any of the provisions of the third section of this ordinance such magistrate, in case the fine imposed shall not be forthwith paid and it shall appear that the offender may be committed to prison without thereby depriving the wagon, cart, or other carriage of which he shall be in charge of a person necessary for the safe conduct of the same, shall forthwith commit such offender to prison, and his warrant for that purpose shall in substance and effect be agreeable to the form in the third schedule of this ordinance mentioned and set forth.

Manner of proceeding when the immediate imprisonment of driver would endanger the safety of the master's property.

18. And be it enacted that in every case in which it shall appear that to commit to prison forthwith any driver convicted as in the last preceding section mentioned would have the effect of depriving the wagon, cart, or carriage of which he was in charge of a person necessary for the safe conduct of the same the magistrate convicting (whether a resident magistrate or a road magistrate) shall instead of forthwith committing the offender cause to be seized and detained in some safe place some sufficient property, matter, or thing in, upon, or belonging to such wagon, cart, or carriage, by way of caution or security for the payment of the fine imposed or otherwise for the reappearance of such offender at some reasonable time to be fixed by the said magistrate for such payment or reappearance; and when and as often as any property, matter, or thing shall be seized and detained under the provisions of this section the magistrate causing such seizure or detention shall deliver to the person convicted a certificate which shall in substance and effect be agreeable to the form in the fourth



schedule hereunto annexed, and shall allow him to depart; and in case the fine imposed shall not be paid, or failing that in case the offender shall not again appear on the day limited for such purpose in the said certificate, the property or thing seized and detained shall be treated and considered as if seized and attached under a warrant of the magistrate granting such certificate against the goods and chattels of the offender and shall be sold in case such magistrate be a resident magistrate by the messenger in manner and form as by the rules of his court in that behalf provided, and in case such magistrate be a road magistrate by some person by him appointed for that purpose in manner and form as is hereinbefore in the sixteenth section of this ordinance provided: Provided, always, that in case the fine imposed be paid or the offender again appear on or before the day in and by the said certificate limited for that purpose the property, article, matter or thing detained shall be restored.

19. And be it enacted that the owner of any property, matter, or thing seized or detained under the circumstances in the last preceding section mentioned shall be authorized either to pay the fine imposed for and on account of the offender and to retain or recover the amount thereof from such offender or otherwise to convey such offender to the magistrate granting the certificate aforesaid, so as to produce such offender at any time before the expiration of the day limited in such certificate for that purpose; and whenever any such offender shall be so produced before any resident magistrate or road magistrate and shall not pay the fine imposed such resident magistrate or road magistrate shall forthwith commit him to prison; and the warrant to be issued by the resident magistrate for that purpose shall be in substance and effect agreeable to the form in the third schedule of this ordinance mentioned and set forth.

20. And be it enacted that it shall and may be lawful for any person who shall witness or discover any contravention of the provisions of the second, third, or fourth sections of this ordinance and for any other person whom he shall desire to assist him and shall be willing so to do to require and if necessary and practicable use all force necessary to compel the owner, driver, or other person or persons in charge of the wagon, cart, or other carriage by or by means of which such contravention shall have been committed forthwith to proceed with the wagon, cart, or other carriage in question

Payment by  
master of fine  
in last section,

or delivery up  
of offender.

Authority of  
persons seeing  
contraventions  
of this ordi-  
nance to  
compel offen-  
ders to appear  
before magis-  
trate;

and the oxen or other cattle belonging thereto to the residence or place of abode of whatever resident magistrate or road magistrate shall be or reside or be found nearest to the place where such wagon, cart, or other carriage shall be when required to proceed as aforesaid, and such resident magistrate or road magistrate shall as soon as may be proceed to hear and determine the subject-matter of the complaint, and shall detain the wagon, cart, or other carriage in question to abide the issue of the investigation of the case: Provided that it shall not be lawful to require any such owner, driver, or other person as aforesaid to proceed to any magistrate whose residence shall be distant three miles or upwards.

if within three miles.

Manner of proceeding when offender cannot at once be taken before magistrate.

21. And be it enacted that when and as often as any person witnessing or discovering any such contravention as aforesaid shall by reason of distance or other impediment find it impossible or deem it inexpedient to require any such wagon, cart, or other carriage to proceed to any resident magistrate or road magistrate, and in every case in which the residence of the nearest resident magistrate or road magistrate shall be distant three miles or upwards from the place at which any such contravention as aforesaid shall be witnessed or discovered and there shall be nearer than the nearest resident magistrate or road magistrate any justice of the peace, field-cornet, or gaoler, the person so witnessing or discovering any such contravention as aforesaid may require and compel such wagon, cart, or other carriage to proceed to whoever of the lastmentioned persons can be most conveniently reached, and such justice of the peace, field-cornet, or gaoler is hereby authorized and empowered at his discretion either to detain the said wagon, cart, or other carriage with the oxen or other cattle thereto belonging for any period not exceeding twelve hours, in order that during that period the case concerning it or them may be disposed of by some resident magistrate or road magistrate should it be practicable so to do, or such justice of the peace, field-cornet, or gaoler may in case the owner of such wagon, cart, or other carriage shall be in charge of or with the same take, but without fee or reward and as near as may be in the form in the fifth schedule to this ordinance set forth, the bond, obligation, or recognizance of such owner with or without sureties as may be thought fit, conditioned for the appearance of such owner before any resident magistrate whom the said owner and the person complaining shall agree to have

inserted, and in case they shall not so agree then before the resident magistrate whom the justice of the peace, field-cornet, gaoler, or constable shall under the circumstances deem the most convenient, upon some convenient day to be after consulting such owner and person complaining fixed by the justice of the peace, field-cornet, or gaoler, and which day shall be mentioned in such bond, obligation or recognizance, then to answer the charge to be preferred against him; and upon such owner entering into such bond, obligation, or recognizance the wagon, cart, or other carriage in question and the oxen used for drawing the same shall be allowed to depart; but if in any case the owner of such wagon, cart, or other carriage brought as aforesaid to any justice of the peace, field-cornet, or gaoler should not in person be in charge of or present with the same then in place and stead of taking such bond, obligation, or recognizance as aforesaid such justice of the peace, field-cornet, or gaoler shall and may detain the alleged offender to answer the charge against him, provided his so doing would not have the effect of depriving any wagon, cart, or other carriage of a person necessary for the safe conduct of the same; but if such detention would have such effect such justice of the peace, field-cornet, or gaoler shall and may seize and detain and if he shall think fit forward to and place in the nearest public pound such a number of the oxen or other cattle belonging to such wagon, cart, or other carriage as he shall deem sufficient to meet and satisfy any fine, penalty, or forfeiture which may be imposed for or in respect of the charge preferred, or should it be practicable shall seize and detain instead some property, matter, or thing in, upon, or belonging to such wagon, cart, or other carriage, and shall then permit and suffer such wagon, cart, or other carriage to depart, having first delivered a written statement to the owner or person in charge thereof of the day on which the case will come on to be investigated in and by the court of the resident magistrate.

Bond for appearance of owner before magistrate.

Detention of offender in default of bond;

or seizure of sufficient property.

22. And be it enacted that in every case in which any wagon, cart, or other carriage shall be brought as aforesaid to any justice of the peace, field-cornet, or gaoler such justice of the peace, field-cornet, gaoler, or constable shall take down in writing the name and residence of every person bringing the same or causing the same to be brought, and may require every such person to enter into a bond, obliga-

Provision for appearance of complainants on day of trial.

tion, or recognizance with or without sureties and as near as may be in the form in the sixth schedule to this ordinance set forth to appear and give evidence in the court of the resident magistrate; or in case such justice of the peace, field-cornet, or gaoler shall propose to detain the wagon, cart, or other carriage with the oxen or other cattle as aforesaid in order that the case may be brought before any road magistrate then before such road magistrate touching and concerning such alleged offence; and in case no sufficient security either personally or by sureties shall when required be given by some person or persons so to appear and give evidence the wagon, cart, or other carriage shall unless the matter complained of in regard thereto shall be apparent upon the view thereof and the justice of the peace, field-cornet, or gaoler shall himself think fit to prosecute be permitted to pursue its journey.

Proceeding on frivolous and vexatious complaints.

23. And be it enacted that if in any case in which any wagon, cart, or other carriage shall be brought as aforesaid to any justice of the peace field-cornet, or gaoler it shall appear to such justice of the peace, field-cornet, or gaoler that the complaint made is groundless and vexatious the person preferring the same and neglecting to give sufficient security personally or by sureties to appear and give evidence as aforesaid may upon the request of the owner or person in charge of the wagon, cart, or other carriage in question be detained in custody until he shall be brought up before the court of the resident magistrate, such owner or person in charge in his turn giving security to appear and give evidence in the said court or in person abiding in order so to do when the said person or persons shall be brought before the same, which shall be as soon as reasonably may be.

Penalty on such complaints.

24. And be it enacted that any person who shall to any resident magistrate, road magistrate, justice of the peace, field-cornet, or gaoler prefer by virtue or under pretext of this ordinance any groundless and vexatious complaint against any other person or any wagon, cart, or other carriage shall in addition to any civil action to which he may render himself liable forfeit upon conviction any sum not exceeding forty shillings.

Transmission of bonds for appearance to magistrate.

25. And be it enacted that in every case in which any justice of the peace, field-cornet, or gaoler shall take from any such owner as aforesaid (whether resident in the district in which any alleged offence shall have been witnessed or

discovered or not) any such bond, obligation, or recognizance as aforesaid he shall forthwith forward the same to the resident magistrate mentioned therein, together with the name and residence of every person complaining as aforesaid, as also any bond, obligation, or recognizance which may have been entered into by any such lastmentioned person to appear and give his evidence in the court of the resident magistrate at the time fixed in the bond, obligation, or recognizance of such owner as aforesaid for the hearing of the case.

26. And be it enacted that in every case in which any oxen or other cattle or any property, matter, or thing shall have been detained or impounded under and by virtue of provisions in that behalf hereinbefore set forth by any justice of the peace, field-cornet, or gaoler such justice of the peace, field-cornet, or gaoler shall transmit forthwith to the resident magistrate a report of what has been done in that behalf, mentioning the day named by him to the parties for the hearing of the case together with the name and residence of and the other matters and things concerning every person complaining, in manner and form as in the last clause of the last preceding section mentioned and set forth.

Report of detention of cattle, &c., to magistrate.

27. And be it enacted that it shall be the duty of every resident magistrate to whom any such bond, obligation, or recognizance as aforesaid or any such report as in the last preceding section mentioned shall be transmitted by any justice of the peace, field-cornet, or gaoler to sit for the hearing of the case to which it relates upon the day which has been specified for the hearing of the same, and thereupon in the presence of the parties interested should both attend or in the absence of such of them if any as may make default to pronounce such judgment as shall to justice appertain.

Duty of magistrate to sit for hearing of case on day fixed.

28. And be it enacted that if the court of the resident magistrate shall see cause to convict any owner in any case in which it shall have been reported as aforesaid that any oxen or other cattle or any property, matter, or thing seized and detained have been detained and impounded as aforesaid by any justice of the peace, field-cornet, or gaoler, the said oxen or other cattle shall and may be excused in satisfaction of the judgment: Provided, always, that the pound fees or charges due and payable thereon shall be first deducted from the amount for which any such oxen or other cattle shall be sold; and that there shall next be deducted the expense of sending the same to pound by such justice of the peace, and

Excursion of property detained on conviction of owner.

that in case there shall then remain any surplus after deducting the fine, penalty, or forfeiture imposed such surplus shall be paid over to such owner.

Conviction of driver in his absence.

29. And be it enacted that if the court of the resident magistrate shall see cause to convict in his absence any driver in any case in which any oxen, cattle, property, article, matter, or thing shall have been seized, detained, or impounded the same shall and may be excused in satisfaction of the judgment: Provided, always, that if such driver duly appear the thing seized, detained, or impounded shall be forthwith restored to the owner; and provided that it shall be competent for such owner at any time before the actual sale of the thing so seized, detained, or impounded to redeem the same by payment for and on account of the offenders of the fine imposed with reasonable charges to be assessed by the said magistrate; and provided that if such owner shall produce to such magistrate at any time before such sale aforesaid the convicted party (as he is hereby authorized to do) and shall pay such reasonable charges as aforesaid the thing seized, detained, or impounded shall be forthwith restored.

Restoration of owner's property detained on driver's appearance.

Prosecuted by summons,

30. And be it enacted that nothing in this ordinance contained shall be construed so as to make it imperative or necessary for any person witnessing or discovering any contravention of this ordinance to require the wagon, cart, or other carriage by or by means of which such contravention shall have taken place to proceed at once to any resident magistrate, road magistrate, justice of the peace, field-cornet, gaoler, or constable as aforesaid, but that such person may should he so think fit prosecute or cause to be prosecuted the party offending before any court of resident magistrate which such person shall select: Provided, however, that no summons shall be issued by any such court in any case until such person shall have deposed on oath to the fact or facts charged to be or to have been such a contravention as aforesaid; and provided, also, that no person shall be summoned to appear before any such court other than that of the district in which he resides, except such court shall be appointed to be holden within the distance of twenty miles of such residence.

at the district court or court within twenty miles of offender's residence.

Proceeding and judgment on default of appearance.

31. And be it enacted that in every case in which any person shall have been summoned to appear before any court of resident magistrate being that of the district in which he resides or some other such court to be held within twenty

miles of his residence to answer to the charge of contravening any of the provisions of this ordinance, and such person shall not appear upon the day appointed for that purpose, then the said court, upon being satisfied by the return of the messenger of such court endorsed upon the summons or other credible evidence on oath that the said summons was duly served, may either proceed to hear the case in the absence of the person summoned and give final judgment and if necessary issue execution thereupon, or in case it should seem more expedient the resident magistrate may issue his warrant for the apprehension of the person so making default in manner and form as is by law provided in regard to a person neglecting to appear to answer any criminal charge: Provided, however, that when and as often as any case shall be heard in the absence of the defendant as aforesaid and such person shall be convicted process shall in the first instance issue only against his goods, and not either directly or alternatively against his person; and provided, also, that if it shall afterwards be made to appear that no goods have been found sufficient to satisfy the exigency of the writ or warrant of execution it shall and may be lawful for the court having cognizance of the case then to issue a warrant against the defendant for committing him to the prison nearest to his residence, in manner and form as such court might have done forthwith in case such defendant had duly appeared or been apprehended and brought before the same.

Execution.

32. And be it enacted that every sentence or judgment of any resident magistrate or road magistrate given or pronounced in any case of alleged contravention of any the provisions of this ordinance shall be final and conclusive and shall not be subject to be brought by way of appeal or review before any other court, anything in the charter of justice or any other law or ordinance to the contrary notwithstanding.

Sentence without appeal or review.

33. And be it enacted that if any person being in charge of any wagon, cart, or other carriage, whether the owner thereof or not, shall in any case in which he shall be required to proceed to any resident magistrate, road magistrate, justice of the peace, field-cornet, or gaoler under and by virtue of either the twentieth or twenty-first sections of this ordinance resist or refuse so doing or make any undue or unnecessary delay in so doing such person shall forfeit upon conviction any sum not exceeding five pounds: Provided,

Penalty on refusal to proceed to magistrate as required under 20th and 21st sections.

always, that the said forfeiture shall in no case attach or be inflicted except where it shall be proved that some one or more of the provisions of the second, third, or fourth sections of this ordinance were actually contravened in the view of the person requiring the wagon, cart, or other carriage contravening the same to proceed as aforesaid.

Penalty or the kindling of fires near certain roads.

34. And be it enacted that if any person shall whether by day or night kindle, place, or have any fire upon the ground upon any part or within twenty yards on either side of the public road aforesaid from Cape Town to Simon's Town or of the new hard road aforesaid from Cape Town to its terminus at the Eerste River or of the public road from Cape Town to and through the municipality of Green Point, such person shall upon conviction forfeit any sum not exceeding two pounds; and it shall and may be lawful for any person finding any such fire forthwith to extinguish the same or cause the same to be extinguished: Provided, also, that it shall and may be lawful for His Excellency the Governor by any proclamation or proclamations to be by him from time to time issued in that behalf to extend the provisions of this section to any other public road or part thereof.

Apprehension without warrant of offenders under last section.

35. And be it enacted that it shall and may be lawful for any person in whose presence any such offence as is in the last preceding section mentioned shall be committed to apprehend without warrant the person offending and to deliver him to any resident magistrate, road magistrate, field-cornet, constable, or peace officer, who shall keep him in safe custody and with all reasonable dispatch convey him with the witness or witnesses before the nearest resident magistrate or road magistrate (which road magistrate shall have in regard to the said offence the same jurisdiction as a resident magistrate), to be dealt with according to law: Provided, always, that if in any case the person about to be apprehended as aforesaid shall be in actual charge of or belong to any wagon, cart, or any other carriage the person apprehending shall unless there shall be on the spot some other person ready and willing with the consent of the person about to be apprehended to take charge of such wagon, cart, or other carriage cause the offender or some other person to conduct the said wagon, cart, or other carriage to such resident magistrate, road magistrate, or field-cornet, or to some public pound or police station, there to be kept for the owner, by whom it may at any time be taken possession of; such owner, however, being



bound before receiving possession thereof to pay and satisfy all reasonable charges and expenses attendant upon the keeping of the same and of the oxen or other cattle belonging thereto; and provided, also, that the warrant of committal by any road magistrate for the offence in the last preceding section mentioned shall in substance and effect be agreeable to the form in the third schedule hereunto annexed set forth; or such resident magistrate or road magistrate may in case it shall appear more conducive to the interest of the owner of such wagon, cart, or carriage proceed in manner and form as in the eighteenth section is provided to seize and detain some property or such matter or thing and allow the said offender to depart; and thereupon all and singular the provisions of the said eighteenth and nineteenth sections of this ordinance shall be applicable and be applied as fully as if the same were here again repeated.

Form of committal.

36. And be it enacted that the reasonable charges and expenses in the last preceding section mentioned shall be and constitute a debt due by and recoverable from the owner of the wagon, cart, or other carriage in regard to which or the oxen or other cattle belonging to which the same shall have been incurred, and in case such owner shall not himself be a party offending such charges and expenses shall be by him recoverable over from the offender: Provided, always, that in case of any dispute about the amount of any charges or expenses claimed under and by virtue of the last preceding or of the fourteenth, fifteenth, twenty-eighth, or fortieth sections of this ordinance and of which the amount shall not be ascertained by law such dispute shall be settled by the decision of any resident magistrate or road magistrate.

Payment of charges by owner or offender.

37. And be it enacted that in all cases the oxen or other cattle drawing or belonging to any wagon, cart, or other carriage which shall under the provisions of the twentieth or twenty-first sections of this ordinance be brought to or before any resident magistrate, road magistrate, justice of the peace, field-cornet, or gaoler shall be deemed to belong to the owner of such wagon, cart, or other carriage, and shall be liable to be seized and sold in satisfaction of any fine, penalty, or forfeiture incurred by such owner.

Presumption of ownership of oxen, &c., in owner of wagon.

38. And be it enacted that when and as often as it shall be necessary to proceed by summons from the resident

Definition of "owner" in regard to summons.

magistrate's court in regard to any alleged contravention by or by means of any wagon, cart, or other carriage, for which contravention the owner is hereinbefore declared to be liable, the several and respective persons following shall in the several and respective cases following be deemed to be for the purpose of incurring any fine, penalty, or forfeiture under the provisions of this ordinance but not otherwise such owners, that is to say,—1st, the person whose name shall at the time of the alleged contravention be painted upon any wagon, cart, or other carriage, as the owner thereof shall be deemed to be such owner and as such responsible, unless it shall be made to appear to the court that his name was so upon the said wagon, cart, or other carriage without his knowledge or consent; 2d, the person having the right of property in any wagon, cart, or other such carriage which ought by the second section of this ordinance to have the name of the owner legibly painted thereon, and which either has not any name so painted or has so painted the name of some person not being the person having such right of property without the knowledge or consent of such person shall be deemed to be the owner and as such responsible; 3d, the person having the right of property in any carriage of a species or description in regard to which the painting thereupon of the owner's name is not hereinbefore enjoined shall be deemed to be the owner should such person be present in or with such carriage at the time of any contravention complained of, or should such carriage be then under the care and management of any person as his servant or agent; but in every other case the owner of any such last-mentioned carriage shall be deemed to be the person by whom or by whose servant or agent the same shall be driven or conducted at the time of any such contravention as aforesaid: Provided, always, that nothing herein contained shall be construed to extend so as to enable the messenger to attach in order to satisfy any fine, penalty, or forfeiture imposed upon any person as such owner as aforesaid anything except what would independently of this ordinance be the property of such person.

Penalty on  
furious driving.

39. And be it enacted that any person who upon any road or in any place in which negligent, careless, or furious driving is hereinbefore by the third section of this ordinance made punishable as therein mentioned shall ride so negli-

gently, carelessly, or furiously as to injure or endanger the person or property of any other person shall upon conviction forfeit any sum not exceeding forty shillings.

40. And be it enacted that every person offending against the provisions of the last preceding section may be apprehended without warrant in order to be brought before the nearest resident magistrate or road magistrate (which road magistrate shall have in regard to the said offence the same jurisdiction as a resident magistrate) in like manner and form as is by the thirty-fifth section of this ordinance provided in regard to the offending person therein mentioned: Apprehension of persons furiously driving without warrant. Provided, also, that the horse or other animal upon which such person so offending as aforesaid shall then be riding may be detained and conducted to the magistrate aforesaid by the person apprehending such person, and such horse may for the purpose of satisfying or making good the fine, penalty, or forfeiture incurred by any such person be deemed to be the property of the offender and be dealt with as such; Property in and attachment of horse, &c. and provided, further, that when and as often as any such horse shall be seized and attached under the warrant of any road magistrate to satisfy the sentence of any such magistrate the person seizing and attaching the same may place such horse at livery instead of sending him to the public pound, in which case he shall give immediate notice to the messenger of the court of the resident magistrate of the district in which such horse shall be detained, who shall proceed in regard to the sale thereof precisely as if such horse had been seized and attached by himself under and by virtue of a warrant of the said resident magistrate: Restoration of horse. Provided, always, that every such horse shall be restored upon the payment of the fine, penalty, or forfeiture imposed together with the reasonable charges and expenses of the horse's keep as also of the person who seized and attached the same under and by virtue of the warrant of the road magistrate aforesaid; Form of committal. and provided, further, that the warrant of committal by any road magistrate for the offence in the last preceding section mentioned shall in substance and effect be agreeable to the form in the third schedule hereunto annexed set forth.

41. And be it enacted that it shall and may be lawful for any resident magistrate should he so think fit to award in regard to any prosecution by virtue or under pretext of any of the provisions of this ordinance either to the party complaining or the party complained against such reasonable Power of magistrate to award costs.

costs as might lawfully be awarded by such magistrate in regard to any civil action pending in his court, and such resident magistrate may commit to prison any defendant adjudged to pay the same until the same shall be paid in like manner as is by the sixth section of this ordinance provided, in regard to the fine, penalty, or forfeiture which such defendant shall have incurred: Provided, however, that all such costs as may be awarded against any complainant shall be recoverable in manner and form as costs awarded against a plaintiff in a civil suit or proceeding in such court, except when the complainant shall appear to have committed the offence in the twenty-fourth section of this ordinance mentioned and be thereof convicted, in which case the amount of such costs shall in the warrant of committal be added to the amount of the fine imposed.

Appropriation  
of fines.

42. And be it enacted that the whole amount of every fine, penalty, and forfeiture levied upon conviction of any offence in contravention of any of the provisions of this ordinance shall upon recovery thereof be paid to the person prosecuting the offender, unless such person shall decline to receive the same and direct some charitable or other appropriation thereof, in which case it shall be applied accordingly.

Annual return  
of cases, &c.,  
by road magis-  
trate.

43. And be it enacted that every road magistrate shall on or before the 31st day of December now next ensuing and on or before the 31st day of December in each succeeding year prepare from his record book and transmit to His Excellency the Governor a statement in writing, showing the number of cases connected with this ordinance by him determined, the names of the parties, the date of the hearing, the judgment pronounced, and the aggregate amount received or levied, and the mode in which that amount has been applied; and every such statement shall be vouched by having added thereto by such road magistrate the declaration following, that is to say, "I, ———, do solemnly and sincerely declare that the above is a true and correct statement regarding the several matters mentioned and set forth in the forty-third section of the Ordinance No. 9, of 1846," which declaration such road magistrate shall sign.

Application to  
road magis-  
trate of certain  
sections of  
Ordinance No.  
32.

44. And be it enacted that the fifth and remaining sections of the Ordinance No. 32, of 1827, entitled, "Ordinance for creating Justices of the Peace in this Colony," shall apply and extend to all road magistrates appointed under and by

virtue of the provisions of this ordinance, and every person acting in obedience to any warrant of any such road magistrates or acting in aid of such person, precisely as if the said sections were herein again set forth and word for word repeated, substituting only road magistrate for justice of the peace whenever the former word occurs and such person as last aforesaid for the constable or other officer or person or persons acting by his order and in his aid in the tenth and twenty-first sections of the said ordinance mentioned.

45. And be it enacted that in the interpretation of this ordinance the term "governor" shall mean the officer for the time being administering the government of this colony; and that the term "resident magistrate" shall comprehend any officer for the time being acting as such; and that the term "carriage" shall comprehend every description of vehicle whether upon two wheels or more, or whether drawn by one horse or more, except when there is something in the context to restrict the meaning of the said term; and that the term "cattle" shall comprehend all animals used for draught; and that the singular number shall include several persons, animals, or things, as well as one person, animal, or thing; and that the masculine gender shall include females as well as males unless there be something in the context repugnant to such construction.

Interpretation  
clause.

46. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

Exclusion of  
Natal.

47. And be it enacted that this ordinance shall commence and take effect from and after the first day of May next.

Time of taking  
effect.

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SCHEDULE NO. 1.

*Oath of Allegiance to be taken by the Road Magistrate.*

I, ———, do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God.

Oath of alle-  
giance.

*Oath of Office to be taken by the Road Magistrate.*

I, ———, do swear that faithfully and honestly and to the best of my ability and power I will discharge my duty as a road magistrate appointed under and by virtue of the Ordinance No. 9, of 1846. So help me God!

Oath of office.

## SCHEDULE NO. 2.

*Warrant referred to in the 13th Section of the above Ordinance.*

To — (name of the person to whom the warrant is directed).

Warrant under  
section 13.

Whereas — (name the known or alleged or supposed owner) or other the owner or owners of a certain (state the description of the carriage) now at this place (or if at the place of any justice of the peace, field-cornet, gaoler, or constable state where), has (or have) this day been convicted before me of the offence of contravening the Ordinance No. 9, 1846, and I have thereupon adjudged that for the said offence he (or they) do forfeit the sum of — (state the amount of the fine imposed); this is therefore to authorize and require you to seize and take possession of — (state the description of the property or as the case may be the number and species of the cattle to be seized) now belonging to the said (repeat the name of the carriage), and to treat and dispose of the same as by the said ordinance is provided, in order that of the same may be levied and made the said sum of —, together with your reasonable charges about the same; and for so doing this shall be your warrant. And return to me this warrant, endorsing thereupon what you shall have done under it.

Given under my hand at —, this — day of —, 18—.

(Signed) —, Road Magistrate.

## SCHEDULE NO. 3.

*Warrant of Road Magistrates for committing to prison for offences under the 3d, 34th, and 39th Sections of the above Ordinance.*

To the gaoler or keeper of Her Majesty's gaol at —.

Warrant under  
sections 3, 34,  
and 39.

Whereas — (name the offender) has been this day adjudged by me to forfeit and pay the sum of £— for the offence of which he was convicted of contravening the — section (or —) of the Ordinance No. 9, 1846, but has not paid the said sum, this is therefore to require you to receive the said — into your custody and him safely to keep to hard labour, for the space of (state the period of imprisonment) now next ensuing, unless the said sum of £— shall be sooner paid.

Given under my hand at —, this — day of — 18—.

(Signed) —, Road Magistrate.

\* \* Should the imprisonment be meant to be without hard labour, the words "to hard labour" in the above form are to be omitted.

## SCHEDULE NO. 4.

*Certificate mentioned in the 18th Section of the above Ordinance.*

Certificate  
under section  
18.

This is to certify that — (name the offender) was this day adjudged by me to forfeit and pay me the sum of £— for

contravening the Ordinance No. 9, 1846, which fine he has not paid; wherefore and inasmuch as the said (name the offender) is needed to conduct the (state the description of the carriage) of which he is in charge, I have by virtue of the eighteenth section of the said ordinance caused to be seized and detained (state the description of the property) as security for the payment of the said fine or otherwise for the reappearance before me of the said (name of the offender) on the — day of — next ensuing, at — o'clock of the forenoon, failing which the said (repeat the description of the property) will be dealt with as by the said eighteenth section is directed; of which all whom it may concern are required to take notice.

Given under my hand at — this day of —, 18 — .

(Signed) —, Resident Magistrate or  
 „ —, Road Magistrate  
 (as the case may be).

#### SCHEDULE NO. 5.

##### *Recognizance mentioned in the 21st Section of the above Ordinance.*

Before me — (state name and office of the person taking the recognizance) on this — day of —, 18—, came and appeared — (name and residence of the owner of the carriage), who acknowledged himself to owe to our Lady the Queen the sum of £—, to be levied and made of his goods and chattels if he shall make default in the condition following: Recognizance  
under section  
21.

Whereas the said — (owner's name) is the owner of a certain (state the description of the carriage) detained under the provisions of the 21st section of the Ordinance No. 9, 1846, upon a charge of this day (or otherwise according to the truth) having at or near — (state the place) contravened the said ordinance; now the condition of this recognizance is such that if the said owner shall personally appear before the court of the resident magistrate of the district of — between the hours of eleven and twelve o'clock on the forenoon of the — day of — next ensuing, then to answer any charge which shall be preferred against him of having so as aforesaid contravened the said ordinance, and not to depart without the leave of the said court, then this recognizance to be void.

Acknowledged before me as aforesaid.

(Signed) —, Justice of the Peace  
 (or otherwise as the case may be.)

\* \* Should there be any surety to the recognizance, add his name and residence next after that of the owner, changing "himself" into "themselves," "his" into "their," and in place of "he" in the last clause of the obligation inserting again the name of the owner.

## SCHEDULE NO. 6.

*Recognizance mentioned in the 22nd Section of the above Ordinance.*

Recognizance  
under section  
22.

Before me ——— (as in schedule No. 4) on this ——— day of ——— 18—, came and appeared ——— (name and residence of the witness) who acknowledged himself to owe to our Lady the Queen the sum of £——, to be levied and made of his goods and chattels if he shall make default in the condition following:

Whereas the said ——— hath this day brought or caused to be brought before me, ——— (repeat the name), a certain (state the description of the carriage) whereof ——— is named as the owner, complaining that by or by means of the same, and at or near ——— (place) the Ordinance No. 9, of 1846, was this day (or otherwise according to the fact) contravened; now the condition of this recognizance is such that if the said (witness) shall personally appear before the court of the resident magistrate for the district of ——— (or before A. B., Esq., of ———, road magistrate, as the case may be) between the hours of eleven and twelve o'clock in the forenoon of the ——— day of ——— next ensuing (in case the witness is to appear before a road magistrate the hours will depend on the circumstances, and should be so stated), then and there to give evidence touching and concerning the said alleged contravention, and shall not depart without the leave of the court, then this recognizance to be void.

Acknowledged before me as aforesaid.

(Signed) ———, Justice of the Peace  
(or otherwise as the case may be).

\* \* Should there be more witnesses than one, or one or more witnesses with sureties, the necessary changes will be understood from the note to form in schedule No. 5.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 28th day of February, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.



No. 10.—Sd. P. Maitland.]

Ordinance for amending the Law relating to the Baking Trade.

WHEREAS doubts exist whether or not all bakers within the colony are by law required to take out licences to trade as such: And whereas it is expedient to remove such doubts and to regulate in certain other respects the baking trade: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the proclamation of Lord Charles Henry Somerset, the then Governor of this colony, bearing date the 6th of December, 1822, and of any other law or usage heretofore in force in this colony as shall be repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed and the same is hereby repealed accordingly.

Preamble.

Repeal of former laws.

2. And be it enacted that from and after the first of May next no person shall within this colony exercise the trade or calling of a baker without having previously taken out a baker's licence; and any person exercising the trade or calling of a baker as aforesaid without having previously taken out such licence as aforesaid shall for every offence forfeit five pounds: Provided, however, that every person within this colony lawfully keeping a retail shop may without taking out a baker's licence sell bread purchased or obtained from any person who shall have taken out a baker's licence aforesaid; provided, also, that nothing herein contained shall extend to prevent any person from selling bread to travellers without any licence whatever.

Penalty on carrying on trade of a baker without licence.

Sale of bread at retail shops.

3. And be it enacted that every such licence shall be issued by the distributor of stamps of the district within which the intended bakery shall be situated, and shall be in substance in the same form and shall be paid for at the same rate as the baker's licence now granted to bakers in Cape Town; and such distributor as aforesaid shall issue such licences to commence and be in force for the year 1846 from the 1st May next, and he shall allow a rebate of one fourth the amount of every such licence for the said year; but every such licence as aforesaid for every succeeding year shall commence from and continue in force for twelve months after the 1st of January in every such year: Provided

Issue of licences by distributor of stamps.

that nothing herein contained shall be construed so as to affect the validity of any baker's licence which shall be in force at the date of the promulgation hereof.

Licence applicable to one baking place only.

4. And be it enacted that no person who shall have taken out a baker's licence shall be entitled by virtue thereof to bake or make bread at more than one place or premises or to sell the same elsewhere than at the place or premises where it is baked or made: Provided, however, that any one person may take out as many baker's licences as he may require, and that the holder of a baker's licence who shall also keep a lawful retail shop may sell in such retail shop bread baked and made at the place or premises licensed as a bakery without taking out any additional baker's licence: and provided, also, that the servant of any licensed baker in charge of any delivering cart of such baker may sell bread for and on account of such baker from and out of such cart while on its daily or usual delivering rounds.

Sale by delivery from carts.

Municipal regulation as to registration of bakers.

5. And be it enacted that nothing in this ordinance contained shall extend to alter or affect any municipal regulation of the municipality of Cape Town touching and concerning the registration at the office of the municipality of any licence to exercise the trade of a baker or to vend bread; but every such regulation shall be deemed, taken, and judged of in regard to bakers and venders of bread precisely as if this ordinance had never been passed.

Presumption on sale of bread without licence.

6. And be it enacted that every person selling bread without having previously taken out a baker's licence shall be deemed and taken to have himself baked and made the same unless he shall prove that the same was baked and made by some licensed baker.

Repeal of clause of proclamation of 1822.

7. And be it enacted that the tenth clause or section of the proclamation aforesaid of the 6th of December, 1822, shall be repealed, and the same is hereby repealed accordingly.

Meaning of term "bread."

8. And be it enacted that in the interpretation of this ordinance the term bread shall not extend to sweetened or spiced bread or cakes or any species of confectionery, and that the singular number shall include several persons as well as one person and that the masculine gender shall include females as well as males.

Exclusion of Natal.

9. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

10. And be it enacted that this ordinance shall commence Time of taking effect. and take effect from and after the 1st day of May next ensuing.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 10th day of March, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 11.—Sd. P. Maitland.]

Ordinance for amending the Law relative to the Licensing of Retail Shops.

WHEREAS by law persons keeping retail shops in Cape Preamble. Town, Simon's Town, and the towns and villages of Stellenbosch, Swellendam, Graaff-Reinet, Uitenhage, Tulbagh, George, and the Paarl are required to take out an annual licence for the privilege of so doing, on a stamp of one pound ten shillings in value or amount: And whereas it is expedient to provide for the taking out in certain other towns and villages of similar licences: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the 1st May next no person shall keep a retail shop in any of the towns, villages, or places mentioned in the schedule hereunto annexed without having taken out an annual licence for the privilege of so doing on a stamp of the value or amount of one pound ten shillings. Necessity of licence in places named in schedule.

2. And be it enacted that every such licence shall be issued Issue of licence by distributor of stamps. by the distributor of stamps of the district within which the intended retail shop shall be situated; and such distributor shall issue such licences to commence and be in force for the year 1846 from the 1st May next, and he shall allow a rebate of one third of the amount of every such licence for

the said year ; but every such licence as aforesaid for every succeeding year shall commence from and continue in force for twelve months after the 1st of January in every such year.

Extension of ordinance to places not in schedule by proclamation.

3. And be it enacted that it shall and may be lawful for the Governor of the colony by any proclamation or proclamations to be by him issued for that purpose to declare and make known from time to time as occasion shall require any other towns, villages, or places in which it shall have become just and equitable that the obligation of taking out such licences as aforesaid should be imposed, and from and after whatever time shall be fixed in and by any such proclamation as the time from and after which it shall be incumbent for all keepers of retail shops in any particular town, village, or place to have such licences as aforesaid it shall be so incumbent precisely as if such licences were by this ordinance expressly directed and required to be taken out.

Limits of towns, villages, &c.

4. And be it enacted that for the purposes of this ordinance the limits of every town, village, or place which is or which shall become a municipality shall be the limits of such municipality for the time being ; and of every town, village, or place not being a municipality in which there shall be a public market an imaginary circle drawn at the distance of two miles from such public market in every direction ; and of every town, village, or place which shall neither be a municipality nor have a public market but which shall have erected therein or adjacent a Dutch Reformed church, commonly called or known as the church of such town, village, or place, an imaginary circle drawn at the distance of three miles from such church in every direction ; and of every town, village, or place not being any such town, village, or place as aforesaid such limits as the Governor of the colony by any proclamation or proclamations, to be by him issued, shall from time to time fix and determine: Provided that if any town, village, or place which is now a municipality shall at any time hereafter cease to be such the limits of such town, village, or place shall for the purposes of this ordinance be the limits assigned to such municipality at the time of its cessation, unless and until the said limits shall be altered by some such proclamation as aforesaid ; which alteration, however, and all further alterations which shall be deemed expedient, any such proclamation shall from time to time be competent to make.

5. And be it enacted that so much of the proclamations of the 24th December, 1807, and the 24th December, 1812, or of any former law or usage in this colony as imposes a penalty of treble the value of the retail shopkeeper's licence or any other penalty upon all keepers of retail shops neglecting or failing to take out such licence shall be repealed, and the same are hereby repealed accordingly. Repeal of former proclamations.

6. And be it enacted that every person who shall keep a retail shop in any of the towns, villages, or places in this ordinance or in the schedule thereto annexed or in any such proclamation as aforesaid mentioned and set forth without having taken out the licence for the privilege of so doing by law required shall forfeit for every such offence any sum not exceeding five pounds and not less than one pound. Amount of penalties.

7. And be it enacted that so much of the proclamation aforesaid of the 24th December, 1812, as authorizes the granting of a certain licence of the value of five rixdollars, or seven shillings and sixpence, for selling in Cape Town certain specified articles by retail shall be repealed, and the same is hereby repealed accordingly: Provided, always, that notwithstanding such repeal all such lastmentioned licences at any time heretofore duly granted shall continue in full force and operation precisely as if such repeal had not taken place. Repeal of law as to amount of licence.

8. And be it enacted that from and after the 1st day of January, 1847, it shall be lawful to sell in Cape Town, and that from and after the taking effect of this ordinance it shall be lawful to sell in all other places within this colony, fruit, vegetables, milk, eggs, firewood, cakes, or confectionery without taking out any licence for the privilege of so doing. Sale of articles without licence.

9. And be it enacted that in the interpretation, the term "governor" shall mean the officer administering the government of this colony for the time being, and that the singular number shall include several persons as well as one person and that the masculine gender shall include females as well as males. Interpretation clause.

10. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal. Exclusion of Natal.

11. And be it enacted that this ordinance shall commence and take effect from and after the 1st day of May next ensuing. Time of taking effect.

—  
SCHEDULE.

Bathurst, Beaufort, Bredasdorp, Caledon, Clanwilliam, Colesberg, Cradock, D'Urban, Fort Beaufort, Green Point, Graham's Schedule of places.

Town, Malmesbury, Melville, Mossel Bay, Napier, Papendorp, Port Elizabeth, Prince Albert, Richmond, Riversdale, Rondebosch, Sidbury, Somerset East, Somerset West, Stockenstrom, Victoria, Wellington, Worcester, Wynberg.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 10th day of March, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 12.—Sd. P. Maitland.]

[10th March, 1846.

Ordinance for fixing the Value of Immovable Property within certain Municipalities for the purposes of Road Rates.  
[Repealed in the repeal of Ordinance No. 8, 1843, and Ordinance No. 12, 1844, by Act No. 9, 1858.]

No. 13.—Sd. P. Maitland.]

Ordinance for facilitating Loans on security of Shares in Joint-stock Companies.

Preamble.

WHEREAS a number of banking and other joint-stock companies exist in this colony, constituted respectively by and under respective deeds of co-partnership or association commonly called trust deeds: And whereas in all or most of such deeds as aforesaid a certain clause or provision is contained by which it is stipulated and agreed between the parties thereto that proprietors should assign and transfer their shares by endorsements upon the certificates thereof, but that no such endorsement should be valid to transfer any interest in or right or title to any share until such endorsement should have

been registered and certified in manner and form as by the said deeds provided: And whereas in all or most of the said deeds a certain other clause or provision is contained limiting and determining the number of shares which it shall be competent for any person to hold or possess: And whereas the two certain clauses or provisions aforesaid were devised and intended to apply to and govern cases of sale and purchase and are inapplicable to cases in which shares are sought to be only pledged, seeing that in such cases it would be inconvenient to require that a complete and entire change of ownership should be *ab initio* effected, while moreover the second of the clauses or provisions aforesaid limiting and determining the number of shares to be held or possessed by any one person would in many instances tend to prevent such complete and entire change from being effected: And whereas it may be apprehended that the title of any person to or with whom any such certificate of shares of any joint-stock company as aforesaid may be pledged might, whether such certificates have endorsed thereon fitting words of cession from the person pledging to the person receiving the pledge or are only indorsed in blank by such first-mentioned person, or are by him pledged and deposited without either cession or endorsement but with a collateral power to sell conferred upon the person receiving the pledge to be executed in case of default made by the person pledging, be drawn into question and disputed by execution creditors or creditors in an insolvent estate, so long as no assignment or transfer as aforesaid had been as aforesaid registered and certified: And whereas any such apprehension may tend to impede the freedom of raising money upon security of certificates of shares, and it is therefore expedient to remove the same and to facilitate transactions tending to promote the interest and convenience of traders and others requiring from other persons temporary advances or forbearance of their demands: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the legal holder of any share of the capital stock of any joint-stock company now existing or to be hereafter established within this colony to pledge or to have pledged such share for any purpose, object, or consideration for which movable property may lawfully be pledged, by pledging or having

Pledge of shares by pledge of certificates of shares.

pledged in manner and form as in the next succeeding sections mentioned the certificate of such share, and the person receiving such pledge (called hereafter in this ordinance the pledgee) shall be deemed and taken as against the pledger and his creditors whether in execution or insolvency, and all persons claiming from, through, or under him or them to have a good and valid hypothec or lien upon the said certificate and upon the said share, and to be in the same plight and condition in regard to such share as if the same like the certificate thereof were a thing capable of being actually handed over and deposited with such person and had actually so been: Provided, always, that nothing herein contained shall extend to alter or affect the mutual rights or claims of the company in which such share exists and the owner of any such share, which rights or claims notwithstanding any such pledge shall be deemed and judged of precisely as if such pledge had never been effected; and provided, also, that nothing in this ordinance contained shall extend to supersede, invalidate, or otherwise affect any special provision in any trust deed contained, touching and concerning the manner and form in which alone pledges of shares should be constituted and effected.

Manner of  
pledging certi-  
ficates.

2. And be it enacted that every such share as aforesaid shall be deemed and taken as against the pledger, his heirs and creditors, to be or to have been lawfully and effectually pledged when and as often as the certificate of such share shall be or shall have been delivered into and detained in the actual custody and possession of the pledgee, having endorsed thereon in fitting words a cession of the said share made in favour of the pledgee by the person entitled to cede the same, or having thereon the blank endorsement of such person so entitled, or otherwise when in reference to the certificate so delivered and detained as aforesaid some instrument, note, or memorandum in writing, shall be, or shall have been made containing a description of the share pledged and a statement of the purpose, object, or consideration for which the same shall have been pledged: Provided, always, that nothing herein contained shall be construed so as to deprive any pledge sought to be effected in any manner or form other than is in this section mentioned of any force or validity which it might otherwise have had; and provided, also, that nothing in this ordinance contained



shall be deemed or taken to abridge, alter, or affect the right if any of any pledgee of any share to retain the same for or on account of any future or other debt or demand not contemplated at the time of the original pledge or mentioned in any such instrument, note, or memorandum as aforesaid, which right shall be judged of and determined according to the ordinary rules of law relative to the detention of movables pledged, for the security of future or other debts or demands.

3. And whereas certificates of shares which have been pledged or otherwise delivered upon good consideration may through fraud be alleged or through mistake be supposed to be lost or destroyed, and thereupon application for fresh certificates may be made to the directors of the company in which the shares exist: And whereas a sudden or secret compliance with any such application might tend to the prejudice of pledgees or other persons, and it is therefore expedient to provide for the protection of such pledgees or other persons and at the same time to provide for the issue of fresh certificates in cases where the original certificates shall appear to have been really lost or destroyed: Be it enacted that in every case in which any such application as aforesaid shall be made to the directors of any joint-stock company such directors in case they shall not have knowledge or notice that the share in regard to which the fresh certificate is applied for is in pledge or otherwise disposed of shall (but at the cost and charge of the applicant) insert an advertisement in the Government Gazette and in such one of the newspapers in the colony as they shall select, stating that an application has been made for a fresh certificate for the share numbered — and issued to — as the proprietor thereof, upon the ground that the original or former certificate of the said share has been lost or destroyed (as the case may be), and that should no objection be lodged at the office of the company on or before some certain day to be fixed in such advertisement (not being less than fourteen days from the date of the last publication of the said advertisement), the said fresh certificate will be issued as requested.

Issue of fresh certificates on proof of loss of originals.

4. And be it enacted that in case no such objection as aforesaid shall be lodged it shall and may be lawful for the said directors to issue or cause to be issued the fresh certificate

Non-liability of company on issue of fresh certificates.

Personal responsibility of directors in certain cases.

applied for, and such directors shall not nor shall the company incur thereby any liability whatever: Provided, always, that if any pledgee of any certificate and share shall have at any time before the application for a fresh certificate given notice in writing at the office of the company that the same has been pledged to him or if the pledgee of any certificate and share shall lodge an objection in pursuance of any such advertisement and the directors shall nevertheless without the consent of such pledgee or the decree of some competent court issue such fresh certificate, such directors shall be personally responsible to such pledgee for any loss or damage which he may thereby sustain.

Order of preference between pledgee of original certificate and *bona fide* pledgee or purchaser on faith of fresh certificate.

5. And be it enacted that in case the pledgee of any original or former certificate of any share of which a fresh certificate is applied for as aforesaid shall not have given notice in writing of such pledge at the office of the company, or after such advertisement as aforesaid shall have been duly published shall not within the time in that behalf specified lodge an objection to the issue of any fresh certificate and the directors shall in consequence have issued or caused to be issued such certificates to the person applying for the same, every subsequent purchaser or pledgee dealing *bona fide* and without notice of the older pledge upon the faith of the fresh certificate as evidence of the ownership of the share which it represents shall be entitled to be preferred to the full extent of his claims and demands above or before the original pledgee: Provided, however, that such original pledgee shall still be entitled to be preferred above or before the person by whom or in whose right or supposed right any such fresh certificate shall have been obtained and above or before his heirs and above or before his creditors whether in execution or insolvency, but so, however, as not to require any execution creditor to refund any moneys actually paid out to him or to require the creditors of any insolvent estate to refund any dividends by them actually received.

Interpretation clause.

6. And be it enacted that in the interpretation of this ordinance the term person shall embrace any co-partnership or company and that the singular number shall include several persons as well as one person, and that the masculine gender shall include females as well as males.

Exclusion of Natal.

7. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

8. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof. Time of taking effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 25th day of March, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 14.—Sd. P. Maitland.]

Ordinance for improving the Law of Evidence.

WHEREAS the inquiry after truth in courts of justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue both in criminal and civil cases should be laid before the persons who are appointed to decide upon them and that such persons should exercise their judgment on the credit to be given to the witnesses adduced and on the truth of their testimony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the Ordinance No. 72, 1830, entitled "Ordinance for altering, amending, and declaring in certain respects the Law of Evidence within this Colony," and of the Ordinance No. 19, 1845, entitled "Ordinance for altering, amending, and declaring in certain respects the Law of Evidence within the District of Natal," and of any other law or custom heretofore in force in any part of this colony as is repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed, and the same is hereby repealed accordingly. Preamble.

2. And be it enacted that no person offered as a witness shall hereafter be incompetent to give evidence in any action, suit, or proceeding by reason that such person has been previously convicted of any crime or offence. Repeal of portions of former laws. Abolition of incompetency of witness from prior conviction.

Abolition of  
of incompeten-  
cy from inter-  
est.

Retention of  
old law as to  
evidence of  
parties.

No change as  
to actual plain-  
tiffs or defen-  
dants.

Competency of  
nominal party  
liable for costs  
by payment of  
money into  
court.

Competency of  
private prose-  
cutor.

Exception.

3. And be it enacted that no person offered as a witness shall hereafter be incompetent to give evidence in any action, suit, or proceeding by reason of any interest which such person may have in the matter in question or in the event of such action, suit, or proceeding: Provided, however, that nothing herein contained shall be construed so as to alter or in anywise affect the law relative to the giving or requiring of the oath or evidence of either party to any suit, action, or proceeding, which oath or evidence shall hereafter be received or required in such cases and none other as those in which the same might lawfully have been received or required previously to the passing of this ordinance; and provided, also, that this ordinance shall not be construed so as to render competent to give evidence any person though not a party on the record in whose immediate and individual behalf any action, suit, or proceeding may either wholly or in part be instituted or defended, or the husband or wife of any such person respectively.

4. And be it enacted that when and as often as any nominal party to the suit as such nominal party is in the twenty-sixth section of Ordinance No. 72 aforesaid mentioned and described shall be so situated as to be primarily liable to pay the costs of suit of the adverse party in case the judgment or verdict in such suit should be in favour of such adverse party, but shall not be otherwise interested, it shall and may be lawful for any person on whose behalf such suit shall be brought or defended by such nominal party to pay into court such sum as the said court shall deem reasonable and award to meet and satisfy such costs as aforesaid, there to abide the event of the suit and the further order of the court; and thereupon such nominal party shall be deemed and taken to be in the same plight and condition as if he had been released by the adverse party to such suit from his liability for the said costs.

5. And be it enacted that no person shall hereafter be incompetent to give evidence in any case by reason that in such case he prosecutes at his own instance for any crime or offence: Provided, however, that when any such person shall in any such case seek the recovery or restitution of any money, matter, or thing he shall not by virtue of anything in this ordinance contained be deemed (if otherwise incompetent to give evidence) to be rendered competent so to do.

6. And be it enacted that persons belonging to or sprung from any barbarous and uncivilized tribe or race of people in Africa, and whether usually resident in the colony or not, who from ignorance or defective knowledge of God and total or partial absence of religious belief shall be found not to understand the nature or recognize the religious obligation of an oath shall and may be admissible to give evidence in any court within this colony without being sworn or being upon oath: Provided, always, that before any such person shall proceed to give evidence the judge or magistrate before whom he shall be offered as a witness shall admonish him to speak the truth, the whole truth, and nothing but the truth; and shall further administer or cause to be administered to such person any form which shall either from his own statement or other source of information appear to be calculated to impress his mind and bind his conscience, and which shall not as being of an inhuman, immoral, or irreligious nature be obviously unfit to be administered; and provided, also, that any such person who shall wilfully and falsely state anything which if sworn would have amounted to the crime of perjury shall be deemed to have committed the said crime, and shall upon conviction be subject to such punishment as is or shall be by law provided for or in regard to the said crime.

Unsworn  
testimony of  
uncivilized  
tribes.

Admonition by  
magistrate.

Punishment of  
false statement  
as for perjury.

7. And whereas in a session of parliament holden in the third and fourth years of the reign of his late Majesty King William the Fourth an act was passed for enabling the sect or people called Separatists, who from conscientious scruples refuse to take an oath in courts of justice or other places, to make in lieu and stead of an oath their solemn affirmation and declaration: And whereas it is expedient that the said act should in substance be extended to this colony: Be it enacted that every person for the time being belonging to the sect or people called and known in England and Ireland by the name of Separatists who shall be required upon any lawful occasion to take an oath in any case when by law an oath is or may be required shall instead of the usual form be permitted to make his or her solemn affirmation or declaration in the words following *videlicet*, "I, A. B., in the presence of Almighty God solemnly, sincerely, and truly declare and affirm that I am a member of the religious sect called and known in England and Ireland by the name of Separatists, and that the

Affirmation of  
Separatists.

Punishment on false affirmation as for perjury.

taking of any oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect; and I do also in the same solemn manner affirm and declare," &c.; which said affirmation and declaration shall be of the same force and effect in all courts of justice and other places where by law an oath is or may be required, as if such Separatist had taken an oath in the usual form; and if any person making such affirmation and declaration shall in fact not be one of the sect or people aforesaid he shall wilfully and falsely affirm or declare anything which, if sworn in the usual form would have amounted to the crime of perjury, such person shall be deemed to have committed the crime of perjury and shall upon conviction be subject to such punishment as is or shall be by law provided for or in regard to the said crime.

Extension to Natal.

8. And be it enacted that this ordinance shall extend to the district of Natal.

Promulgation.

9. And be it enacted that this ordinance shall commence and take effect in the said district of Natal from and after such date as shall be fixed and appointed for the commencement thereof by any proclamation to be by the Lieutenant-Governor of the said district for the purpose issued and posted upon or affixed to any public place in Pietermaritzburg; and that the same shall commence and take effect in the other parts or portions of this colony from and after the date of the promulgation thereof.

Non-application to suits pending.

10. And be it enacted that nothing in this ordinance contained shall apply to or affect any suit, action, or proceeding which shall be pending at the time of the commencement of this ordinance.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 25th day of March, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) K. B. HAMILTON,  
Clerk to the Legislative Council.

No. 15.—Sd. P. Maitland.] [24th April, 1846.]

Ordinance for rectifying certain Title Deeds heretofore issued to certain of the Settlers of 1820.

[Expired. *Vide* Act No. 24, 1856, and Act No. 7, 1859.]

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No. 16.—Sd. P. Maitland.] [24th April, 1846.]

Ordinance for creating Resident Magistrates within the District of Natal.

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No. 17.—Sd. P. Maitland.] [24th April, 1846.]

Ordinance to amend the Law regarding Marriages within the District of Natal.

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No. 18.—Sd. P. Maitland.] [24th April, 1846.]

Ordinance for regulating Sales by Auction within the District of Natal.

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No. 19.—Sd. P. Maitland.] [30th April, 1846.]

Ordinance for securing the due Performance of Burgher Duty.

[Expired 1st August, 1846.]

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No. 20.—Sd. P. Maitland.] 4th May, 1846.]

Ordinance for regulating the Levy of the Burgher Force of Cape Town and Green Point.

[Expired 1st August, 1846.]

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No. 21.—Sd. P. Maitland.] [24th Sept., 1846.]

Ordinance for amending the Law relating to the Rights of Execution Creditors within the District of Natal.

No. 22.—Sd. P. Maitland.] [24th Sept., 1846.

Ordinance for Punishing the Concealment of the Birth of Children within the District of Natal.

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No. 23.—Sd. P. Maitland.] [24th Sept., 1846.

Ordinance for Licensing Retail Shops within the District of Natal.

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No. 24.—Sd. P. Maitland.] [24th Sept., 1846.

Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within the District of Natal.

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No. 25.—Sd. P. Maitland.] [24th Sept., 1846.

Ordinance for regulating the payment of the expenses of Witnesses attending to give evidence on Criminal Trials and Preparatory Examinations within the District of Natal.

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No. 26.—Sd. P. Maitland.] [24th Sept., 1846.

Ordinance for preventing the mischiefs arising from the printing and publishing within the District of Natal of Newspapers and Papers of a like nature by persons not known, and for regulating the printing and publication of such papers in other respects; and also for restraining the abuses arising from the publication in the said District of blasphemous and seditious Libels.

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No. 27.—Sd. P. Maitland.]

Ordinance for amending the Law relative to Conventional Hypothecations.

Preamble.

WHEREAS it is found that parties to whom or in whose favour mortgages or hypothecations as well general as



special have been passed sometimes abstain from registering the same against their debtors until the increasing embarrassments of such debtors or other reasons render it necessary to secure a preference over other creditors who may have dealt with such debtors in total ignorance that any such mortgages or hypothecations were in existence: And whereas such a practice may be used so as to cover fraud and is one which tends to defeat the objects or limit the advantages of the debt registry of this colony and which should therefore be suppressed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every deed or instrument of mortgage or hypothecation commonly called a general bond executed after the commencement and taking effect of this ordinance shall if executed by the debtor or mortgager within the limits of the municipality of Cape Town be tendered for registration in the deeds registry office within the space of seven days next after the day of the execution thereof, and if so executed elsewhere within the limits of the western division of this colony shall be tendered as aforesaid within the space of fourteen days next after such execution as aforesaid, and if so executed within the limits of any of the eastern districts shall be tendered as aforesaid within the space of twenty-eight days next after such execution as aforesaid; and no such deed or instrument which shall be tendered for registration after the expiration of the term hereinbefore limited for the tendering of the same shall be (except as in the next succeeding section is excepted) registered, and if registered such registration shall be null and void: Provided, always, that nothing in this ordinance contained shall be deemed or taken to extend to any deed or instrument executed elsewhere than in any of the places aforesaid nor to deprive any deed or instrument executed within any of the said places of any force or effect which though unregistered it may by law possess; provided, also, that nothing in this ordinance contained shall be construed so as to entitle any instrument to be registered which instrument would not by law be now entitled to registration.

Registration of general bonds within seven days after execution in Cape Town, within fourteen days in western divisions, with-in twenty-eight days in eastern divisions.

2. And be it enacted that if in any case the occurrence of peculiar circumstances shall prevent any such deed or instrument as aforesaid which should have been tendered for registration within some one of the certain times or spaces aforesaid from being so tendered, it shall and may be lawful

Order by judge on proof of absence of fraud or neglect of registration after lapse of due time.

for any person whom it shall concern to apply to any judge of the supreme court for an order directing the registrar of deeds to register the said deed or instrument notwithstanding the time or space aforesaid shall have elapsed, and such judge upon being satisfied by the person applying that the delay has not arisen from fraud or neglect may should he think fit make such order, and thereupon the registrar of deeds shall register such deed or instrument, and such registration and the effect thereof shall be taken and judged of precisely as if this ordinance never had been passed.

Insertion of date of execution.

Penalty on notary inserting false date.

3. And be it enacted that every such deed or instrument as aforesaid executed as aforesaid within any of the places aforesaid shall in some part or portion thereof set forth the date and place of the execution thereof; and if any notary public or any other person whomsoever shall knowingly and wilfully insert or set forth in any such deed or instrument any false or erroneous date or place such notary public or other person shall for such offence forfeit any sum not exceeding one hundred pounds and not less than ten pounds to be recovered for his own use with costs of suit by any person suing in any competent court for the recovery of the same.

Necessity of express words and maximum amount in deeds to cover future advances.

4. And whereas it is expedient that notice as particular as possible should be given upon the face of every deed or instrument of hypothecation of the amount which such hypothecation is intended to secure; and whereas as often as such deeds or instruments are framed so as to cover or secure future debts or advances to an indefinite amount no such notice is conveyed and inconveniences may thence result; and whereas it is expedient to amend the law in this respect: Be it enacted that no deed or instrument of hypothecation, whether general or special, executed at any time after the commencement and taking effect of this ordinance shall be of any force or effect to give any preference or priority to the payment of any advances, debts, or demands made or accruing after the date of the registration of such deed or instrument, unless it shall be expressed in such deed or instrument that the same is meant or intended to cover or secure future advances, debts, or demands generally, or some particular description thereof to be in the said deed or instrument described, and unless also some certain sum shall be expressed in such deed or instrument as a sum beyond which such future advances, debts, or demands shall not be deemed to be covered or secured by the

hypothecation made or created by such deed or instrument : Provided, always, that nothing herein contained shall be construed so as to give validity or effect to any deed or instrument or any part of any deed or instrument which before this ordinance would have been invalid or ineffectual.

5. And be it enacted that every such deed or instrument as aforesaid which shall have been executed before but shall remain unregistered upon the day of the commencement and taking effect of this ordinance shall be tendered for registration within the space of one month next after such day, and if not so tendered shall not be registered or if registered such registration shall be null and void : Provided, always, that the provisions in the second section of this ordinance contained shall apply to every such last-mentioned deed or instrument when and as often as the occurrence of peculiar circumstances shall prevent the same from being tendered for registration within the said space of one month.

Registry with-  
in one month of  
deeds already  
executed.

6. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

Non-extension  
to Natal.

7. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking  
effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 3rd day of October, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 28.—Sd. P. Maitland.]

Ordinance for preventing the Mischief arising from the cutting, rooting up, and destroying of Trees, Shrubs, and Bushes growing on the Cape Flats and Downs.

WHEREAS it has become an object of the utmost importance to this colony to preserve from the effects of drifting sands

Preamble.

the new hard road constructed over or across the Cape flats or downs : And whereas a mischievous and illegal practice prevails of cutting down, rooting up, and carrying away from the said flats or downs for the purpose of firewood the trees, shrubs, or bushes growing there, by means of which practice the sands are loosened and exposed and are carried by the wind to and deposited upon the said road, to the serious detriment if not total destruction of certain parts thereof : And whereas no efforts made or to be made by the Central Board of Commissioners of Public Roads to bind and fix those portions of the said flats or downs from which the sands are carried by causing them to be planted with trees, shrubs, bushes, or other vegetable productions have been or can be of any avail so long as the mischievous and illegal practice aforesaid shall be permitted to continue : And whereas in order as much as may be to suppress the said practice and protect the road aforesaid it is expedient to amend the law relative to the removal of trees, shrubs, and bushes from the said flats or downs : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the third and fourth sections of Ordinance No. 5, 1836, entitled " Ordinance for defining the limits of and securing from injury the Cape Flats and Downs," shall be repealed, and the same are hereby repealed accordingly.

Repeal of part  
of former law.

Penalties on  
destroying  
trees, shrubs,  
&c.

Second and  
subsequent  
convictions.

2. And be it enacted that if any person (except persons travelling as hereafter is excepted) shall cut, root up, burn, break, destroy, or carry away any tree, shrub, or bush growing upon any part of the crown lands situate within the Cape downs or flats, or shall engage or employ any other person so to do (whether such last-mentioned person shall actually do so or not), or shall take upon himself to sell or dispose of or authorize to be carried away any such tree, shrub, or bush, such person shall upon the first conviction for the said offence forfeit any sum not exceeding five pounds, and upon non-payment thereof shall be imprisoned for any term not exceeding one month, and upon a second conviction for the said offence shall forfeit any sum not exceeding ten pounds and not less than five pounds, and upon non-payment thereof shall be imprisoned for any term not exceeding three months and not less than one month, and upon a third or any subsequent conviction for the said offence shall forfeit any sum not exceeding twenty pounds

and not less than ten pounds, and upon non-payment thereof shall be imprisoned for any term not exceeding six months and not less than three months: Provided, always, that every such imprisonment as aforesaid shall be with hard labour unless the magistrate committing shall otherwise award; and provided, also, that every person travelling through or over the flats or downs aforesaid shall be at liberty without incurring any of the penalties or forfeitures aforesaid to cut down and collect such trees, shrubs, or bushes as shall be needed for the purpose of any fire which such person shall require or desire to kindle or keep at any outspan-place within the said flats or downs, such person doing no unnecessary damage in the cutting or collection of the same.

Exemption of travellers.

3. And be it enacted that every person being the owner, lessee, or other occupant of any land being private property situate wholly or in part within the said flats or downs who shall deliver to or permit to be carried away upon any wagon, cart, or other carriage any trees, shrubs, or bushes which shall have grown upon such private property shall grant and deliver to the person in charge of such wagon, cart, or other carriage a certificate or note in writing signed by such owner, lessee, or other occupant certifying in substance that the trees, shrubs, or bushes carried in or upon such wagon, cart, or other carriage have been obtained from the person signing the same; and every owner, lessee, or occupant who shall neglect to give such certificate or note in writing to the person in charge of every wagon, cart, or other carriage carrying away with his knowledge and consent any such trees, shrubs, or bushes as aforesaid shall for every such neglect forfeit any sum not exceeding twenty shillings.

Certificates by owners of private property in flats to persons carrying away trees, shrubs, &c.

Penalty on neglect of such certificates.

4. And be it enacted that no person being the owner, lessee, or other occupant of any land being private property situate wholly or in part within the said flats or downs and lying to the westward of an invisible line supposed to be drawn from the beach of Table Bay at the point where a line drawn due west from Duiker Vallei would touch the said beach to the said Duiker Vallei, thence to the seventh milestone on the hard road across the flats, thence to Jackal's Vallei, thence to the house commonly called Mannenberg's, thence to the Vaderlandsche Riet Vallei, thence to the northern end of Zeekoe Vallei, thence to the southern end of Zeekoe Vallei, and thence in a straight line due south to the beach of False

Licences by civil commissioner to owners of certain portions of flats to carry away trees, &c., on their property.

Penalty on so carrying away without licence.

Bay, shall deliver or permit to be carried away in or upon any wagon, cart, or other carriage any trees, shrubs, or bushes having grown upon such private property without having previously obtained a licence in writing from the civil commissioner of the Cape division or officer acting as such, authorizing him to remove the trees, shrubs, or bushes growing upon such private property; and any such owner, lessee, or occupant as is in this section mentioned who shall without having obtained such licence permit any trees, shrubs, or bushes to be carried away in or upon any wagon, cart, or other carriage shall for every such offence forfeit any sum not exceeding forty shillings and not less than one pound, and upon non-payment thereof shall be imprisoned for any term not exceeding one month.

Conditions of licence.

5. And be it enacted that the civil commissioner aforesaid shall upon the application of any such owner, lessee, or occupant as is in the last preceding section mentioned grant such licence as aforesaid as often as such civil commissioner shall be satisfied by inspection or otherwise that there are growing upon the private property in question trees, shrubs, or bushes which might be removed without thereby loosening or exposing sands in such a manner as to occasion the drifting of the same; and every such licence shall be revocable by such civil commissioner and shall be by him revoked whenever it shall appear that the said private property and the trees, shrubs, or other bushes thereupon are in such a condition that the further removal of the latter would produce injurious consequences: Provided, always, that every such licence may be framed in such a manner as to authorize the removal of such trees, shrubs, or bushes as aforesaid from a part or parts only of any private property instead of the entire; and provided, also, that when and as often as any owner, lessee, or other occupant applying for such a licence as aforesaid shall be wholly refused the same or shall be allowed a licence covering a part or parts only of his property it shall and may be lawful for such owner, lessee, or other occupant to require compensation from the Central Board of Commissioners of Public Roads for any losses which he may allege himself to have sustained, and thereupon such proceedings shall be had as if such claim were a claim of compensation preferred under and by virtue of the tenth section of Ordinance No. 8, 1843, entitled an "Ordinance for improving the Public Roads of this Colony."

Compensation on refusal of licence.

6. And be it enacted that when and as often as any wagon, cart, or other carriage shall be found within or upon any part of the said flats or downs (not being private property) or upon the said hard road or any other road or place to which the said wagon, cart, or other carriage shall have come from any place eastward of the Salt River having in or upon such wagon, cart, or other carriage trees, shrubs, or bushes of a species or description commonly found growing on the said flats or downs, it shall and may be lawful for any person finding the same to require the person in charge thereof to produce and show such a certificate or note in writing as aforesaid, and his refusal or neglect so to do shall be deemed and taken for the purpose of the penalties by this ordinance provided to be conclusive evidence that the said trees, shrubs, or bushes were carried away by the person so neglecting or refusing from crown land as in the second section of this ordinance mentioned, and thereupon such person may lawfully be required and if he shall refuse may if necessary be forcibly compelled to proceed forthwith to the nearest resident magistrate or road magistrate, there to be dealt with according to law in the exercise of the jurisdiction hereinafter conferred: Provided, always, that if it shall be proved to the satisfaction of such resident magistrate or road magistrate that the certificate or note in writing by law required was really given and received, and afterwards lost or mislaid the person accused shall be acquitted, or if he shall have paid any fine imposed upon him previous to such proof being given shall have the same returned to him, or if in prison by reason of default made in the payment of any such fine shall be forthwith discharged by an order under the hand of the committing magistrate.

Evidence of  
contravention  
of second  
section.

7. And be it enacted that the court of the resident magistrate of Cape Town and the district thereof and the Cape district, and the court of the resident magistrate of the district of Wynberg, and the court of the judge and superintendent of police of Cape Town shall respectively have jurisdiction to inquire into and determine all cases and questions of fines, forfeitures, or penalties by this ordinance provided.

Jurisdiction in  
all cases under  
the ordinance.

8. And be it enacted that every road magistrate resident within the division of the Cape shall have jurisdiction in regard to every offence in the second section of this ordinance mentioned whenever any wagon, cart, or other carriage shall be brought before him under and by virtue of the sixth

Jurisdiction as  
to offences  
under second  
section.

section of this ordinance, and shall in regard to the prosecution of any such offence proceed in manner and form as by law would have been fit and proper had such wagon, cart, or other carriage been brought before him under and by virtue of the twentieth section of Ordinance No. 9, 1846, entitled "Ordinance for the better preservation of the Public Roads and the prevention of Accidents thereon," charged with having contravened any of the provisions of the third section of the said last-mentioned ordinance.

Penalty on  
forging certifi-  
cate.

9. And be it enacted that if any person shall forge or alter any such certificate or note in writing as aforesaid, or if any person in charge of any wagon, cart, or other carriage shall knowingly produce and show as genuine any forged or altered certificate or note in writing as aforesaid, or any paper purporting to be such a certificate or note in writing as aforesaid which shall not bear and shall by the person producing and showing the same be known not to bear the signature of any person by the provisions of this ordinance authorized and entitled to grant such a certificate or note in writing, or if any person so authorized and entitled as last aforesaid shall knowingly put or affix any wrong date to any such certificate or note in writing as aforesaid, or if any such lastmentioned person shall deliver to any other person any such certificate or note in writing save only for the use and protection of some wagon, cart, or other carriage then actually loaded with or loading or about to load the trees, shrubs, or bushes referred to in and intended to be protected by such certificate, such person so offending shall upon conviction of any such offence be liable to forfeit any sum not exceeding twenty pounds, and upon non-payment thereof shall be imprisoned for any term not exceeding six months.

Time of taking  
effect.

10. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 3rd day of October, 1846.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.



No. 29.—Sd. P. Maitland.] [5th Oct., 1846.

Ordinance for the better Regulation of the Sale of Wines and Spirituous and Fermented Liquors.

[Repealed by Ordinance No. 9, 1851.]

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No. 30.—Sd. P. Maitland.] [30th Oct., 1846.

Ordinance for applying a sum not exceeding £161,854 15s. 10d. for the service of the year 1850.

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No. 31.—Sd. P. Maitland.] [30th Oct., 1846.

Ordinance for applying a sum not exceeding £7,421 16s. 10d. for the service of the year 1846, in addition to the sum already in that respect provided.

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No. 32.—Sd. P. Maitland.] [30th Oct., 1846.

Ordinance for amending the Law regarding certain Rules of Court.

[Repealed by Act No. 26, 1856.]

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No. 33.—Sd. P. Maitland.] [25th Nov., 1846.

Ordinance for amending the Ordinance, No. 2, 1846, entitled "Ordinance for creating a Deeds Registry Office for the District of Natal.

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No. 34.—Sd. P. Maitland.] [14th Dec., 1846.

Ordinance for levying Wharfage and other Dues in Cape Town and for devoting them to the construction of a Harbour of Refuge in Table Bay, and for other purposes.

[Not sanctioned by the Home Government.]

No. 1.—Sd. P. Maitland.]

Ordinance for removing Vessels stranded in the Ports and Harbours of this Colony.

Preamble.

WHEREAS ships and vessels which have been run or driven on shore in the ports and harbours of this colony are sometimes wholly abandoned there by the persons interested therein or entitled thereto to the great detriment of such ports and harbours : And whereas it is expedient to provide for the removal within a reasonable time of all ships and vessels which now are or which at any time hereafter may be stranded or aground in any of the ports or harbours aforesaid : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all ships or vessels or the hulls or remains of any ships or vessels now lying and being stranded or aground below high-water mark in any of the ports or harbours following, that is to say, Table Bay, Algoa Bay, Simon's Bay, Mossel Bay, and Port Beaufort, shall within four months next after the commencement and taking effect of this ordinance be removed by those entitled thereto or interested therein ; and that all ships or vessels or hulls or remains of any ships or vessels which shall at any time after the commencement and taking effect of this ordinance be stranded or aground below high-water mark as aforesaid in any of the said ports or harbours shall in like manner be removed within four months next after the same shall have been so stranded or run aground : Provided, always, that nothing in this ordinance contained shall extend to any ship or vessel in regard to which any attempt shall be in progress or be about to be made to get the same again afloat, nor to any craft laid or drawn up upon the beach for repair or security until required for sea.

Removal of stranded ships in certain ports within four months of taking effect of ordinance :

or within four months of stranding.

Exception.

Property in vessels not removed within the prescribed period vested in the Queen.

2. And be it enacted that every ship or vessel or hull or remains of any ship or vessel which shall be found lying and being stranded and aground below high-water mark as aforesaid after the expiration of the period in which the same should have been removed shall thereupon become the property of Her Majesty the Queen ; and all former owners or other persons interested therein shall thenceforth be absolutely divested of all right or title to or interest in the same ; and it shall and may be lawful for the harbour master or port captain if such there be of the port or harbour

in which the same shall be found, or if there be none such then for any person thereto authorized by the civil commissioner of the division in which such port or harbour shall be situated, to remove or cause to be removed with all convenient speed such ship or vessel or hull or remains thereof, and to sell or cause to be sold by public auction or private sale as shall be deemed most expedient the materials so removed, and in case the proceeds of such sale of any ship or vessel or hull or remains thereof which shall become stranded or aground as aforesaid at any time after the commencement of this ordinance shall be insufficient to pay the expenses thereof together with the reasonable costs and charges of the removal of the materials sold, then such harbour master, port captain, or other person shall be entitled to recover for the use of her said Majesty in her colonial treasury from any person in this colony who shall have taken on him the sale or other disposition of the hull of the said vessel, her tackle, apparel, furniture or stores, or any part thereof the amount of such reasonable costs and charges or so much thereof as shall still remain unsatisfied, not exceeding however in any case the proceeds realized by such person from such sale or the value of the property disposed of otherwise than by the sale thereof.

Proceedings in such case by harbour master civil commissioner, &c.

3. And be it enacted that the limits of the certain ports and harbours aforesaid shall for the purposes of this ordinance be such as shall from time to time be fixed by the governor of this colony for the time being in any proclamation or proclamations to be by him issued for that purpose, and such limits respectively when so proclaimed shall be deemed and taken as if herein set forth.

Fixing of limits of ports by proclamation.

4. And be it enacted that it shall and may be lawful for the governor aforesaid by any proclamation to be by him issued for that purpose to extend the provisions of this ordinance to any other port or harbour in this colony not being in the district of Natal, and to define the limits of such port or harbour, and thereupon all and singular the provisions of this ordinance shall extend to such port or harbour precisely as if the same and the limits thereof had been mentioned and set forth in this ordinance.

Power of governor to extend provisions of ordinance to other ports.

5. And be it enacted that it shall and may be lawful for the lieutenant-governor of the district of Natal, by any proclamation to be by him issued for that purpose and affixed to or posted upon some public place at Pietermaritz-

Extension to Natal.

burg, to extend the provisions of this ordinance to any port or harbour in the said district and to define the limits of such port or harbour; and thereupon all and singular the provisions of this ordinance shall extend to such port or harbour precisely as if the same and the limits thereof had been mentioned and set forth in this ordinance: Provided, always, that all sums of money received or recovered in regard to any such last-mentioned port or harbour or any vessel or remains found therein shall be paid into the treasury of the said district.

Time of taking  
effect.

6. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 11th day of January, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 2.—Sd. Henry Pottinger.]

[23rd Feb., 1847.

Ordinance for facilitating the Apprehension and regulating the mode of Conveyance of Deserters from Her Majesty's Land Forces within the District of Natal to their respective Corps; and for the more prompt payment of Rewards and Expenses consequent thereupon.

No. 3.—Sd. Henry Pottinger.]

Ordinance for authorizing the Vestry of St. Paul's Church, Rondebosch, to raise a Sum of Money not exceeding £2,000, to enlarge the Building of the said Church.

Preamble.

WHEREAS it is expedient to enlarge the building of the church of Saint Paul for the better accommodation of the

inhabitants of Rondebosch in the Cape district: And whereas there are no funds in the possession of the vestry thereof applicable to that purpose: And whereas it is desirable that a sufficient sum of money should be raised by way of mortgage on the security of the pew-rents of the said buildings to defray the expense of the enlargement aforesaid:

1. Now therefore be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that from and after the promulgation hereof it shall and may be lawful for the vestry for the time being of St. Paul's Church of Rondebosch aforesaid to raise on loan any sum or sums of money not exceeding two thousand pounds, and specially to hypothecate the pew-rents of the buildings of the said church as and for a security for the repayment of the said loan and the interest thereof.

Power of vestry to raise money on hypothecation of pew-rents.

2. And be it enacted that it shall and may be lawful for the chairman and churchwardens of the said vestry for the time being, being authorized thereto by a resolution of the said vestry, to appear before the registrar of deeds of this colony and then and there 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, provided that the said capital sum does not in the whole exceed the sum of two thousand pounds; and the act of the said chairman and churchwardens in respect thereof shall be deemed and taken to be the act of the said vestry.

Execution of bond.

3. And be it enacted that all moneys raised as aforesaid shall on the receipt thereof be deposited in one of the banks of this colony in the joint names of the chairman and churchwardens aforesaid, and no sum or sums of money shall be withdrawn therefrom otherwise than upon the respective signatures of the said chairman and churchwardens.

Deposit of moneys so obtained in bank.

4. And be it enacted that an account of all the expenses incurred and moneys outlaid in the enlargement of the said church shall be kept by the said chairman and churchwardens and submitted to the examination and audit of the said vestry at every duly convened meeting thereof during the continuance of the alterations aforesaid.

Account and audit thereof.

5. And be it enacted that it shall be incumbent on the said vestry and they are hereby required after the payment of the interest on any loan raised on the security of the pew-rents, and providing for the necessary repairs and other incidental

Duty of vestry to provide for interest and eventual repayment of loan from annual revenues.

expenses of the said church, to set apart the remainder of the annual revenue of the said church to provide a fund for the payment of the accruing interest and the eventual repayment of the capital sum or sums of money raised as aforesaid until the same are wholly paid off and discharged; an account whereof shall be kept under the direction of the said vestry, which said account and the account hereinbefore required to be kept by the chairman and churchwardens aforesaid shall be subject to all the same regulations as are by law provided for the general church fund accounts of the said vestry.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 5th day of March, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

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No. 4.—Sd. Henry Pottinger.]

Ordinance to indemnify all Persons in regard to certain Acts done during the recent existence of Martial Law.

**Preamble.**

WHEREAS by reason of the hostilities in which Her Majesty the Queen became involved in or about the month of April, 1846, with the Kafir tribes adjacent to the eastern frontier of this colony and the irruption into the said colony of numerous armed bands belonging to the said tribes it became necessary for the then Governor of this colony, General Sir Peregrine Maitland, K.C.B., to proclaim martial law, to be in force throughout this colony: And whereas by a proclamation of the said Governor bearing date the 22nd of April, 1846, it was accordingly proclaimed and directed that from and after the promulgation thereof martial law should be in force throughout the whole colony for all cases and in all matters connected with the assembling, embodying, conducting, and supplying Her Majesty's forces, and the

certain inhabitants in the said proclamation mentioned : And whereas by a certain other proclamation of the said Governor bearing date the 13th of January, 1847, after reciting the proclamation aforesaid, it was proclaimed and directed that from and after the promulgation thereof martial law should cease to be in force in any part or portion of this colony : And whereas during the time or part of the time that the said martial law was in force in this colony military operations were being carried on against the tribes in certain territories adjacent to this colony, and it became and was necessary for the said Sir Peregrine Maitland and other persons acting under him to direct, authorize, do, and perform, as well within this colony as in the territories aforesaid, certain acts, matters, and things which were not justifiable by the strict rules and forms of law but which were necessary for the public service : And whereas it is expedient that the said Sir Peregrine Maitland and all persons acting under him should be indemnified in respect of such orders, directions, acts, matters, and things : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation hereof the said Sir Peregrine Maitland and all persons acting under him shall be and they are hereby jointly and severally indemnified, freed, and discharged from and against all actions, suits, and prosecutions whatsoever which might be brought or instituted in any of the courts of this colony for or on account or in respect of all or any acts, matters, and things whatsoever done, ordered, directed, or authorized within this colony by the said Sir Peregrine Maitland, as such governor aforesaid or as commander-in-chief of Her Majesty's forces, or by any person or persons acting under him in any command or capacity, military or civil, during the existence within this colony of such martial law as aforesaid, or which were done, ordered, directed, or authorized during the same space of time within any of the territories aforesaid, which territories shall for the purposes of this ordinance be deemed and judged of precisely as if the same had been when the said proclamation of the twenty-second of April, 1846, was promulgated a part or portion of this colony ; so only and provided always that such acts, matters, and things shall have been done, ordered, directed, or authorized *bonâ fide* necessarily and properly, in furtherance and execution of the objects for which martial

Indemnity to  
Sir P. Maitland  
and persons  
serving under  
him for acts  
done during  
martial law.

law was proclaimed as aforesaid, which shall be presumed to be the case until the contrary be proved by the party complaining; and provided also that nothing in this ordinance contained shall extend or apply to any suit or action in regard to which there shall be between the parties contestation of suit at the time of the commencement of this ordinance; all of which suits or actions if any shall be heard and determined precisely as if this ordinance never had been passed.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 11th day of March, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

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No. 5.—Sd. Henry Pottinger.] [30th March, 1847.

Ordinance for the creation of Municipal Boards in the Towns and Villages of the District of Natal.

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No. 6.—Sd. Henry Pottinger.] [30th March, 1847.

Ordinance for enabling the Lieutenant-Governor of Natal to make provision for regulating the dealing in and possession of Fire-arms and Ammunition within the said District.

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No. 7.—Sd. Henry Pottinger.] [30th March, 1847.

Ordinance for enabling the Lieutenant-Governor of Natal to establish Public Pounds within the said District.



No. 8.—Sd. Henry Pottinger.] [30th March, 1847.]

Ordinance for enabling the Lieutenant-Governor of Natal to establish Markets within the said District.

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No. 9.—Sd. Henry Pottinger.] [30th March, 1847.]

Ordinance for regulating the Sale of Wines and Spirituous and Fermented Liquors within the District of Natal.

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No. 10.—Sd. Henry Pottinger.] [30th March, 1847.]

Ordinance for laying certain Duties upon Licences and in lieu of Stamps within the District of Natal.

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No. 11.—Sd. Henry Pottinger.] [30th March, 1847.]

Ordinance for amending the Ordinance No. 14, of 1845, entitled Ordinance for erecting a District Court in and for the District of Natal.

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No. 12.—Sd. Henry Pottinger.] [30th March, 1847.]

Ordinance for the Establishment and Regulation of a Post Office and Postage within the District of Natal.

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No. 13.—Sd. Henry Pottinger.] [16th April, 1847.]

Ordinance for empowering the Commissioner for Claims to take Evidence relative thereto.

[Expired.]

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No. 14.—Sd. Henry Pottinger.] [25th June, 1847.]

Ordinance for enabling the Governor of the Colony to create Courts of Resident Magistrates.

[Repealed by Act No. 20, 1856.]

No. 15.—Sd. Henry Pottinger.]

[20th July, 1847.

Ordinance for reviving the Provisions of the Ordinance No. 15, of 1844, entitled "Ordinance to provide for the enregisterment in the Land Registers of the Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820."

[Expired. Revived by Act No. 14, 1856, and Act No. 7, 1859.]

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No. 16.—Sd. Henry Pottinger.]

Ordinance for the better Regulation of Pounds and Prevention of Trespasses.

Preamble.

WHEREAS the existing pound regulations of this colony are in many respects defective and by reason thereof much injury and inconvenience are sustained by the inhabitants of the country districts: And whereas it is expedient to provide for the better regulation of all public pounds not being within or belonging to any municipality, and to define the duties appertaining to the situation of poundmaster, and also to impose penalties upon the owners of animals found trespassing, and to regulate certain other matters of a like nature: And whereas the state and condition of the several parts or portions of this colony are such that the same regulations in all respects regarding pounds and trespasses could not without inconvenience be unalterably enacted for the colony at large, and it will therefore be expedient while providing regulations for or in respect of the several matters aforesaid to provide at the same time a means or mode by which certain of them may be accommodated and rendered suitable to the peculiar circumstances of particular divisions: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the Government minute of the 17th of June, 1825, commonly called the pound regulations, and the proclamation of the Governor of this colony, Lord Charles Henry Somerset, of the 23rd of May, 1823, and all other laws or usages so far as the same may be repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed, and the same are hereby repealed accordingly.

Repeal of  
former laws.

2. And be it enacted that it shall be the duty of the civil commissioner of every division to establish one or more pound or pounds in each field-cornetcy of his division, and to appoint subject to the approbation of His Excellency the Governor some fit and proper person to be the poundmaster or keeper of every such pound; and it shall be competent for such civil commissioner to dismiss any such poundmaster for misconduct or for what such civil commissioner shall consider such; but every such dismissal together with the grounds and reasons thereof, shall be forthwith reported to His Excellency the Governor: Provided, however, that no field-cornet or assistant field-cornet not being already a poundmaster at the time of the taking effect of this ordinance shall except as hereinafter excepted be eligible to be appointed or continued as a poundmaster; and provided that no person shall be appointed or continued as poundmaster who shall not possess sufficient pasturage for the number of animals likely to be at any time impounded, nor shall any licensed dealer in wines or spirits be so appointed or continued; provided, nevertheless, that it shall and may be lawful for the civil commissioner of any division with the previous consent of the Governor of this colony to appoint any field-cornet or assistant field-cornet to be a poundmaster in any place where sufficient grounds for dispensing with the prohibition aforesaid shall be found to exist.

Establishment  
of pounds in  
field-cornet-  
cies and  
appointment of  
poundmasters.

Disqualifica-  
tions.

3. And be it enacted that it shall be the duty of the poundmaster of every pound to receive into his charge or custody all horses, horned cattle, sheep, goats, and pigs which shall be tendered at such pound by any person being himself the owner or occupier of any fixed property or any person authorized thereto in writing by any such owner or occupier, between sunrise and sunset, in order to be impounded as having been found trespassing upon such property; and any poundmaster who shall not by himself or some one acting on his behalf receive into his charge or custody all such animals as aforesaid so tendered as aforesaid shall for every such neglect or refusal incur a fine not exceeding five pounds, and such poundmaster shall moreover be liable to satisfy and make good whatever amount of damage the owner of such animals so refused or neglected to be impounded or any other person shall or may sustain by reason of such refusal or neglect.

Duty of pound-  
master to  
receive cattle  
tendered.

Penalty on  
neglect.

Receipt for  
impounded  
cattle.

4. And be it enacted that every poundmaster or person acting on his behalf shall give to every person delivering any animals into his charge a receipt or certificate in writing, signed by such poundmaster or other person setting forth the number and description of the animals so delivered and specifying the species of trespass as reported by the person impounding the same for or on account of which the same shall have been seized and impounded, and such poundmaster shall enter the contents of every such certificate in his pound-book hereinafter mentioned.

Mileage pay-  
able to person  
delivering  
cattle to be  
impounded.

5. And be it enacted that every person who shall bring to the pound and deliver to the poundmaster any animals to be impounded and who shall produce a note or memorandum in writing from the owner or occupier of the property trespassed upon or his known agent or caretaker (which note or memorandum the poundmaster shall preserve as a voucher) stating in substance that the bearer has been directed or authorized to convey the said animals to such pound shall be entitled to receive from the poundmaster of such pound at the time of the delivery over to him of such animals mileage at and after the rate of four pence for each mile not exceeding ten of the distance which such animals shall have been brought and four pence for each mile not exceeding ten which such person shall be obliged to return from such pound to the place from which such animals shall have been brought or to his residence (whichever shall be the nearest to such pound), and in case such animals shall have been brought a greater distance than ten miles then such person shall receive for every mile above ten as well in coming to as returning from such pound at and after the rate of three pence: Provided, always, that such mileage shall not be paid to more persons than one, but when and as often as the number or nature of the animals brought to be impounded shall be such as to require the care and attendance of more persons than one the owner of the said animals shall be liable and bound to pay to the person impounding the same mileage at and after the rate aforesaid for and in respect of every person more than one necessarily and properly employed in conveying such animals to the pound, and such additional amount shall be recoverable by action in any competent court.

Poundmaster's  
fees for receiv-  
ing cattle.

6. And be it enacted that the poundmaster shall be entitled to demand or retain (as the case may be) a fee of one

shilling for every horse and of six pence for every other animal (not being a sheep or a goat) delivered to and received by him to be impounded, and a fee of one half-penny for every sheep or goat so delivered and received.

7. And be it enacted that the poundmaster shall be entitled over and above the fee in the last preceding section mentioned to demand or retain (as the case may be) a further fee of four pence and one half-penny per diem for every day during which any such animal as aforesaid (not being a sheep or a goat) shall be herded, grazed, and fed by such poundmaster, and a fee of one half-penny per diem for every sheep or goat so herded, grazed, and fed : Provided, always, that every stallion horse or stallion ass above the age of two years, every bull above the age of one year, every ram, he-goat, or boar above the age of nine months, and every animal, male or female, which from contagious disease, dangerous vice, or other reason shall be unfit to run with the remaining herd shall be kept and fed separately and safely ; and for every such stallion horse or ass shall be charged by such poundmaster one shilling and six pence per diem, for every such bull one shilling per diem, for every boar nine pence per diem, for every ram, he-goat, or other separated animal as aforesaid three pence per diem.

Poundmaster's  
fees for  
grazing, &c.

8. And be it enacted that the rate of mileage hereinbefore in the fifth section mentioned and the amount of the fees payable on delivery of receipt as in the sixth section, and the amount of the fees payable for herding, grazing, and feeding as in the seventh section mentioned shall be capable of being altered and adapted by each and every of the district meetings hereinafter as in the thirty-seventh section mentioned : Provided, always, that no such district meeting shall be competent to impose or establish any rate of mileage greater than six pence or less than two pence for each mile going to the pound and for each mile returning therefrom, or any fees payable as aforesaid on delivery and receipt greater than the fees in that behalf in the sixth section mentioned or less than one half of the said fees respectively, or any fees to be payable as aforesaid for herding, grazing, and feeding greater than six pence or less than four pence per diem for or in respect of every animal impounded (not being a sheep or goat) or greater than one half-penny or less than one farthing per diem for every sheep or goat ; provided, also, that none of the fees or

Power of  
district meet-  
ings to alter  
rates of  
mileage, &c.

Limitation of  
power.

rates in the sixth and seventh sections respectively mentioned shall be reduced by any such meeting as aforesaid unless with the concurrence of the civil commissioner presiding thereat.

Mileage and fees payable to poundmaster by owner, and a charge on cattle detained.

Duty of poundmaster to keep kraals in repair.

Number of cattle poundmaster may detain for charges.

Number of kraals to be kept.

9. And be it enacted that the mileage hereinbefore in the fifth section mentioned and the certain fees aforesaid to be taken and recovered by the poundmaster of each pound, whether those specified as aforesaid or those substituted for the same by any such district meeting as hereinbefore and hereinafter mentioned, shall be paid to the said poundmaster by the owner of the animal impounded and shall be a charge upon such animals, which may be detained for the security thereof, and such fees as aforesaid shall be taken and received by every poundmaster for his own use; and in consideration thereof he shall be bound to put and keep his certain kraals and enclosures by the next section required in good and sufficient repair and to keep a sufficient number of competent herdsmen, and generally to sustain all charges belonging to or connected with the animals impounded until they shall as hereinafter provided be released or sold: Provided, always, that every poundmaster shall deliver to the owner of any animals impounded who may not be in a condition to pay the charges due upon the same so many thereof as may be so delivered without thereby incurring any fair or reasonable risk that the animal or animals retained might prove insufficient to cover or satisfy the charges due upon the animals so delivered and those due or to become due upon the animals retained, and any poundmaster who shall retain after demand any greater number of such animals than reasonably and fairly were necessary amply to secure or satisfy such charges as aforesaid shall be liable to make good to the owner thereof whatever damage he may sustain by such wrongful retention; and provided, also, that if in any case any animal shall be illegally placed in the pound the person so placing it there shall be liable to the owner to repay or make good all damages, costs, and charges arising out of such proceeding, together with an additional sum of two shillings for or in respect of every horse or head of cattle so illegally impounded.

10. And be it enacted that it shall be the duty of every poundmaster and he is hereby required to keep and maintain not less than three separate and distinct kraals or inclosures for horses, for horned cattle, for sheep and goats

and pigs; but it shall be lawful for the civil commissioner of every division in regard to any particular pound therein with respect to which a strict compliance with the provisions of this section shall be either wholly impossible or highly inconvenient to authorize a deviation therefrom to such an extent as he shall find to be requisite and necessary, and every poundmaster shall take or cause to be taken due and proper care of all animals impounded and turn them or cause them to be turned out to graze not later than one hour at farthest after sunrise in the morning, and shall be responsible to the owners thereof for all injury and damage which they may sustain by reason of any sort or degree of neglect or default on the part of such poundmaster or his servants or others acting on his behalf; and any poundmaster who shall ride or drive or otherwise work or use any animal impounded shall for every such offence forfeit a sum not exceeding five pounds; and when and as often as any animal shall die or be injured from intrinsic causes or unavoidable accident and without any such default as aforesaid the poundmaster shall enter or cause to be entered in his pound-book hereinafter mentioned a true description of the animal dead or injured and of the cause or casualty (so far as ascertainable) which shall have occasioned its death or injury as the case may be; and in case any death or injury shall have taken place in regard to which no such entry as aforesaid shall be made or if any entry shall be made wilfully untrue in any respect such death or injury shall be deemed and taken to have been occasioned by the default of such poundmaster who shall be responsible accordingly.

Duties of poundmaster as to cattle impounded.

Record of death of animals.

11. And be it enacted that it shall and may be lawful for every poundmaster to destroy or cause to be destroyed or impounded animals affected with any contagious disorder or such as may from any cause be found so furious and ungovernable as to endanger the lives of human beings or to be obviously destructive to other animals impounded: Provided that no animal however diseased or dangerous shall be destroyed until the justice of the peace nearest to the pound in which such animal shall be confined, or in case he shall be absent from his residence or shall reside at a greater distance than twelve miles the nearest field-cornet, or in case he shall be absent from his residence or shall reside at a greater distance than six miles two disinterested landowners (not

Destruction of animals having contagious disorders.

Notice of disease by poundmaster to justice of the peace, field-cornet, &c.

Payment of horse-hire to justice of the peace, &c.

Prohibition to poundmaster to impound for trespass in his own pound.

living or jointly occupying with the poundmaster requiring their attendance), shall have examined the animal proposed to be destroyed and shall agree with the poundmaster regarding the necessity of such destruction; and every justice of the peace, field-cornet, or landowner attending for the purpose of any such inspection shall be paid by such poundmaster horse-hire at and after double the usual tariff-rate, which shall be recoverable from the owner of the animal should the same be destroyed; but should the same not be destroyed or should such animal be destroyed and the owner thereof be unknown then the amount of such horse-hire shall be paid to such poundmaster by the colonial treasury; and provided that the owner of every such animal when known to such poundmaster shall be summoned in writing by such poundmaster to attend such examination as aforesaid (and for serving such summons the poundmaster may recover from such owner horse-hire at the usual tariff rate), and in case such owner shall attend such inspection and object to the destruction of the said animal such owner shall be entitled to release such animal from the pound in case he shall release the same forthwith and shall at the same time release also all other animals belonging to him (if any) impounded at the same time with the animal proposed to be destroyed; provided, also, that no sheep affected merely with the disease commonly called *brandzichte* or goat with the disease called the scurvy shall be destroyed unless with the owner's consent, nor shall any such examination as aforesaid be had recourse to in regard to such sheep or goat.

12. And be it enacted that no poundmaster shall (except as hereinafter excepted) be permitted to confine in the pound under his care any animals found trespassing upon any property belonging to such poundmaster either individually or in common with any other person, but all such animals shall be sent to the nearest pound kept by any other poundmaster; but every poundmaster sending any animals to such other pound shall be bound to make for the information of persons seeking strayed or missing animals a memorandum in his pound-book setting forth the number and description of the animals so sent; and if any poundmaster shall confine any animal or omit to make a memorandum contrary to the provisions of this section he shall for every such offence forfeit any sum not exceeding ten pounds and not less than two pounds: Provided, always, that nothing in this section shall



extend to any poundmaster from whom the nearest pound other than that kept by himself shall be distant twenty-five miles or upwards.

13. And be it enacted that in every case in which the owner of any animals impounded in any pound shall be a person known to the poundmaster of such pound it shall and may be lawful for such poundmaster to send notice in writing to such owner informing him that the said animals have been so impounded, and such poundmaster shall be entitled to receive for the service of such notice horse-hire at and after the usual tariff rate, and the amount of such horse-hire shall be payable by the owner receiving the same and become a charge upon the animals impounded; but no poundmaster shall send such notice until the animals in question shall have been impounded for the space of forty-eight hours, and if any poundmaster shall sooner send such notice he shall not be entitled to demand such horse-hire as aforesaid.

Notice by  
poundmaster  
to owner.

14. And be it enacted that it shall be the duty of every poundmaster to keep a book to be called the "Pound-book," which book shall be kept in the English or Dutch language according as the civil commissioner of the division shall authorize and direct, and in which shall be entered the date at which any animals shall have been received, a description of the animals in such a manner as to enable and assist persons seeking strayed or missing cattle to identify and recover the same, the name and residence of the person who shall have sent the said animals to the pound, the name and residence of the owner or supposed owner, the date of release by owner when the animals shall be released, the date and particulars of the sale when the animals shall be sold, and any other matters which the poundmaster shall be instructed from time to time by the civil commissioner aforesaid to ascertain and record: Provided, always, that in regard to the form in which all entries in the pound-book shall be made the poundmaster shall obey all such directions as he shall in that behalf receive from the civil commissioner aforesaid.

Pound-book.

Its requisites.

15. And be it enacted that it shall be the duty of every poundmaster to make out and forward to the civil commissioner of his division by every post or at such longer intervals as such civil commissioner shall direct a copy of all the entries made in the pound-book between each

Transmission  
of copy of  
pound-book to  
civil commis-  
sioner.

Penalty on  
false entry.

successive transmission of such copy ; and the civil commissioner aforesaid shall cause all such copies to be duly filed or otherwise preserved in his office in some place where the same may be conveniently inspected by all persons desirous to inspect the same ; and if any poundmaster shall make or permit to be made any wilfully erroneous entry in his pound-book or in any copy of any part thereof so forwarded as aforesaid he shall for every such offence forfeit any sum not exceeding twenty-five pounds and not less than five pounds.

Inspection of  
pound-book  
at place of  
sale.

16. And be it enacted that it shall be the duty of every poundmaster and he is hereby required to take with him to every sale of animals impounded as hereinafter mentioned his said pound-book, and such book shall be free of all claim for the inspection of all persons desirous to inspect the same at the office of the resident magistrate when such there is at the place of sale, or otherwise at some convenient place to be approved of by the civil commissioner of the division.

Inspection of  
pound-book at  
poundmaster's  
residence.

17. And be it enacted that the pound-book of every poundmaster shall (except when otherwise provided by this ordinance or when the same shall be required in the course of any legal proceeding) be kept at the residence of the poundmaster, and may be inspected at all reasonable hours by every person desirous to inspect the same upon payment of a fee of sixpence ; and it shall be incumbent upon every poundmaster to make them sign and deliver to any person applying for the same a copy of any entry or entries in his pound-book contained upon being paid by the applicant the sum of one shilling for every entry required to be copied.

Advertisement  
of impounded  
animals after  
ten days.

18. And be it enacted that when and as often as any animals impounded in any pound which shall not be released or taken away within ten days next after the same shall have been received by such poundmaster as impounded, such poundmaster shall prepare and forward to the civil commissioner of his division in order to the publication thereof as in the next succeeding section provided an advertisement setting forth the species, marks, and distinguishing peculiarities if any of the animals so remaining in the pound, and in regard to horses and horned cattle their colour also, and such advertisement shall give notice to all whom it may concern that the animals therein

mentioned will be sold at the next ensuing sale of impounded cattle (as hereinafter mentioned), the time and place of holding which sale shall be set forth in such advertisement.

19. And be it enacted that every civil commissioner receiving any such advertisement as aforesaid from any poundmaster within his division shall except as hereinafter is excepted forthwith transmit the same to the secretary to government in Cape Town in order that it may be inserted twice successively in the Government Gazette: Provided, always, that it shall be lawful for any civil commissioner with the approval of His Excellency the Governor for the time being, instead of transmitting such pound notices as aforesaid for insertion in the Government Gazette, to publish the same in such other and more convenient manner as such civil commissioner shall suggest and the said Governor sanction.

Transmission of advertisement for publication in Gazette.

Other publication.

20. And be it enacted that the successive sales of animals impounded in the several pounds in each division shall except the first sale from and out of every such pound take place as nearly as may be every six weeks, and be held at such towns and villages as the civil commissioner shall appoint, or where there are none such near any particular pound then at such other places as the said civil commissioner shall think fit: Provided, always, that the first sales aforesaid from and out of every such pound shall as much as may be be so arranged by the civil commissioner of each division as to the time of holding the same respectively as to cause every successive sale of or from the several pounds in that division to fall upon and be held in different months; and provided, also, that every civil commissioner shall frame and transmit to the secretary to government for insertion in the Government Gazette once in the month of January and again in the month of July in each year a notice setting forth the dates and places at which the several pound sales as aforesaid for each year are appointed to take place.

Periodical sales at intervals of six weeks.

21. And be it enacted that at every pound sale held under the provisions of this ordinance the poundmaster shall act as auctioneer; but no auctioneer's licence shall be necessary in order to entitle any such poundmaster to hold any such sale nor shall any auction duty be payable thereon; and any poundmaster who shall purchase or be directly or indirectly interested in any purchase at any such sale held

Poundmaster's right to act as auctioneer.

Prohibition of poundmaster to purchase.

by him shall be liable to forfeit any sum not exceeding twenty-five pounds and not less than ten pounds.

Hours of sale  
and manner of  
selling.

22. And be it enacted that every such sale as aforesaid shall be held between the hours of ten o'clock a.m. and three o'clock p.m., and that no animal shall be put up for sale until the same shall have been impounded for five weeks at least unless with the consent of the owner first had and obtained, and that at every such sale all animals except sheep and goats shall be put up and sold singly and the sheep or goats shall be put up and sold in lots not exceeding ten in number, and that in no case shall sheep and goats be put up together in the same lot, or sheep or goats with different marks or brands; and in case of any contravention of any of the provisions of this section the poundmaster who shall have brought or sent to the sale the animal or animals in regard to which such contravention shall have taken place shall for each offence forfeit any sum not exceeding ten pounds and be also liable to pay to the owner of any animal sold in contravention of any of the provisions of this section the full value of the same.

Sales for cash.

23. And be it enacted that at every such sale as aforesaid all animals shall be sold for cash and not otherwise and that the proceeds of every such sale less the amount of the pound and other fees properly payable and of any damage due or assessed in manner and form as hereinafter mentioned shall be handed over with all convenient speed to be by him paid to the owners of animals sold according to their respective rights: Provided, always, that when and as often as there shall be a resident magistrate not being also a civil commissioner at the village or place where any such sale as aforesaid shall be held the proceeds aforesaid shall be handed over to such resident magistrate who shall with all convenient speed pay the same to the civil commissioner of the division; and provided, also, that if in any particular case the animals sold shall not realize sufficient to satisfy all such fees and damages as aforesaid the proceeds shall be first applied to the payment of the fees aforesaid and the balance of such fees or damages shall be recoverable from the respective owners by the parties entitled to receive the same by suit or action in any competent court; and provided, further, that in case the owner of any animals sold in respect of which any sum of money shall have been handed over by any poundmaster to any civil commissioner or

Application of  
proceeds.

resident magistrate shall not within the space of twelve months from the day of such payment claim the same, the same shall become the property of Her Majesty the Queen and be paid into the colonial treasury.

24. And be it enacted that every poundmaster shall be allowed for his attendance at every such sale as aforesaid a fee of ten shillings, to be borne by the several owners of the animals sold in proportion to the amount of purchase money realized on account of every such owner.

Poundmaster's fee for attendance.

25. And be it enacted that every person finding any horse, head of horned cattle, sheep, goat, or pig trespassing upon his lands or grounds may send the same to the nearest accessible pound, but except as in the next succeeding section is excepted to none other, and if any person shall by himself or his servants ride or otherwise work or use any animal found trespassing or detain at his place or on his property any such animal for any space of time exceeding twenty-four hours he shall for every such offence forfeit any sum not exceeding ten pounds, to be recovered for his own use by the owner of the animal or animals so detained.

Animals to be sent to nearest accessible pound.

Penalty on detention beyond twenty-four hours.

26. And be it enacted that when and as often as any animal found trespassing as in the last preceding section mentioned shall be known to belong wholly or in part to any poundmaster or to any person residing or having the right to graze such animal upon the place or farm of any poundmaster such animal may be sent to the nearest accessible pound other than that kept by such poundmaster as aforesaid, provided such lastmentioned pound be not more than fifteen miles farther off than the pound kept by such poundmaster.

Poundmaster's cattle to be sent to pound within fifteen miles.

27. And be it enacted that every magistrate, justice of the peace, field-cornet, assistant field-cornet in any division or any person authorized in writing by any of the said persons may send to the nearest accessible pound all animals which shall be found upon any outspan-place in such division not being in the possession of travellers outspanning there or which being in the possession of such person shall be outspanned there for more than twenty-four successive hours, unless such person shall be detained by floods or some other sufficient cause; and when and as often as any such person as aforesaid takes or sends any such animals to the pound he shall be entitled to receive the mileage as hereinbefore provided.

Trespass on outspan-places.

Injury to  
public dams or  
tanks.

28. And be it enacted that when and as often as any animal not belonging to or being in the possession of travellers, shall be found trespassing on or injuring any dam or tank belonging to the government and intended for the use of travellers and their cattle only, such animals may be sent to the nearest accessible pound by any of the persons in the last preceding section mentioned in case there shall not be any person appointed or authorized by government to take charge of such dam or tank ; but in case there shall be any such lastmentioned person then it shall be his duty to impound all animals liable to be impounded, and he shall be entitled to receive the mileage as hereinbefore provided.

Repetition of  
such injury.

29. And be it enacted that if any animals belonging to any person shall be found to have wrongfully trespassed upon or injured any such tank or dam as aforesaid, twice or oftener within the space of three months, such person shall over and above all other fees and charges be liable to forfeit any sum not exceeding five pounds.

Penalty.

Furious  
driving and  
wanton ill-  
treatment of  
trespassing  
animals.

30. And be it enacted that if any person shall furiously drive, worry, starve, or wantonly ill-treat any animal found trespassing as aforesaid, or conduct the same to the pound by any except the nearest route unless some other shall be more desirable for the animal itself or to avoid standing crops, or divide or separate any number of animals found trespassing at the same time in order to send them separately to the pound and so obtain double or still greater mileage, such person shall be liable for every such offence to forfeit any sum not exceeding five pounds, and shall moreover be liable to make good to the owner the amount of any damage which he may have sustained by any infringement of this section.

Penalty.

Rescue.

31. And be it enacted that if any person shall by threats or violence or otherwise rescue or attempt to rescue against the will of the person or persons in charge of any animals lawfully seized in order to be impounded, or shall so rescue or attempt to rescue any animals after the same shall have been impounded with any poundmaster, such person so rescuing or attempting to rescue the same shall for every offence forfeit any sum not exceeding ten pounds.

Penalty.

Trespass in  
gardens, vine-  
yards, &c.

32. And be it enacted that the owner of or other person lawfully claiming any such animal as in the twenty-fifth section of this ordinance mentioned which shall be found trespassing in any garden, vineyard, or enclosure or on cultivated land in which any crop is growing or cut but not removed, or in

any stack-yard or trap-floor or other enclosed place containing grain shall be liable to pay as trespass money to the owner of the property trespassed upon for or in respect of each horse, head of horned cattle, pig, or goat so trespassing the sum of one shilling and six pence and for every sheep the sum of one penny as damage, exclusive of all pound fees and other charges: Provided, always, that when and as often as any animals shall be sent to the pound for or in respect of any such trespass as is in this section mentioned, the person sending the same shall send with them to the poundmaster a note in writing, signed by himself or by his own agent or caretaker, setting forth the number and description of the animals sent and the species of place or property in or upon which the said animals shall have been found trespassing, and the amount of damage payable under and by virtue of the provisions of this section, when the complainant shall elect to claim such amount instead of referring the amount of damage to the award of the field-cornet and landowners as hereinafter mentioned, or instead of proceeding by way of action; but when the complainant shall elect to refer such amount to such award or to legal proceedings then the note in writing aforesaid shall after specifying the animals trespassing and the property trespassed upon state the intention of the complainant to proceed for the amount of damage according to law; and if no such note in writing shall be delivered to the poundmaster together with the animals sent to the pound then such animals shall be deemed to have been impounded for an ordinary trespass as in the next succeeding section mentioned: Provided, always, that when and as often as any animals shall be conveyed to the pound by the owner or occupier of the property trespassed upon in person then his verbal statement shall be taken and be recorded by the poundmaster, and shall be of the same effect as any such note in writing as aforesaid.

Transmission of written statement of damage to poundmaster.

Right of complainant to claim award of field-cornet or to proceed at law.

Verbal statement of damage.

33. And be it enacted that when and as often as any such animal as in the preceding section mentioned shall be found trespassing in or upon any property not being of the description of any in the last preceding section mentioned, the owner of or other persons lawfully claiming such animal shall be liable to pay as trespass-money to the owner of the property trespassed upon for or in respect of every horse, head of horned cattle, pig, or goat the sum of four pence, and for every sheep where the number shall not exceed three

Trespass-money for damage in unenclosed property.

hundred the sum of one half-penny, and where the number of sheep shall exceed three hundred the sum of one farthing for every sheep.

Repetition of  
trespass.

34. And be it enacted that when and as often as the same animal or animals (or any of any of them) of the same owner shall be found trespassing again upon the same property of the same owner within the space of fourteen days next after any former trespass by the same animal or animals upon the same property, the owner of such animal or animals so again trespassing shall be liable to pay double the rate of mileage and of trespass money in force for the time being in regard to trespasses not being repeated trespasses.

Penalty.

Alteration of  
trespass money  
by district  
meeting

35. And be it enacted that it shall and may be lawful for every district meeting as hereinbefore and hereinafter mentioned to alter and adapt the provisions in the thirty-second or thirty-third sections mentioned by changing the rate to be paid for trespass-money as therein specified or by abolishing any such rate entirely: Provided, always, that it shall not be competent for any such district meeting to impose or establish in place or stead of the rate in the thirty-second section mentioned any rate higher than three shillings for any animal other than a sheep or three pence for any sheep, or to impose or establish in place or stead of the rate in the thirty-third section mentioned any rate higher than one third of whatever rate shall be imposed or established in regard to the trespasses mentioned in the thirty-second section.

Limit of  
increase.

Liability of  
poundmaster  
on delivery of  
animal without  
payment of  
damage.

36. And be it enacted that no poundmaster shall release or deliver up any animal impounded until there shall be paid to him over and above all other fees and charges the amount of such damages as may be due and payable under or by virtue of either of the three last preceding sections, for which damages in case of any release or delivery up of the animals impounded the poundmaster shall be responsible.

Constitution  
of district  
meetings of  
justices of the  
peace.

37. And whereas it is expedient to provide for the adaptation of certain clauses of this ordinance to the peculiar circumstances of particular divisions should the said provisions be found upon experience to be unsuited to such divisions: Be it enacted that at any time after the first day of January, one thousand eight hundred and forty-nine, it shall and may be lawful for the civil commissioner of any division of this colony and he is hereby required upon receiving a requisition to that effect in writing, signed by not less than twenty such landowners of such division, to



call a meeting of the justices of the peace of such division at some time and place to be specified for the purpose of considering the provisions of the fifth, sixth, seventh, thirty-second, and thirty-third sections of this ordinance, in order to determine whether they or any of them stand in need of alteration; and such meeting shall be summoned upon a notice to be published not less than three weeks before the day of meeting in the Government Gazette, and at such meeting the civil commissioner shall take the chair, and every question moved thereat shall be determined by a majority of votes of the persons then present and entitled to vote, and in case there shall be an equality of votes the chairman shall have an additional or casting vote; and in case it shall be decided at or by any such meeting that any alteration shall be made in regard to any of the rates by any of the respective sections aforesaid established the civil commissioner aforesaid shall as such chairman as aforesaid report the particulars of such alterations to the secretary to Government for the information of His Excellency the Governor, and every such alteration shall be announced by a government notice in the Government Gazette together with the date at which such alteration shall commence and take effect in the division in question, and thereupon the rate, charge, or payment mentioned in such notice shall become fixed and binding, and the rate, charge, or payment in this ordinance contained for which the rate, charge, or payment in such notice mentioned shall be substituted shall become void and of no effect: Provided, always, that no such meeting shall be competent to alter or interfere with any provision of this ordinance other than those contained in the several sections hereinbefore in this section recited or to alter or interfere with any of the provisions of the said recited sections except under and within the limits and restrictions in the eighth and thirty-fifth sections of this ordinance respectively contained; and provided that every rate, charge, or payment in this ordinance contained and not altered by any such meeting shall remain and continue in full force and effect.\*

38. And be it enacted that at any time after the expiration of twelve months from any such meeting as aforesaid,

\* The powers by this section vested in the civil commissioners and justices of the peace are transferred to the divisional councils by Act No. 5, 1855. (*Vide* Act No. 14, 1856.)

Powers of district meeting.

Limitation of powers.

Interval of twelve months before second meeting.

but not sooner, it shall and may be lawful for the civil commissioner of the division in and for which such meeting shall have been held upon a similar requisition to that in the last preceding section mentioned to call in manner aforesaid a similar meeting for the purpose of altering or adapting the rates, charges, or payments for the time being, and such second meeting shall have and possess all and singular the powers and authorities and none other hereinbefore conferred upon the first meeting aforesaid, precisely as if the rates, charges, or payments for the time being in any such division had been the rates, charges, or payments by this ordinance imposed, and such meeting shall proceed and the decision thereof shall be notified in the same manner as is hereinbefore provided in regard to the first meeting aforesaid, and such notification shall be attended with the like effect as that of the decision of the said first meeting.

Interval of twelve months as to succeeding meetings.

39. And be it enacted that similar meetings to those in the two last preceding sections mentioned may successively be summoned upon similar requisitions at intervals of not less than twelve months for the purpose of altering and adapting in manner and form as aforesaid the rates, charges, and payments for the time being: Provided, however, that no district meeting whatsoever held under this ordinance shall be competent to proceed to or transact any business unless there shall be present thereat at the hour appointed for holding the same at least three members exclusive of the chairman.

Quorum of meeting.

Appointment of other persons besides justices to act at district meetings.

40. And be it enacted that if in any division there shall be fewer than seven justices of the peace (exclusive of the civil commissioner) resident within a distance of twenty-five miles from the civil commissioner's office such civil commissioner upon receiving any such requisition as aforesaid shall inform the Governor for the time being of the number of justices within such limits, and thereupon it shall and may be lawful for such Governor by notice in the Government Gazette to nominate so many other fit and proper persons resident within such limits as he shall think fit, to meet and act with the justices assembled at any such meeting: Provided that every justice of the peace resident in any division shall be entitled to meet and act, no matter at what distance he shall or may reside; and provided that every person once nominated to meet and act, shall still be competent so to do, although seven or any greater number of justices may afterwards be resident within the limits aforesaid.

41. And be it enacted that if in any case the owner of any species of property in the thirty-third section described shall deem the amount which would be claimable under and by virtue of such of the provisions in that section contained an inadequate compensation for the damage done it shall and may be lawful for such owner to require that such damage shall be assessed by the nearest field-cornet and any two landowners, one to be nominated by the complainant and the other by the owner of the animals which have trespassed: Provided, always, that in case the owner of such animals shall be unknown or shall refuse or neglect to nominate a landowner willing and ready to act then the field-cornet shall nominate a landowner in his place or stead, and in case the said field-cornet and landowners shall not agree in their assessment then the amount agreed upon by any two of them shall be binding.

Reference to field-cornet and two landowners of damage under section 33.

42. And be it enacted that when and as often as any person shall be minded to refer the amount of damage sustained to the field-cornet and landowners as aforesaid such field-cornet shall be informed of the trespass within twenty-four hours next after the trespass committed, and he shall fix such time for the inspection as may be most convenient to all parties; and such field-cornet and landowners shall be entitled to receive from the complainant for their award the sum of seven shillings and six pence each, which charge as well as the amount of damages assessed shall be paid by the owner of the animals which have trespassed in case the damages assessed shall exceed the amount which would under the provisions of the thirty-third, thirty-fourth, and thirty-fifth sections of this ordinance have been claimable, but otherwise the charge aforesaid for the award of the field-cornet and landowners shall be defrayed by the complainant requiring their intervention.

Proceedings in the reference.

Fees of referees.

Costs.

43. And be it enacted that every award of field-cornet and landowners shall be in writing, and shall be signed by such field-cornet and landowners, or when all cannot agree by some two of them, and be delivered to the complainant, and shall state in words the amount at which the damage done has been assessed and also whether the complainant or the owner of the trespassing animals is liable for the charge for the award of the field-cornet and landowners.

Award in writing.

44. And be it enacted that when and as often as the animals which shall have done the damage assessed by field-cornet and landowners in manner aforesaid shall have been

Transmission of copy of award to poundmaster.

impounded previously to the making of the award, a copy of the award certified by the complainant to be a true copy shall be sent by him to the poundmaster of the pound in which such animals as aforesaid shall be impounded, and thereupon the assessed damages and the charge aforesaid for the award (when such charge shall not be one against the complainant) shall become a charge upon the animals impounded, which shall not be released or delivered up until the same shall be satisfied, and for the payment of the sum in case of such release or delivery the poundmaster shall be responsible.

Trespass-  
money in case  
of diseased  
sheep or goats

45. And be it enacted that the owners of any sheep infected with the disease commonly called *brandziekte* or scab or of any goats infected with the disease commonly called scurvy which shall be found trespassing upon any species of property shall (except as hereafter excepted) be liable to pay twice the amount of damages which under the provisions of the thirty-second or thirty-third section of this ordinance would be claimable in regard to a similar trespass by sheep or goats not so diseased; and in case such diseased sheep or goats so trespassing shall be found mixed with sheep or goats free from disease and belonging to any other person then the amount of damage shall be double the amount last mentioned; and any person who shall wilfully drive or cause to be driven any diseased sheep or goats respectively into or upon the property of any other person on which there shall be any sheep or goats which shall be respectively free from disease, such person shall over and above all damages and fees payable by him be liable upon conviction to be imprisoned with or without hard labour for any period not exceeding six months.

Effect of claim  
for damages on  
assessment by  
field-cornet,  
and of such  
claim on action  
at law.

46. And be it enacted that nothing in this ordinance contained shall be construed so as to prevent any person complaining of trespass from seeking redress according to law in any competent court; but no person who shall once have claimed damages under the thirty-second and thirty-third sections of this ordinance shall be competent afterwards to require an assessment by field-cornet and landowners, nor shall any person who shall once have claimed either such damages or such assessment be competent afterwards to seek redress by legal process; and whenever any complainant shall be minded to proceed at law for the recovery of damages for an alleged trespass the owner of the cattle impounded for or on account of such trespass shall be entitled to release the same upon payment of pound fees

Release of  
animals on se-  
curity pending  
action.

and upon giving security to the satisfaction of any resident magistrate or justice of the peace or field-cornet for the payment of any damages or costs which the complainant may recover: Provided, always, that every such owner shall be entitled to tender to every such complainant such sum as he may consider adequate to cover and satisfy such damages as aforesaid, and in the event of such tender being refused the complainant shall be condemned in the costs of all such legal proceedings as he may afterwards institute unless the court in which the same shall be pending shall find that such damages exceed the amount so tendered.

Tender.

47. And be it enacted that when and as often as there shall be impounded in any pound any number of sheep or goats respectively affected with the respective diseases in the forty-fifth section mentioned the same shall not be destroyed but be sold by public sale at the place where the sales of animals impounded in the same pound are usually held, in case the civil commissioner shall not appoint (as he is hereby authorized to do) some other place for selling diseased sheep; and such sale shall not take place until the expiration of fourteen days from the day of the impounding of the same and until a notice of such sale shall have been posted at the court-house of the nearest resident magistrate and at the residences of the two nearest field-cornets: Provided, however, that no other publication of such notice shall be necessary; and provided that the sales of diseased sheep and goats shall in all respects other than those herein provided for be regulated in like manner as the ordinary sales hereinbefore mentioned.

Sale of diseased sheep or goats.

Notice of sale.

48. And be it enacted that if in any case it shall chance or happen that property trespassed upon shall be situated in a division different from that in which the pound proper for the receipt of the animals trespassing shall be situated, and that there shall be in such divisions respectively different rates of mileage or trespass-money, then mileage and trespass-money shall respectively be payable according to the rate in and for the division in which the property trespassed on is situate; but all rates payable upon the delivery to and receipt by the poundmaster of such animals, and for herding, grazing, and feeding the same, shall be paid according to the rate in and for the division in which the pound is situate.

Mileage and trespass-money where the pound and property trespassed on are in different divisions with different rates.

49. And be it enacted that every person who shall (without the permission of some person entitled to give permission)

Molestation of animals on owner's property.

by himself or any person acting by his authority molest, drive, or scatter the horses, cattle, sheep, or goats of any other person upon the property of such lastmentioned person or pursue or take away any such animals from off the property of their owner, whether under pretext of seeking for or separating his own animals or any other purpose, shall for every such offence forfeit any sum not exceeding ten pounds.

Destruction of pigs, poultry, and pigeons.

Dogs.

Penalty on stallions trespassing.

Penalty on stallions found amongst mares.

Repeal of proclamation.

Penalty on bulls, rams, &c., trespassing.

Such penalties above other charges.

50. And be it enacted that all pigs, poultry, and pigeons found trespassing in or upon any sort or species of property in the thirty-second section of this ordinance specified may lawfully be destroyed while and where so trespassing by the owner of such property or any person acting by his authority ; and that any dog found trespassing, between the first day of December and the first day of April in any enclosed vineyard or garden in which grapes are growing and doing damage therein may also be destroyed.

51. And be it enacted that the owner of any stallion horse or stallion ass above the age of two years which shall be found without having any person riding, driving, or otherwise in charge of the same trespassing upon the property of any other person shall be liable to forfeit any sum not exceeding five pounds and not less than one pound: Provided, always, that if such horse or ass shall when so trespassing be found amongst mares or with any mare not belonging to the owner of such horse or ass then the owner thereof shall be liable to forfeit any sum not exceeding thirty pounds and not less than six pounds ; and provided that in calculating the said age the term of two years shall be calculated from the first of June of the year in which the animal was foaled ; and provided, also, that the proclamation of the then Governor of this colony, Lord Charles Henry Somerset, of the 23rd of May, 1823, respecting entire horses running loose shall be repealed, and the same is hereby repealed accordingly.

52. And be it enacted that the owner of every bull or ram above the age of twelve months respectively which shall be found trespassing upon the property of any other person shall be liable to forfeit any sum not exceeding two pounds and not less than ten shillings: Provided that if any such bull or ram shall be found amongst cows or ewes respectively the penalty aforesaid shall be doubled.

53. And be it enacted that the penalties in the two last preceding sections respectively mentioned shall be payable over and above all pound fees or other charges.

54. And be it enacted that for or in respect of any of the provisions of this ordinance in regard to which no penalty shall have been hereinbefore or hereinafter expressly provided every person so contravening the law shall incur and be liable to any penalty not exceeding five pounds.

Penalty for  
contraventions  
where not  
specially fixed.

55. And be it enacted that all fines and penalties imposed by any of the provisions of this ordinance shall be recoverable in the court of the resident magistrate of the district in which the offence shall have been committed and may be proceeded for by any person in regard to whose property the act or omission entailing any such fine or penalty shall have taken place; and any fine or penalty which shall not be incurred by any act or omission affecting the property of any particular person may be proceeded for by any person whomsoever; and all fines and penalties when recovered shall be paid to the person proceeding for the same.

Recovery of  
fines and  
penalties.

56. And be it enacted that when and as often as any person convicted of any offence against any of the provisions of this ordinance shall not forthwith pay or satisfactorily secure the penalty imposed it shall and may be lawful for the court imposing such penalty, in case no other term of imprisonment shall have been hereinbefore provided for or in respect of the non-payment of such fine or penalty, to sentence the offender to imprisonment with or without hard labour for any term not exceeding two months.

Imprisonment  
on non-pay-  
ment of  
penalties.

57. And be it enacted that when and as often as any proceeding for the recovery of any such penalty under the provisions of this ordinance shall appear to the court before which such proceeding shall come to be frivolous and vexatious, it shall and may be lawful for such court to adjudge to the party proceeded against double his full costs of defence, to be taxed and assessed by such court and to be paid by the party prosecuting, such costs to be recoverable by the like process as that by which costs awarded to be paid by a plaintiff in any civil suit pending in such court shall be by law recoverable.

Costs in vexa-  
tious proceed-  
ings.

58. And be it enacted that in the interpretation of this ordinance the following words and expressions are intended to have the meanings hereby assigned to them so far as such meanings are not excluded by the context or the nature of the subject-matter, that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things, and words denoting the masculine gender

Interpretation  
clause.

to apply also to persons and inferior animals of the feminine gender; and that the term horse shall include mules and asses, colts, fillies, and foals, and that the term horned cattle shall include bulls, cows, oxen, heifers, and calves, and that the term sheep shall include rams, ewes, wethers, and lambs; and that the term civil commissioner shall include together with civil commissioners assistant civil commissioners and the officers acting as either civil commissioners or assistant civil commissioners; and that the term division shall designate the territory under the fiscal administration of a civil commissioner or assistant civil commissioner.

Exemption of municipalities.

Use of municipal pound.

59. And be it enacted that nothing in this ordinance contained shall extend to any trespass committed or pound erected within any municipality: Provided, always, that animals seized or detained for or on account of any trespass committed beyond the limits of any municipality may be sent to any pound within such limits which will receive the same in case there shall not be any other pound which is not farther off by seven miles or upwards than the pound of the municipality; and all animals impounded in any pound within a municipality shall be subject in all respects to the regulations of such pound; but all questions respecting trespasses committed beyond the limits of any municipality shall be determined and the damages claimable therefrom shall be regulated by the provisions of this ordinance.

Exclusion of Natal.

Time of taking effect.

60. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

61. And be it enacted that this ordinance shall commence and take effect from and after the first day November in the year of our Lord one thousand eight hundred and forty-seven.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 24th day of July, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.



No. 17.—Sd. Henry Pottinger.] [11th Sept., 1847.

Ordinance for declaring the true meaning and construction of the 21st section of the Ordinance No. 8, 1843, entitled "Ordinance for improving the Public Roads of this Colony."

[Repealed, with Ordinance No. 8, 1843, by Act No. 9, 1858.]

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No. 18.—Sd. Henry Pottinger.] [11th Sept., 1847.

Ordinance for applying a sum not exceeding £179,981 9s. 7d. for the service of the year 1848.

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No. 19.—Sd. Henry Pottinger.] [11th Sept., 1847.

Ordinance for applying a sum not exceeding £11,365 9s. 8d. for the service of the year 1847, in addition to the sum already in that respect provided.

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No. 20.—Sd. Henry Pottinger.]

Ordinance for relieving Agricultural and other Produce and other Articles from the necessity of passing through Public Markets.

WHEREAS under and by virtue of certain powers and authorities contained in the following ordinances respectively, that is to say, the Ordinance No. 9, 1836, 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;" the Ordinance No. 6, of 1837, entitled "Ordinance to authorize the Governor of the Colony, by and with the advice of the Executive Council, to establish Markets and provide Regulations for the same in Villages and other places not being Municipalities," and the Ordinance No 1, 1840, entitled "Ordinance for the better regulation of the Municipal Board of Cape Town and the Vicinity thereof," markets have been established in various towns and villages throughout the colony and various regulations regarding the said markets having the force of law been

from time to time framed and published: And whereas by the respective regulations of and concerning the said markets respectively or the greater number of the said markets it is provided and required that certain produce and other articles brought into the said towns or villages shall be obliged to pass through the market established within the same and be there sold by public sale, in case the same shall not have been previously entered in manner and form as by such regulations respectively prescribed upon the registry of such market, on pain of certain penalties in and by the said regulations in that behalf provided: And whereas the compulsory provisions aforesaid whereby the owners of produce or other articles brought into such towns or villages for sale are prevented from selling the same where and when and in what manner they themselves deem best, and are forced to pass the same through the public market and pay market dues and charges thereupon, are subversive of that freedom in regard to their dealings which the inhabitants are entitled to enjoy and are justly deemed oppressive by many farmers and others frequenting the several towns and villages in which such compulsory provisions exist: And whereas it is expedient to annul and made void all such compulsory provisions, leaving all such markets as aforesaid to be resorted to by persons voluntarily desirous of so doing but none other: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all municipal or market regulations heretofore framed and published under and by virtue of any of the aforesaid ordinances respectively, in so far as such regulations or any of them shall be repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed, avoided, and annulled, and the same are hereby repealed, avoided, and annulled accordingly.

Repeal of  
repugnant  
municipal  
market regula-  
tions.

Relief of  
produce, &c.,  
from passing  
market.

2. And be it enacted that no person conveying or carrying any agricultural or other produce or any article, matter, or thing whatever to and into any town or village in this colony shall henceforth be required or obliged under any pain or penalty whatsoever to carry or convey the same into or upon any market established in such town or village under or by virtue of the said ordinances respectively, nor to pass the same through or sell the same at any such market, nor to pay or satisfy any manner of municipal or market dues or charges in respect of any produce, article, matter, or thing not

voluntarily carried or conveyed into or within the precincts of the markets, nor to enter or cause to be entered upon any market registry any produce, article, manner, or thing not as aforesaid voluntarily brought to such market; but on the contrary all persons whomsoever shall be fully and lawfully entitled to bring into, through, or out of every town or village for sale or barter or any other purpose any description of property whatsoever, and to dispose of the same elsewhere than at or on the public market, or to take the same away again as he shall deem expedient, without being thereby liable to pay any fine, forfeiture, due, or charge whatsoever: Provided, always, that nothing herein contained shall be taken or construed so as to impair or affect any such market regulation as aforesaid so far as it may relate to any produce, article, matter, or thing which shall be voluntarily carried or conveyed into or within the precincts of any such market as aforesaid in order to be sold or offered for sale thereat; and such produce, article, matter, or thing shall be subject to all such regulations and be liable to the like dues and charges as if this ordinance never had been passed.

3. And be it enacted that it shall not be competent or lawful for any municipal or market regulation to be hereafter framed and published whether under and by virtue of the ordinances aforesaid or of the Ordinance No. 4, 1839, entitled "Ordinance for the creation of a Municipal Board for the Districts of Green Point and Sea Point," to make or render it compulsory upon any person to convey or carry any produce, matter or thing to any particular market or place of sale or to impose any fine or penalty upon any person for not conveying or carrying the same to such market or place or to impose any due or charge upon or in regard to the sale, barter, or other disposition of any property not voluntarily and actually conveyed or carried into or upon the public market.

Prohibition of future municipal and market regulations making it compulsory for produce to pass market.

4. And be it enacted that the limits of every market established in any town or village under or by virtue of any of the ordinances aforesaid respectively shall remain and continue as fixed or reputed at the time of the promulgation of this ordinance, unless altered or enlarged by some regulation, municipal or otherwise, having the force of law, duly framed and published.

Limits of markets.

5. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal

Exclusion of Natal.

**Time of taking effect.** 6. And be it enacted that this ordinance shall commence and take effect from and after the 1st day of January, 1848.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 20th day of October, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 21.—Sd. Henry Pottinger.]

Ordinance for Improving the Ports, Harbours, and Roadsteads of this Colony.\*

**Preamble.** WHEREAS it is expedient in order to facilitate and encourage the export and coasting trade of this colony that provisions be made by law for increasing the safety and convenience of the several ports, harbours, and roadsteads thereof and generally for improving the same: And whereas such improvement may most fitly and effectively be made by means of local boards of commissioners to be invested with all necessary powers and authorities: Be it therefore enacted by the Governor of the colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor of this colony to nominate and appoint for or in regard to any port, harbour, or roadstead in this colony which shall be deemed by him to need improvement a board of commissioners, to be called and known by such style and title as the said Governor when nominating and appointing the same shall bestow or prescribe.

**Appointment of board of commissioners.**

**Constitution of board.**

2. And be it enacted that every such board of commissioners shall consist of so many fit and proper persons, not less than three nor more than five, as the said Governor shall deem sufficient, who shall from time to time be appointed by proclamation to be from time to time issued in the Government Gazette, and

\*[Vide Ordinance No. 4, 1852, for improving Kowie Harbour; Act No. 20, 1858, and Act No. 6, 1860, for constructing a Breakwater, &c., in Table Bay; Act No. 10, 1858, for enabling Harbour Board of Port Elizabeth to levy wharfage dues; Act No. 7, 1860, for enabling Harbour Board of Mossel Bay to levy wharfage dues.]

such persons so appointed shall continue to be members of the board for or in regard to which they shall have been nominated until their respective appointments shall be revoked by some proclamation to be issued as aforesaid; and every person who shall be appointed to be a member of any such board shall before proceeding to act as such take and subscribe before some resident magistrate or justice of the peace the following declaration, which declaration such magistrate or justice is hereby authorized to administer, that is to say: "I, A. B., do declare that I will faithfully execute the duties of a commissioner of (here state the style and title of the particular board) appointed by His Excellency the Governor under and by virtue of the provisions of Ordinance No. 21, 1847;" and every such declaration so taken and subscribed shall be forwarded to the Secretary to Government to be preserved in the Colonial Office.

Declaration of  
commissioner.

3. And be it enacted that the said Governor shall by proclamation as aforesaid from time to time nominate and appoint one of the members of every such board as aforesaid to be the chairman thereof; and the said board shall hold its meetings at such times and at such place or places as the members thereof shall find it convenient for the dispatch of business to appoint; and such a number of members as shall by any such proclamation as aforesaid be directed shall form a quorum and shall be competent to exercise the several powers and authorities hereinafter mentioned and granted to every such board; and at any meeting of any such board at which the chairman for the time being shall not be present, some member thereof present shall be chosen by a majority of votes of the members present to take the chair, and whenever at any meeting of any such board the votes of the members in regard to any question shall be equally divided the chairman besides his vote as a member shall have a casting vote; and every such board shall be competent to frame all necessary rules and regulations for the due and proper dispatch of business.

Nomination of  
chairman.

Quorum.

4. And be it enacted that it shall and may be lawful for every such board and it shall be the duty thereof, so far as a necessity shall appear to exist and the means at its disposal shall permit, to take measures for improving by means of piers, wharfs, landing-places, moorings, engines, and other works of a like nature the port, harbour, roadstead, bay, or inlet for or in regard to which such board shall have been appointed.

Powers and  
duties of board.

Report to Governor of intended works.

5. And be it enacted that it shall and may be lawful for every such board as aforesaid and it is hereby required to frame and transmit to the Governor aforesaid a report setting forth what particular works appear to the said board to be most required for the improvement of the port or place in regard to which such board shall have been appointed, and stating as accurately as may be the probable nature and cost of such preliminary examinations, surveys, plans, and estimates as shall be necessary, in order to determine in regard to the practicability and expense of such proposed works; and thereupon it shall and may be lawful for the said Governor, should he approve of such report, to cause to be issued such a temporary advance from time to time as he shall find necessary from the colonial treasury to such board as aforesaid, to be by it applied in procuring and prosecuting in respect of such work or works as the said Governor shall approve of and direct any such examinations, surveys, plans, and estimates as aforesaid; and every such temporary advance as aforesaid shall be repaid to the colonial treasury by the board receiving the same from and out of any funds or moneys to be by it received, borrowed, or raised under the provisions and for the purposes of this ordinance; but in case there shall be no such funds or moneys then such advance shall become a charge upon and be borne by the public revenue.

Advance for preliminary expenses.

Authorization of loans on credit of the public revenue.

6. And be it enacted that when and as soon as the necessary examinations and surveys, plans and estimates shall have been made or caused to be made by any such board in respect of any intended work or works as aforesaid the same shall be sent in by such board for the inspection and approval of the said Governor, and thereupon it shall and may be lawful for the said Governor, with the advice and consent of the Legislative Council of the colony, to be declared by any vote or resolution of the council, to authorize any such board to borrow and take up from time to time upon interest such sum or sums of money as may be necessary for the execution of any such work or works, and to engage and pledge the credit and responsibility of the public revenue of this colony for the repayment of the principal and interest of every such sum as shall be so borrowed.

Mode of effecting loans.

7. And be it enacted that all sums of money which shall be borrowed or taken up by way of loan by any such board as aforesaid shall be borrowed and taken up in such amounts and for such times and at such rate of interest as the

Governor aforesaid with such advice and consent as aforesaid to be declared as aforesaid shall approve of, and all such sums shall be a charge upon and payable out of such tolls, charges, fees, and revenues as shall under and by virtue of any of the provisions in that behalf hereafter mentioned, be claimable and recoverable by such board for or in respect of the use by any person or persons of all or any of the works to be provided and completed by such board; and every bond, hypothecation, or other deed necessary for the securing of the due and punctual repayment of every such loan with interest thereon in the meantime shall be executed by and on behalf of the board borrowing the same by the chairman of such board in his capacity as such chairman, and shall be executed by and on behalf of the colonial government by such person as shall by the secretary to government in the name of the Governor aforesaid by any writing under his hand be authorized to execute the same; and the execution by any such last-mentioned person of any such bond, hypothecation, or other deed as aforesaid as surety *in solidum* and co-principal debtor for or in respect of the punctual payment of any principal sum with interest shall have the force and effect of pledging and engaging the public revenue of this colony for the due fulfilment of the stipulations and provisions in the said deed contained and by the board aforesaid to be performed.

Execution of  
bonds.

8. And be it enacted that it shall be lawful for every such board and it is hereby empowered from time to time, to appoint such and so many surveyors, engineers, clerks, officers, and other persons as it shall deem necessary to employ in the execution of any of the powers conferred upon such board by this ordinance, and may from time to time remove such surveyors, engineers, clerks, officers, and other persons or any of them and appoint others in their stead, and fix the respective duties and salaries of such surveyors, engineers, clerks, officers, or other persons, and if it shall think proper so to do take such security from any surveyor, engineer, clerk, officer, or other person appointed by virtue of this ordinance for the due and faithful execution of his office or employment as the said board shall think fit; but no amount of salary shall be assigned to any person engaged for an indefinite period or for any definite period longer than six months until the same shall have been first approved of by the Governor aforesaid.

Power of  
employing  
engineers, &c.

Power with consent of Governor to use public lands and excavate materials.

9. And be it enacted that it shall and may be lawful for every such board by and with the consent of the Governor aforesaid to enter upon and take possession of so much of any land belonging to the Queen's most excellent Majesty as shall be required for the purpose of any of the works, matters, or things aforesaid by such board to be constructed or made or for any other purpose relating to the execution of this ordinance; and also to enter upon all lands of her said Majesty lying convenient to any such works and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or serviceable for the making and repairing of any of the said works.

Vesting in boards of rights of government in regard to private property.

10. And be it enacted that for the purpose of executing any of the objects of this ordinance it shall be lawful for every such board and it is hereby authorized to take and use any land and to dig out and carry away any material belonging to or being found in or upon the land of any person or persons whatsoever and which land shall adjoin or lie convenient to any work to be performed or carried on, and that such board shall be and is hereby invested for the purpose of so doing with all and singular the legal rights if any belonging to the government of this colony in respect to the taking of any such land adjacent to the sea and the raising and carrying away such materials for making and repairing roads or harbours and whether such rights shall have been preserved to the said government by the proclamation of His Excellency Sir John Francis Cradock, bearing date the 6th day of August, 1813, permitting the conversion of lands on loan into places on perpetual quitrent, or shall have been created by express stipulation or condition in any grant of freehold property, or shall exist in any other way or manner whatsoever.

Proceedings where materials are required from lands on which no such rights exist.

11. And be it enacted that in case any such board shall require to take or use any land or to dig out or carry away any materials belonging to any person who shall not be bound by law to allow the said board so to do without requiring any recompense or payment by reason of the powers and authorities in the last preceding section delegated to or bestowed upon the said board, and which person shall think proper to require compensation from the said board, it shall be lawful for the said board and it is hereby authorized to treat and agree with every such person for the purchase or hire as the case may be of any such lands or



materials as last aforesaid, and generally to enter into such contract or contracts relative to the obtaining of any such land or materials upon such terms and conditions as it shall judge expedient; and if any such person and the said board shall not agree upon the purchase money or hire or other recompense to be respectively given by the one party and accepted by the other, then the said board shall cause to be served upon such person a written notice offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said board or to some person by it appointed, within a certain limited time to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not; and in case such person shall refuse to accept the sum offered or shall neglect to reply to said notice then the said board shall by another notice in writing call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said board, and for that purpose to transmit to the said board within a certain reasonable time to be specified in the said last-mentioned notice the name of some person whom he shall select to be an arbitrator upon such arbitration; and the said board upon receiving the name of the person so selected shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said board by the secretary of the said board for the time being and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and shall contain amongst other things a direction to the said arbitrators to set off against and deduct from the amount of such recompense or compensation as would otherwise be claimable the amount at which they shall estimate the benefit and advantage derived or to be derived by the person claiming recompense or compensation by reason of the formation or improvement of the work in regard to which the question shall have arisen, together with a power to the said arbitrators in case of a difference in opinion to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire as the case may be shall be made a rule of the supreme court and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the same subject-matter; and

Offer of recompense for such materials.

Arbitration.

Umpirage.

Making award a rule of court.

Proceeding in  
case of refusal  
of arbitration.

in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid or to sign the said deed of submission, then it shall be lawful for the said board and it is hereby 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 board 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 arbitrators or an umpire under the provisions of this section, and as if all acts by law required for vesting in the said board a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

Proceeding of  
board when  
owner of land  
cannot be  
found.

12. And be it enacted that in case any such board as aforesaid shall require to take or use any of the land or to dig out or carry away any of the materials in the last preceding section mentioned of which the owner or owners shall be absent from the colony and not represented by any agent duly accredited or shall not be discoverable, then it shall be lawful for the said board and it is hereby authorized to cause a notice to be inserted in the Government Gazette for four successive weeks, describing as accurately as may be the land which is required to be taken or used or from and out of which materials are required to be dug out and carried away, and calling by name upon the owner or owners of the said land or materials if known, or if not known then upon the owner or owners whoever he or they may be, to take notice that the said board is ready and willing to treat with the owner or owners or any person duly authorized by him or them for the recompense or compensation to be made or paid by the said board for the said land or materials, and requiring such owner or owners to apply within forty-two days from the date of such notice, which shall be the day of its first publication to the said board, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period then the like proceedings, in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively

given and received shall in all respects be had and taken which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and in case such owner or owners shall not apply to the said board within the said period then it shall and may be lawful for the said board to appoint some competent person to appraise the value of the land or materials required (setting off against and deducting from the value of such land or materials the amount at which the appraiser shall estimate any benefit or advantage derived or to be derived by the owner or owners of the said land or materials, by reason of the formation or improvement of the work in regard to which the question shall have arisen), and such person shall make oath before some justice of the peace (which oath every justice of the peace is hereby empowered to administer) that he hath to the best of his judgment fairly appraised such value, and thereupon it shall and may be lawful for the said board to pay whatever sum such person shall have valued the land or materials in question at into the 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 of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the colony; and the said board upon so paying the said sum shall be authorized and entitled to take or to use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid and as if all acts by law required for vesting in the said board a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

Appraisement  
of land or  
materials.

Payment of  
sum awarded  
into guardians'  
fund.

13. And be it enacted that all works constructed, altered, repaired, or improved by any such board as aforesaid shall vest in such board together with all lands reclaimed by any such board from the sea.

Vesting of  
property in  
boards.

14. And be it enacted that all lands which shall under and by virtue of any of the provisions of this ordinance become vested in any such board as aforesaid and which shall be or become unnecessary for the purposes of any of the works under the management or administration of such board may be sold or alienated by such board, and the moneys arising from the sale or alienation thereof shall be applied by the said board to the purposes thereof: Provided, always, that

Disposal of  
unnecessary  
lands.

no such board shall sell or alienate any such land without the consent of the Governor aforesaid first had and obtained ; and provided also that in the application of the proceeds thereof the said board shall conform to such directions in that behalf as the said Governor shall issue.

Imposition of  
tolls and rates  
for use of  
piers, &c.

15. And be it enacted that when and so often as any pier, harbour, quay, landing-place, engine, moorings, or other work shall become vested in any such board as aforesaid under the provisions of this ordinance it shall and may be lawful for the said board and they are hereby authorized to levy or cause to be levied and paid for the use of such pier, harbour, quay, landing-place, engine, moorings, or other work, such tolls and rates as the Governor aforesaid, with the advice and consent of the Legislative Council aforesaid, to be declared as aforesaid, issued from time to time approve of, and by any proclamation to be by him, shall in that behalf from time to time publish and announce: Provided, always, that when and so soon as the moneys if any due and owing by any such board in respect of sums by such board borrowed and taken up as aforesaid for the purposes of all or any of the works under the management or administration of such board shall have been by such board paid off and satisfied, then and in that case all tolls and rates payable to such board shall as much as may be be lowered to and fixed at such a scale or tariff as shall yield an amount not exceeding the probable average annual expense of maintaining and repairing the works aforesaid and further improving the port or harbour in or about which such works shall have been made ; and such reduction shall be made by the Governor aforesaid by any such proclamation as aforesaid.

Reduction of  
tolls, &c.

Letting to hire  
of tolls, &c., by  
tender or public  
auction.

16. And be it enacted that every such board may from time to time if it shall deem it to be expedient let or farm the tolls and rates to be payable in regard to the use of any pier, harbour, quay, landing-place, engine, moorings, or other work vested in such board by tender or by public auction to the highest and best bidder, for any time not exceeding one year in any case: Provided, always, that previously to every letting of such tolls or rates the said board shall give in some convenient manner public notice of the time and place at which tenders will be received or any such auction as aforesaid will take place, and that the person who shall at any such auction be declared to be the highest bidder or whose tender shall be accepted will be

required to produce two sufficient sureties for the payment of the stipulated hire; and provided also that in every letting of such tolls or rates whether by tender or by auction the said board shall require the farmer or renter thereof to enter into a bond with not less than two responsible sureties, each binding himself as principal debtor for the payment of the whole rent or hire of the said tolls at the time and in the manner in that behalf to be in the said bond specified; and in case any instalment or payment of such rent or hire shall be in arrear and unpaid for the space of three days after the same shall have become due then it shall be lawful for the said board to enter into and take possession of the said tolls or rates and of all toll-houses or other buildings of which the renter or farmer in default would otherwise be entitled to the use, and to re-let the said tolls, or otherwise to place a collector or collectors in receipt thereof and in possession of the said houses and buildings, as to them may seem fit; and the sum for which the said renter or farmer shall have been in default together with all further instalments or payments stipulated to be made by the said farmer or renter shall be due and demandable from him in like manner and form as if he still remained in receipt of the said tolls or rates, credit being given to him by the said board for whatever sums they shall receive for or on account of the said tolls in respect of the term for which the said rates or tolls were let to the renter or farmer making default.

Conditions of  
tender and  
auction.

17. And be it enacted that the said board or in case of any letting to hire every renter or farmer of any tolls or rates shall affix or cause to be affixed and continued in a conspicuous place at or near which any rate or toll shall be payable a table of the rates or tolls to be taken thereat plainly and legibly painted or printed in the English language, under a penalty not exceeding five pounds, to be sued for by any person whatever in any competent court for his own use.

Affixing of  
tables of tolls.

18. And be it enacted that it shall and may be lawful for the Governor aforesaid, with the advice and consent as aforesaid, to be declared as aforesaid when and as often as he shall with such advice and consent approve of any tolls or rates to be levied and paid for and in respect of any pier, harbour, quay, landing-place, engine, moorings, or other work as aforesaid, to fix and determine and by any such proclamation as aforesaid publish and announce whether such tolls or rates

Decision by  
Governor and  
council  
whether all  
articles or only  
articles volun-  
tarily conveyed  
to the pier, &c.,  
shall be subject  
to tolls.

shall be levied and paid upon or in respect of every rated article, matter, or thing landed or shipped at or in any part of the port, harbour, or roadstead in question, or only upon or in respect of such rated articles, matters, or things as shall voluntarily be brought or taken to the pier, harbour, quay, landing-place, engine, moorings, or other work aforesaid in regard to the use of which such tolls or rates shall be imposed; and when and as often as any tolls or rates shall be imposed upon or in respect of all rated articles, matters, and things landed or shipped at or in any part of any port, harbour, or roadstead the Governor aforesaid with the advice aforesaid shall by any such proclamation as aforesaid publish and announce the limits of such port, harbour, or roadstead for the objects and purposes of such tolls or rates and the levy and payment thereof, but not otherwise: Provided, always, that no toll or rate in respect of the use of any moorings which shall be put down or fixed by any such board as aforesaid shall be claimed from or be payable by any vessel other than one which shall by the voluntary act of the master or person in charge have made use of the said moorings.

Appointment  
by board of  
collectors of  
tolls with  
approbation of  
Governor.

19. And be it enacted that it shall and may be lawful for any such board as aforesaid, in cases in which any tolls or rates as aforesaid shall not be leased or let, or for the lessees or lessee of such tolls or rates if leased or let from time to time to appoint by and with the approbation of the Governor aforesaid sufficient collectors and officers or agents for the purpose of receiving the tolls or rates payable under this ordinance, and in case any person liable to pay such tolls or rates shall refuse or neglect to pay the same it shall be lawful for such board or for the lessees or lessee of the said tolls or rates or their officer or agent or other person to whom such toll or rate ought to have been paid to seize the vessels, goods, articles, matters and things in respect of which such tolls or rates ought to have been paid wherever the same may be found, and to detain the same until such tolls or rates together with the reasonable cost and expense of such seizure and detention shall be paid; and if such vessels, goods, articles, matters, and things shall not be redeemed within twenty-one days after the seizure thereof the same shall be sold by public sale, and after deducting the costs of such seizure, detention, and sale all such sums as shall be due in respect of such tolls or rates shall be satisfied thereout and the overplus paid to the owner or whomsoever else it may concern.

20. And be it enacted that if any person or persons shall wilfully cut, break down, destroy, or injure any pier, harbour, quay, landing-place, engine, moorings, or work of any kind whatever erected or made under the authority of this ordinance it shall be lawful for any person or persons who shall see the offence committed to apprehend and also for any other person or persons to assist in apprehending the offender or offenders, and by the authority of this ordinance and without any warrant to deliver him or them to any field-cornet, constable, or peace officer, who is to keep him or them in safe custody and with all reasonable dispatch to convey him or them before the resident magistrate within whose district the offence shall have been committed; and if the party accused shall be convicted of any such offence by any such resident magistrate he or they shall forfeit severally and respectively any sum not exceeding three pounds for every such offence and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeit shall be paid to the person or persons apprehending such offender or offenders and the other moiety shall be paid to the board of commissioners in which the work so injured as aforesaid shall be vested, to be by the said board applied for the purposes of this ordinance; and in case any such offender shall not upon such conviction pay the said forfeiture and satisfaction such magistrate is hereby required to commit him to prison, there to be kept to hard labour if such magistrate shall so order for any time not exceeding three calendar months unless the said forfeiture and satisfaction be sooner paid: Provided, always, that nothing herein contained shall prevent the said board from bringing any action for damages before the supreme or any circuit court having jurisdiction should they consider the amount of such damages to exceed the jurisdiction of any resident magistrate.

Wilful injury  
to piers, &c.

Apprehension  
of offenders.

Penalty.

Imprisonment  
on non-pay-  
ment of  
penalty.

Action for  
damages before  
superior court.

21. And be it enacted that if any person shall without lawful cause do damage or injury to any of the matters or things in the last preceding section mentioned it shall be lawful for any resident magistrate having jurisdiction and he is hereby required upon the application or complaint of the board of commissioners in which shall be vested the work to which such damage or injury shall have been done to summon the party complained of, and upon hearing the parties on both sides or on the non-appearance of the party com-

Damage to  
works.

Award by  
magistrate of  
damage.

Imprisonment  
on non-pay-  
ment.

Action before  
superior court.

Mode of  
keeping, pub-  
lishing, and  
auditing ac-  
counts.

Transmission  
of annual  
report.

Prohibition to  
members to  
receive fees.

plained of to examine the matter of complaint and to award such sum of money by way of satisfaction to the party complaining for such damage as to such resident magistrate shall appear reasonable; and in case of neglect or refusal forthwith to pay such money together with all expenses attending the recovery thereof it shall be lawful for such resident magistrate to sentence the party so neglecting or refusing to any period of imprisonment not exceeding fourteen days: Provided, however, that nothing herein contained shall prevent any such board from bringing any civil action for damages against any person doing such damage or injury as aforesaid before the supreme court or any circuit court having jurisdiction should they consider the amount of such damages to exceed the jurisdiction of any resident magistrate.

22. And be enacted that every such board shall and it is hereby required to cause a true, exact, and particular account to be kept and yearly made up and balanced, that is to say, on the 31st day of December in each year, of all the moneys raised, collected, or in any manner received by the said board or by any person on their behalf by virtue of or for the purposes of this ordinance and of the charges and expenses incurred by the said board, and a copy of such account together with all necessary vouchers shall be transmitted by the said board to the Governor of the colony for the time being, in order to the same being audited by such person or persons as the said Governor may from time to time appoint and afterwards laid by the said Governor before the Legislative Council; and the said board shall also cause an abstract of the said account to be published without delay in the Government Gazette for general information.

23. And be it enacted that every such board shall and it is hereby required when transmitting such yearly account as aforesaid to transmit also a report made up to the 31st day of December in each year detailing all and singular the particulars of every work which such board shall have commenced, carried on, or completed during the year then ended; which report shall by the Governor aforesaid be laid before the Legislative Council.

24. And be it enacted that no person appointed under and by virtue of this ordinance to be a member of any such board as aforesaid shall have or receive any salary or allowance or shall exact, accept, or take any fee or reward whatsoever on any account whatsoever relative to carrying this



ordinance into execution, nor shall any such person be eligible to become a contractor with the board of which he shall be a member for the doing of any work or the supplying of any materials, articles, or things contemplated by this ordinance, nor shall such person directly or indirectly be interested or concerned in any such contract as last aforesaid under a penalty not exceeding one hundred pounds.

25. And be it enacted that in any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this ordinance or for or in respect of any other matter or thing relating to this ordinance by or against any such board of commissioners as aforesaid it shall and may be lawful for the said board to sue or be sued by the style or title by or under which such board shall have been appointed by the Governor aforesaid, and in all criminal proceedings the same style may be used: Provided, always, that no member of any board shall be deemed or taken to be an incompetent witness in any such suit, action, or proceeding by reason of his holding the said office; and provided, also, that the said members shall always be reimbursed out of the moneys to arise by virtue of this ordinance all such costs, charges, and expenses as they shall be put to or become chargeable with by reason of bringing or defending any action or suit, unless such action or suit shall arise from their own gross negligence or wilful default.

Title under which board may sue or be sued.

Members of board competent witnesses in such actions.

Payment of costs.

26. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

Ordinance not to extend to Natal.

27. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 29th day of October, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

## No. 22.—Sd. Henry Pottinger.]

## Ordinance for establishing certain Rules of Court.

Preamble.

WHEREAS the Honourable the Supreme Court of this colony was pleased to promulgate upon the 4th day of February, 1845, and the 13th day of August, 1846, respectively, the three certain rules or orders of the said court which are set forth in the schedule hereunto annexed: And whereas it is expedient that the said rules and orders should be established as law: Be it therefore enacted by the Governor of the colony, with the advice and consent of the Legislative Council thereof, that the said three rules or orders as the same are set forth in the said schedule shall be and the same are hereby confirmed and established and declared to have the force and effect of law.

Time of taking effect.

2. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

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 SCHEDULE.
*Rules promulgated in open Court on the 4th day of February, 1845.*

212. It is ordered that no person who shall heretofore before the date of the promulgation of this rule have become bound by contract in writing to serve within this colony as a clerk to any barrister, advocate, attorney, solicitor, or proctor duly admitted to practise in the said court shall upon the expiration of five years from and subsequent to the date of such contract be admitted and enrolled as an attorney of and in the supreme court in terms of the provisions of the twenty-second section of the royal charter unless such contract shall be enrolled and registered with the registrar of this court together with an affidavit of the time of the execution of such contract by such clerk; and in case any such contract shall not be so enrolled and registered with the registrar at his office within three calendar months from the said date of promulgation of this rule, together with such affidavit of the execution of such contract, then and in such case the service of such clerk thenceforward from and after the date of such promulgation of this rule shall be deemed and taken to be good and effectual service under such contract only from and subsequent to the time of such enrolment and registry, any usage or custom to the contrary notwithstanding.

213. It is ordered that no person who shall after the date of the promulgation of this rule become bound by contract in writing to serve within this colony as a clerk to any barrister, advocate, attorney, solicitor or proctor duly admitted to practise in the

said court during the term of five years from and subsequent to the date of such contract shall be admitted and enrolled as an attorney of and in the supreme court, in terms of the provisions of the twenty-second section of the royal charter, unless such contract shall be enrolled and registered with the registrar of this court at his office, together with an affidavit of the time of the execution of such contract by such clerk, and in case any such contract shall not be so enrolled and registered with the registrar within three calendar months, together with such affidavit of the time of the execution of such contract, then and in such case the service of such clerk under such contract shall be deemed to commence from the time of such enrolment and registry, and not from the execution of such contract, any usage or custom to the contrary notwithstanding.

By the Court,

T. H. BOWLES,  
Registrar of the Supreme Court.

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*Rule promulgated in open Court on the 13th day of August, 1846.*

214. It is ordered that when a defendant has by his default been debarred from pleading and the case has been set down for trial as undefended, and the defaults and requisite notices duly proved, the defendant shall not be permitted either personally or by counsel to appear or in any way to interfere in the trial of the said cause or proceedings thereon.

By the Court,

T. H. BOWLES,  
Registrar of the Supreme Court.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 29th day of October, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council.

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 23.—Sd. H. G. Smith.]

Ordinance for reducing the Postage upon Religious Publications of or under a certain weight.

Preamble.

WHEREAS there is reason to believe that the diffusion of religious knowledge by means of religious periodical publications is much restricted by the rate of postage to which such publications even when they do not exceed an ounce in weight are by law subjected: And whereas it is expedient to reduce the postage upon religious periodical publications not exceeding one ounce in weight to one penny: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of Ordinance No. 1, of 1846, entitled "Ordinance for the Regulation of the Post Office and Postage," as is repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed and the same is hereby repealed accordingly.

Repeal of repugnant portions of Ordinance 1, 1846.

Postage on religious periodical publications.

2. And be it enacted that all religious periodical publications printed in this colony and not exceeding one ounce in weight shall be carried by post from any post office within the colony to any other post office within the same and there delivered upon being prepaid, for postage, one penny: Provided, always, that nothing herein contained shall extend to any publication which shall not be certified to the Governor for the time being by one minister or more of some denomination of Christians to be a religious periodical publication, nor to any which the said Governor shall not authorize the postmaster-general of this colony for the time being to receive and convey at the reduced rate of postage provided by this ordinance.

Certificate required.

Time of taking effect.

3. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 28th day of December, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 24.—Sd. H. G. Smith.]

Ordinance for Improving the Gaols of this Colony.

**WHEREAS** several of the buildings used as public gaols in this colony are in a very defective state and condition owing to which it is difficult to prevent prisoners from escaping or to classify prisoners properly or introduce to any extent any uniform or efficient system of management in regard to such gaols : And whereas it is intended as soon as may be to cause the said defective gaols to be improved, and it is therefore expedient to provide for the establishment of an uniform and efficient system of prison discipline: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor aforesaid, with the advice of the Executive Council of the colony, to make such rules for the government of the several gaols of this colony respectively and for the duties to be performed by the several officers of the same as the said Governor shall deem expedient, and such rules from time to time to alter and amend; and all such rules so made shall be binding upon the keeper of the gaol and all other persons therein: Provided, always, that all such rules shall be consistent with the provisions of this ordinance, and that no such rule shall except so far as by this ordinance provided be competent to impose any punishment or penalty for or on account of any breach thereof by any person whomsoever, save only dismissal from office in the case of persons employed in Her Majesty's service.

Preamble.

Prison regulations to be framed by the Governor with advice of Executive Council.

2. And be it enacted that the keeper of every gaol shall be appointed by the Governor aforesaid and shall be under the immediate authority and superintendence of the resident magistrate of the district in which the gaol in question shall be situate, and shall in virtue of his office be a constable and possess all the powers by law belonging to the office of constable, and shall reside within the prison of which he is keeper and shall not employ himself in any other occupation.

Appointment of gaoler.

3. And be it enacted that neither the keeper of any prison nor any other officer in any prison shall sell nor shall any person in trust for or employed by him sell or have any benefit or advantage from the sale of any article to any prisoners, nor shall he directly or indirectly have any interest in any contract or agreement for the supply of the prison to

Officers of prisons not to furnish supplies under penalty.

which such keeper or other officer shall belong; and any person contravening any of the provisions of this section shall be liable to forfeit any sum not exceeding one hundred and not less than five pounds.

Classification  
of prisoners.

4. And be it enacted that male and female prisoners shall be confined in separate parts of the prison so as to prevent them from seeing, conversing, or holding any intercourse with each other, and that the prisoners of each sex shall be divided into distinct classes, care being taken that prisoners of the following classes respectively do not intermix with each other :

- a.* Persons confined under any decree of civil imprisonment.
- b.* Persons committed for want of sureties to keep the peace.
- c.* Persons committed for murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes or in which any dangerous wound is given, arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep, or goats, or other crime of equal degree of guilt with any of the said crimes.
- d.* Persons committed for any crime of a lesser degree of guilt than any of the crimes aforesaid.
- e.* Persons convicted of any such crime as is hereinbefore in letter *c* set forth.
- f.* Persons convicted of any such crime as hereinbefore in letter *d* set forth.

Provided, always, that it shall be lawful for the Governor aforesaid by any such rule as aforesaid to suspend the execution of all or any of the provisions of this section in regard to any gaol in which the means of carrying the same into effect do not yet exist.

Journal to be  
kept by gaoler.

5. And be it enacted that the keeper of every prison shall keep a journal in which he shall record all occurrences of importance within the prison in such manner as shall be directed by the rules aforesaid to be made by the Governor aforesaid; which journal shall be produced to the resident magistrate of the district upon the occasion of every periodical visit by such magistrate as hereinafter directed, and shall be signed by him in proof of the same having been so produced.

Supply of food  
and clothing to  
be regulated  
by the Govern-  
or.  
Proviso with  
regard to pri-  
soners before  
trial.

6. And be it enacted that it shall and may be lawful for the Governor aforesaid by any such rule as aforesaid to regulate the supply of food and clothing and other necessaries of the prisoners in any gaol: Provided, always, that prisoners confined before trial for any supposed crime or offence shall be allowed to procure for themselves and receive at proper

hours any food, bedding, clothing, or other necessaries, subject to a strict examination and under such limitations and restrictions to be prescribed by any rule or rules as aforesaid as may be deemed necessary to prevent extravagance or luxury within the walls of the prison, and to exclude all articles which might possibly communicate infection or facilitate escape.

7. And be it enacted that it shall and may be lawful for the said Governor by any such rule as aforesaid to provide for securing the cleanliness in regard to person and apparel of every prisoner admitted into any prison, in such manner, however, as to resort as little as may be consistent with the end in view to any means of securing cleanliness to which the prisoner shall object: Provided, always, that the apparel of every such prisoner after being if requisite fumigated and purified shall be returned to him, and that no prisoner before trial shall be compelled to wear a prison dress unless his own clothes be deemed insufficient or improper or necessary to be preserved for the purposes of justice.

Cleanliness of person and apparel of prisoners.

8. And be it enacted that no keeper of any prison shall without the order of the resident magistrate first had and obtained punish any prisoner for any offence or supposed offence under any pretext whatsoever: Provided, however, that when and as often as it shall be urgently and absolutely necessary to secure any refractory prisoner or any prisoner contriving to escape pending the arrival of the magistrate the keeper may by his own authority place such prisoner in irons; and such keeper shall in every such case make an entry in his journal recording the particulars thereof, and shall without loss of time send notice to the resident magistrate of what has taken place.

No punishment to be inflicted without magistrate's order.

Refractory prisoners may temporarily be placed in irons by gaoler.

9. And be it enacted that it shall and may be lawful for the Governor aforesaid by any such rules as aforesaid to fix the times and occasions upon which the resident magistrate of the district shall visit and inspect the gaols thereof, to which rules in that behalf such magistrate shall conform.

Prison visiting by resident magistrate.

10. And be it enacted that when in the course of any visit to or inspection of any gaol which it shall be the duty of any resident magistrate to visit and inspect it shall be proved to the satisfaction of such magistrate that any prisoner has wilfully disobeyed any lawful order, or has shown violence or insolence to the keeper of the prison or any other officer thereof, or has been guilty of profane cursing and swearing or of using indecent words or of any indecent behaviour, or

Offences against discipline and good order punishable by visiting magistrate.

Punishments which may be inflicted on certain classes of prisoners.

has used to any person intimidating language or threatening acts, or has wantonly destroyed or injured any food, clothing, or other matter or thing intrusted to him to use, or has committed any wilful act of disorder or breach of the prison discipline such resident magistrate may order any such prisoner so offending to be placed in solitary confinement with or without spare diet for any period not exceeding seven days, or to be kept in irons for any period not exceeding seven days, or to receive personal correction by any number of lashes not exceeding twenty-five, or to be kept at hard labour either within or without the prison for any period not exceeding twenty-one days: Provided, always, that the name of the offender, the nature of the offence, and the punishment ordered shall be recorded in the journal of the prison-keeper; provided, also, that no prisoners save those under sentence of imprisonment with hard labour shall be liable to receive personal correction.

No prisoner before trial to be put in irons, &c., except for the causes aforesaid, unless under special written authority from magistrate.

11. And be it enacted that except for the causes and under the circumstances aforesaid no prisoner before trial shall be put in irons or in the stocks or be fastened or fettered in any manner whatsoever whether by way of security against escape or otherwise, unless for reasons moving him thereto the resident magistrate shall in special cases authorize by writing inserted in the keeper's journal a departure from this rule.

Prisoners escaping or attempting to escape or assisting others to escape may be tried in courts of resident magistrate.

12. And be it enacted that if any prisoner shall make his escape from gaol or attempt to make his escape or conspire or confederate with any other prisoner or other person to make the escape of both or either of them or shall supply any other prisoner with any implement, matter, or thing intended to aid such other prisoner in making his escape, such prisoner may be tried for such offence before the court of resident magistrate of the district in which such gaol shall be situated, and upon conviction may be sentenced to undergo any punishment which such magistrate shall for the time being have power and authority to award.

Introduction of spirits, &c., into any gaol.

13. And be it enacted that it shall and may be lawful for the Governor aforesaid by any such rules as aforesaid to fix and prescribe the circumstances under which any spirituous or fermented liquor may be carried or brought into any gaol; and if any person shall in contravention of any such rule carry or bring or attempt to carry or bring into any gaol any spirituous or fermented liquor it shall be lawful for the keeper or any other of the officers of such gaol to apprehend or



cause to be apprehended such offender and to bring him before the court of resident magistrate for the district at its next sitting (which court is hereby empowered to hear and determine such offence in a summary way), and such offender if convicted shall be liable to pay any fine not exceeding twenty pounds and not less than five pounds, and in default of payment shall be liable to be imprisoned for any period not exceeding two months with or without hard labour.

14. And be it enacted that if any keeper or other officer of or person employed in any gaol shall sell, lend, or give away to any prisoner any spirituous or fermented liquor or knowingly permit or suffer to be received or used by any prisoner any such liquor contrary to any such rule as aforesaid in that behalf such keeper or other officer or other person being convicted of such offence by the court of resident magistrate for the district (which court is hereby empowered to hear and determine such offence) shall be liable to pay any fine not exceeding forty pounds and not less than ten pounds, and in default of payment shall be liable to be imprisoned with or without hard labour for any period not exceeding three months.

15. And be it enacted that no gaming shall be allowed in any gaol and that the keeper and other officers and persons employed in any gaol shall be authorized and he and they are hereby required to seize and destroy all cards, dice, or other instruments of gaming.

16. And be it enacted that no fee or gratuity shall be paid or payable by any prisoner either on his entrance, commitment to, continuance in, or discharge from any gaol either to the keeper or his servants or any officer of or person employed in the gaol, and any keeper or other officer or person receiving or demanding any such fee or gratuity shall for every such offence forfeit any sum not exceeding ten pounds.

17. And be it enacted that the resident magistrate of every district shall as often as shall by any such rule as aforesaid be required prepare and transmit to the Governor of this colony periodical returns showing the name and description of every person confined in the said gaol, by whom such person has been committed, the cause or grounds of his imprisonment, the date of the warrant of committal or other order or authority for such imprisonment, the number and employment of the various officers or other persons employed in the gaols, and all such other matters as by any such rule as aforesaid shall be required to be included in such return.

Penalty.

Penalty on officers giving or permitting prisoners to receive spirits, &amp;c., contrary to rule.

Gaming forbidden within the gaol.

No fees to be paid by prisoners to officers of gaol.

Penalty on officer receiving any such fee.

Gaol returns to be prepared by resident magistrate.

Rules, &c., relating to treatment of prisoners to be fixed up in every prison.

18. And be it enacted that so much of this ordinance and so much of any such rules as aforesaid as relates to the treatment and conduct of prisoners shall be printed in legible characters both in the English and Dutch languages and fixed up in conspicuous parts of every prison, so that all persons may have access thereto.

Judge and superintendent of police of Cape Town to exercise the powers, &c., with regard to Cape Town prisons given to resident magistrates by this ordinance.

19. And be it enacted that in regard to any gaol situate in Cape Town or the district thereof the judge and superintendent of police of Cape Town and not the resident magistrate of Cape Town shall be invested with the right and charged with the duty of visiting and inspecting the same, and the keeper of any such gaol shall be under his authority and superintendence; and such judge and superintendent of police shall exercise every power and perform every duty hereinbefore confirmed or imposed upon any resident magistrate acting out of court.

Interpretation of terms.

20. And be it enacted that in the interpretation of this ordinance the term "governor" shall mean the officer administering the government of this colony for the time being; and that whensoever mention is made of any public officer the officer so mentioned shall be deemed to be such officer for the time being or the officer for the time being acting as such; and that words importing the singular number shall respectively be understood to include several persons, matters, and things as well as one person, matter, or thing; and that words importing the masculine gender shall respectively be understood to include females as well as males, unless there be something in the subject or context repugnant to such construction.

Ordinance not to extend to Natal. Time of taking effect.

21. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

22. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 28th day of December, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 25.—Sd. H. G. Smith.]

Ordinance for improving the Police of the Colony.

WHEREAS it is intended to augment and render more efficient the police of the several country districts of this colony : Be it enacted by the Governor of the colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor of this colony for the time being to nominate and appoint from time to time as occasion may require, in every district of this colony other than Cape Town and the district thereof, some fit and proper person to be the head of the police force of such district, who shall be called and styled "chief constable of the district of \_\_\_\_\_."

Preamble.

Chief constable.

2. And be it enacted that every such chief constable shall before entering upon the duties of his office take the oath of allegiance and also subscribe the declaration of office following, that is to say, "I, A. B., do declare that I will truly and faithfully to the best of my ability, without fear, favour, or affection, perform the duties of chief constable of the district of \_\_\_\_\_;" which oath and declaration the resident magistrate of the district is hereby authorized to receive.

Oath of allegiance and declaration of office.

3. And be it enacted that such chief constable shall have and possess all the powers and authorities of a constable as in the next succeeding section more particularly described, and he shall be under the authority and control of the resident magistrate of the district and shall as such chief constable yield obedience to all the lawful commands of such resident magistrate, and shall constantly report to such resident magistrate all cases of crimes or offences which shall come to his knowledge.

Powers and duties of chief constable.

4. And be it enacted that it shall and may be lawful for the resident magistrate of every district other than Cape Town and the district thereof, with the consent of the Governor aforesaid, to nominate and appoint so many fit and proper men as may be necessary to be and constitute the police force of such district, who shall be sworn in by such magistrate to act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders when crimes have been committed ; and the men so sworn shall within the said district have all such powers, authorities, privileges, and advantages and perform all such

Appointment of police made by magistrate with consent of Governor.

Powers and duties of constables.

duties and incur all such responsibilities as any constable duly appointed now has or hereafter may have within his constablewick or assigned district by virtue of any law or ordinance existing or to exist in this colony, and shall obey all such lawful commands touching the manner in which they shall conduct themselves in the execution of their office as they may from time to time receive from their lawful superiors, as the latter shall be constituted, named, and specified in the rules and regulations to be hereafter framed.

Rules, &c., framed by magistrate subject to Governor's approval.

5. And be it enacted that the resident magistrate of each district, subject to the approval of the Governor aforesaid, shall and may from time to time frame such rules and regulations as the said magistrate shall deem expedient relative to the general government and management of the men so as aforesaid to be appointed members of the police force of such district, the classification, rank, and particular duty of the several members, their distribution and inspection, the description of arms, accoutrements, and other necessaries to be furnished to them, and which of them shall be provided with horses for the performance of their duty, and all such other rules and regulations relative to the said police force as the said magistrate shall from time to time deem expedient for preventing neglect of duty or abuse of authority and for rendering such force as efficient as possible for the performance of its duties.

Chief constable may suspend members of the force, but no man to be dismissed by other than the Governor.

6. And be it enacted that the chief constable of the district with the consent of the resident magistrate thereof may suspend from his employment any man belonging to the police force of that district whom he shall deem guilty of misconduct or negligent or remiss in the discharge of his duty or otherwise unfit for the same; but no man belonging to such force shall be dismissed save by the said Governor; and when and as often as any man shall be dismissed or shall cease to belong to such force all powers vested in him as a constable by this ordinance shall immediately cease and determine.

Penalty for infringing the rules.

7. And be it enacted that any constable belonging to the police force of any district who shall be guilty of any neglect or violation of duty in his office of constable as the same shall be defined by the rules and regulations to be hereafter framed shall be liable to a penalty not exceeding ten pounds, which penalty may be deducted from any salary then due to such offender, or such offender may in the discretion of the

resident magistrate of the district (who is hereby authorized and empowered to enforce in a summary manner all penalties to be incurred under this section as well as under the section next succeeding) be imprisoned for any term not exceeding one month; but no such penalty or punishment shall be held or taken to exempt such constable from any other penalty or punishment which may by any other law be affixed to any illegal act or acts of which he may be guilty.

8. And be it enacted that no constable belonging to any such police force shall be at liberty to resign his situation or withdraw himself from the duties thereof unless expressly permitted so to do by the chief constable in writing or unless he shall give to such chief constable two full months' notice of his intention; and every constable who shall so resign or withdraw himself without such leave or notice shall be liable to forfeit all arrears of pay then due to him or to a penalty not exceeding ten pounds or to imprisonment for any term not exceeding one month as to the resident magistrate of the district shall seem best and most expedient.

Resignation of constable not permitted except on written consent of chief constable or two months' notice.

Penalty.

9. And be it enacted that every constable belonging to any such police force who shall be dismissed from or shall cease to hold and exercise his office and who shall not forthwith deliver over to the chief constable all the clothing, accoutrements, appointments, and other necessaries which may have been supplied to him for the execution of his duty or who shall wilfully or maliciously injure any of the said articles so as to render the same valueless or of less value before delivering the same over shall be liable to imprisonment for any time not exceeding two months; and it shall be lawful for the resident magistrate of that district to issue his warrant to search for and seize for the use of the said police force all the clothing, accoutrements, appointments, and other necessaries which shall not be so delivered over wherever the same may be found.

Clothing, &c., to be delivered to chief constable on leaving the force. Punishment for not doing so.

10. And be it enacted that every person not being a member of any such police force who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to such member and who shall not be able satisfactorily to account for his possession thereof shall be liable to a penalty not exceeding ten pounds or in the discretion of the magistrate before whom he shall be convicted to imprisonment for any term not exceeding one month.

Penalty on persons possessing clothing, &c., belonging to the force without accounting for the same.

Public house keepers not to harbour constables on duty under penalty.

11. And be it enacted that if any owner or keeper of any house, shop, store, or other place for the sale of any liquors whether spirituous or otherwise shall harbour or entertain any constable belonging to any such police force or permit such constable to remain in his house, shop, store, or other place as aforesaid for any part of the time during which to his knowledge such constable should be on duty every such owner or keeper as aforesaid shall for every such offence be liable to forfeit and pay any sum not exceeding ten pounds, and in default of payment thereof shall be liable to imprisonment for any term not exceeding one month.

Constables on duty not to be employed on private business.

12. And be it enacted that no constable during any part of that time during which he shall be on duty shall be employed by any resident magistrate or chief constable or other public officer in any sort or description of private business, work, or labour under any circumstances or pretext whatsoever.

Assault or resistance to constable on duty punished.

13. And be it enacted that every person who shall assault or resist any person belonging to any such police force in the execution of his duty or who shall aid or incite any person so to assault or resist shall for every such offence be liable to a penalty not exceeding ten pounds, or the offender may in the discretion of the magistrate before whom he shall be convicted be imprisoned for any term not exceeding one month.

Duties of police force.

14. And be it enacted that the said chief constable and the police under his command shall as much as in them lies suppress all tumults, riots, affrays, or breaches of the peace within the limits of their district, and enforce every law or ordinance made or to be made for the due observance of the Lord's day, for the regular and decent conduct of houses licensed to retail wines or other liquors, for preventing the opening of such houses on improper days and at improper hours, for the suppression of unlicensed tippling houses, for the punishment of drunkenness, and generally for every purpose connected with the good order and tranquillity of the said district.

Admission into premises of dealers licensed under Ord. 29, 1846, may be demanded by chief constable or any constable appointed by him.

15. And be it enacted that the chief constable and any constable who shall by the said chief constable be specially nominated and appointed for the purpose but not any other constable shall and may from time to time and at all times as often as they shall have reasonable and probable ground for suspecting that any retail dealer licensed under the Ordinance

No. 29, of 1846, is selling at unlawful or prohibited days or hours any of the liquors in the said ordinance mentioned demand admittance into the premises of such dealer for the purpose of examining the same; and if such dealer shall wilfully and intentionally refuse to admit such chief constable or constable he declaring his official character, or if such dealer shall wilfully and intentionally make any unnecessary delay in admitting the said parties, such dealer shall be liable for such offence to any penalty not exceeding five pounds, or in default of payment thereof shall be liable to imprisonment for any term not exceeding one month. Penalty for refusal or delay.

16. And be it enacted that it shall be lawful for either of the persons in the last section mentioned and empowered for the purpose therein stated to require admittance into any lodging or other house or into any apartments in any house within their district, not being a licensed house, in case there shall appear either from the fact that persons are seen coming out therefrom in a state of intoxication or from any other fact of a like nature or from private information given just and reasonable ground for believing that spirituous or other liquors are being sold therein for the purpose of examining the same; and if the occupier of any such house or apartment shall wilfully and intentionally refuse to admit such person as aforesaid (such person as aforesaid duly declaring his official character) or if such occupier shall wilfully and intentionally make any unnecessary delay in admitting such person as aforesaid, such occupier shall be liable for such offence to any penalty not exceeding five pounds sterling, or in default of payment thereof shall be liable to imprisonment for any period not exceeding one month. Same persons empowered to enter other houses in which it is suspected that spirituous liquors are sold. Penalty for refusal or delay.

17. And be it enacted that it shall and may be lawful for the members of any such police force to prevent, abate, and suppress all such nuisances and offences within any municipality situated in their district as shall be punishable by any municipal regulations of such municipality, and they are hereby empowered to arrest without warrant any person whom they shall see in the actual commission of any such nuisance or who shall be charged by any street-keeper or other officer of the said municipality or any other credible person with having recently committed any such nuisance; provided there shall exist reasonable ground for apprehending that except by arresting the party so offending within view Powers of police in regard of nuisances.

of the said constable or so charged as aforesaid with having offended when not within such view such party could not be found or made answerable to justice without delay, trouble, or expense.

Arrest of persons using abusive language, &c., provoking a breach of the peace.

18. And be it enacted that it shall be lawful for the chief constable or any constable belonging to any such police force to take into custody without warrant any person who shall in any thoroughfare or public place use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace or from which a breach of the peace may be justly apprehended, and every such person so offending 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 a course seem necessary to find sufficient sureties to keep the peace.

Arrest of persons carrying goods under suspicious circumstances.

19. And be it enacted that it shall and may be lawful for any member belonging to any such police force to stop any person or persons whom such member shall find at any time between sunset and sunrise carrying or transporting any bundle or parcel or generally any goods of any sort or description whatsoever within his district, and to interrogate such person or persons; and if he or they shall not account satisfactorily for the possession of the goods or articles so being carried or transported or if there shall be reasonable grounds for suspecting that such goods or articles have been criminally procured, then it shall be further lawful for such member of the said police force to conduct the said goods and articles and the person or persons so carrying or transporting the same to the public prison or nearest police station, and to detain such person or persons in custody until the then next sitting of the resident magistrate of such district, who shall inquire into the circumstances and make such determination as shall to him seem fit and proper.

Discharge of prisoners under certain circumstances by chief constable.

20. And be it enacted that whenever any person charged with any offence not being of a grave or serious character shall be without warrant in the custody of any constable of any such police force during any time when the court of the resident magistrate is shut it shall be lawful for the chief constable if he shall deem it prudent to discharge such person from actual custody, taking however but without fee or reward the bond, obligation, or recognizance of such person with or without sureties, conditioned for the appearance of the person thereby bound before the said resident magistrate at



his next sitting, the time and place of which shall be specified in the said recognizance; and the said chief constable shall enter in a book to be kept for the purpose the name, residence, and occupation of the party and of his surety or sureties if any entering into such recognizance, together with the condition thereof and the sum thereby acknowledged, and shall return every such recognizance to the court at which the party was bound to appear at the next ensuing sitting of the same.

21. And be it enacted that no chief constable or constable of or belonging to any such police force as aforesaid shall demand or receive from any person whatsoever any fee, gratuity, or payment for anything done or abstained from by such chief or other constable by virtue or under colour of his office.

Unlawful payments to constables.

22. And be it enacted that no chief constable or other constable shall directly or indirectly be concerned in or derive any profit or advantage from any tap, canteen, public house, or inn within the district nor from the supply of any rations, transport, matter, or thing to the public gaol or to the police force of such district, and any chief or other constable contravening any of the provisions of this section shall forfeit any sum not exceeding one hundred and not less than five pounds.

Constables not to be concerned in canteens nor in supplying gaols.

23. And be it enacted that the chief constable of every district shall diligently and faithfully execute or cause to be executed as he shall be by law required all criminal process of the supreme or any circuit court.

Criminal process of supreme court.

24. And be it enacted that every chief constable shall every morning (unless prevented by some lawful cause) make a return in writing to the resident magistrate of the district showing how each constable of the force has been employed during the hours of duty of the previous day.

Returns to be made by chief constable.

25. And be it enacted that when and as often as the members of any such police force as aforesaid shall not be provided with a place of residence by the government of this colony but shall be required to provide a residence for themselves such residence shall be fixed as near as may be to the public gaol of the district and shall be approved of by the resident magistrate.

Residences of members of police force.

26. And be it enacted that it shall and may be lawful for the chief constable to perform within the limits of the town or village in which the office of the resident magistrate of his

Field-cornet's duties to be performed by chief constable.

district shall be situated all and singular the several duties which by law might be performed within such town or village by the field-cornet of a field-cornetcy embracing such town or village: Provided that the limits of every town or village shall for the purpose of this section be as follows, that is to say,—should the same be or become a municipality the municipal limits for the time being, and should the same not be a municipality then the limits of such town or village shall be an imaginary circle drawn at the distance of two miles from the office aforesaid of the resident magistrate.

Penalties not claimed to be applied to police superannuation fund.

27. And be it enacted that when and as often as any person entitled as informer to any pecuniary penalty or share of any such penalty under and by virtue of any law or ordinance now in force or hereafter to be enacted shall refuse or decline to receive such penalty or share thereof or waive his right thereto, so much thereof as might have been lawfully claimed or demanded by such person shall go to and be received by the trustees of any police superannuation fund which under and by virtue of the provisions in the next succeeding sections contained shall have been formed and be in existence and be applied to the objects of such fund as hereinafter mentioned.

Police superannuation fund.

28. And be it enacted that a fund to be called the police superannuation fund for the district of ——— shall be created in each and every district of this colony, and that the resident magistrate of such district and the chief constable of such district shall be the trustees for the administration of such fund.

Certain sums to be paid over to the superannuation fund.

29. And be it enacted that all such sums as shall arise from such a deduction from the pay of every police constable for the time being as His Excellency the Governor shall direct but not being a deduction at a higher rate than that of two pounds and ten shillings in the hundred pounds in any one year, and all sums to arise from stoppages from the pay of any of the persons aforesaid on account of sickness, and all sums to arise from fines imposed upon any of the said persons for misconduct in his capacity as a member of the police force, and all sums to arise from fines imposed upon drunken persons and for assaults committed upon members of the said police force, and all sums to arise from the sale of worn or cast clothing supplied to the said force, and all sums to arise from any such penalties or shares of penalties as are in the twenty-ninth section of this ordinance mentioned

shall be paid and handed over to the said trustees to go and be applied to the said fund.

30. And be it enacted that the said trustees shall from time to time as they shall find opportunity and deem expedient lend out on the mortgage of immovable property in this colony or otherwise as they shall think proper whatever moneys belonging to any such police superannuation fund they may from time to time have at their disposal, and all bonds which shall be taken for any such moneys so lent out shall be taken to be payable to the resident magistrate aforesaid and the chief constable aforesaid, both for the time being in their capacity as trustees of such police superannuation fund; and all interest to arise from the investment of the said fund, or so much thereof as shall not be needed for the purposes hereinafter mentioned shall be again invested for accumulation.

Investment of moneys belonging to the fund.

31. And be it enacted that the said trustees shall yearly upon the 31st of December in every year frame and lay before His Excellency the Governor an account showing the amount and state of the said fund up to the said date.

Trustees' report.

32. And be it enacted that it shall and may be lawful for the said Governor to authorize and direct the said trustees to pay from time to time from and out of any such fund such sums of money by way of reward to such members of the police force of that district as shall by extraordinary services have merited the same.

Rewards to members of the force.

33. And be it enacted that it shall and may be lawful for the said Governor to order that any police constable shall be superannuated and thereupon to authorize and direct the said trustees to pay from and out of the proper fund aforesaid to the party superannuated such certain yearly allowance as the said Governor shall approve of and prescribe, but subject, however, to the following limitations and conditions, that is to say, that when and as often as the party superannuated shall have served with diligence and fidelity for any term not less than fifteen and not more than twenty years his yearly allowance may be made equal to but shall not exceed one half of his yearly pay while in active service, which yearly pay shall be taken to be the average of his yearly pay for the three years next preceding his superannuation, and that when and as often as the party superannuated shall have served in manner aforesaid for the term of twenty years or upwards his yearly allowance may be made equal to but shall not

Superannuation.

exceed two thirds of his yearly pay while in active service, which yearly pay shall be taken to be the average aforesaid : Provided, always, that no serjeant of police or police constable who shall be under the age of fifty years shall be capable of receiving any such yearly allowance as aforesaid unless it shall be certified in writing by the judge and superintendent of police for the time being that such person from infirmity of mind or body is incapable of discharging the duties of his situation.

Constables disabled in execution of duty.

34. And be it enacted that it shall and may be lawful for the said Governor, in case any police constable shall be disabled for the performance of his duty by reason of any wound or injury received by him in the actual execution of his duty, to authorize and direct the said trustees to pay from and out of the fund aforesaid to the party so disabled whatever his age or time of service such yearly allowance not exceeding the average of his yearly pay for the three years next preceding the time of his receiving the said wound or injury should he have served so long, and if not such yearly allowance not exceeding the average of his yearly pay during his time of service as the said Governor shall approve of and prescribe.

Allowance not to be claimed as matter of right.

35. And be it enacted that nothing in this ordinance contained shall be construed so as to entitle any police constable to claim as matter of right any part or portion of the said fund or any allowance whatever from or out of the said fund or to prevent any such person from being unconditionally dismissed.

Chief constable not to receive any portion of fund.

36. And be it enacted that no chief constable shall be entitled either by way of reward for services or by any allowance or otherwise to receive any part or portion of the superannuation fund of his district.

Cape Town police not affected by this ordinance.

37. And be it enacted that nothing in this ordinance contained shall extend to or affect the executive police of Cape Town and the district thereof.

Construction.

38. And be it enacted that in the construction of this ordinance the term "governor" shall mean the officer administering the government of this colony for the time being, and that the term "month," whenever the same occurs, shall be taken to mean a calendar month, and that the term "imprisonment" shall embrace imprisonment either with or without hard labour as the functionary awarding such imprisonment shall adjudge and declare, and that all words

importing the singular number only shall include several persons, matters, and things as well as one person, matter, or thing, and the words importing the masculine gender only shall include females as well as males, unless there be something in the subject or context repugnant to such construction.

39. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

Ordinance not  
to extend to  
Natal.

40. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking  
effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 28th day of December, 1847.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 26.—Sd. H. G. Smith.]

Ordinance to provide for the Performance in certain Places  
of certain Duties now performed by Clerks of the Peace.

WHEREAS it is intended in certain districts to dispense with the office of clerk of the peace: And whereas it will thereupon become necessary to make other provisions for the performance in such districts of the duties of the said office: And whereas provision has been or will be made by certain other ordinances for the performance in such districts of so much of the said duties as relates to the prosecution of crimes but provision remains to be made for the performance of certain other duties of a miscellaneous nature imposed from time to time upon clerks of the peace by certain former laws and ordinances: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of any former law or ordinance as shall be repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed and the same is hereby repealed accordingly. Preamble.

Contracts of  
service under  
Ordinance 49  
of 1828.

2. And be it enacted that in any district of this colony in or for which there shall not be a clerk of the peace all contracts of service and apprenticeship mentioned in the Ordinance No. 49 and passed on the 14th of July, 1828, entitled "Ordinance for the admission into the Colony under certain restrictions of Persons belonging to the Tribes beyond the Frontier thereof, and regulating the manner of their employment as Free Labourers in the service of the Colonists," and which contracts respectively are by the said ordinance directed to be entered into before or made by the clerk of the peace, shall be entered into before or made by the resident magistrate of such district, who shall do and perform in that behalf all and singular the duties imposed upon such clerk of the peace, and such magistrate shall also receive the counterpart of such passes as are in the second section of the said ordinance mentioned, and shall furnish to the secretary to government the list of passes by the said section required from the clerk of the peace.

Witness' ex-  
penses under  
Ordinance 59  
of 1829.

3. And be it enacted that in regard to all criminal trials in any court of resident magistrate in any district for which there shall not be a clerk of the peace the duties touching bills for the expenses of witnesses by the fourth section of the Ordinance No. 59, bearing date the 2nd of April, 1829, entitled "Ordinance for regulating the Payment of the Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations," imposed upon the said clerk of the peace shall be and the same are hereby imposed upon and shall and may be discharged by the clerk of the said court: Provided that in any summary cases before the said court such witnesses, whether against or in favour of the party accused, as shall have been summoned with the previous approbation or consent of the said clerk as being in his judgment necessary and proper to be summoned, shall be deemed to be summoned at the instance of the public prosecutor within the meaning of the said ordinance, and all other witnesses summoned shall be deemed for the purposes of the said ordinance to be so summoned by a private prosecutor or by the party accused, as the case may be, and shall be treated accordingly.

Preparatory  
examinations.

4. And be it enacted that in the cases of all preparatory examinations before the resident magistrate or any justice of the peace of any district for which there shall not be a clerk of the peace the clerk of the peace of such district shall for

the purposes of the fifth and sixth sections of the said Ordinance No. 59 be deemed and taken to be absent.

5. And be it enacted that in any district for which there shall not be a clerk of the peace the resident magistrate shall do and perform the duties touching the certain notices regarding Jesuits and members of other religious orders of the Church of Rome, which by the sixth section of the Ordinance No. 68, bearing date the 13th of January, 1830, entitled "Ordinance for the Relief of His Majesty's Roman Catholic Subjects in this Colony," are imposed upon the clerk of the peace.

Notices regard-  
ing Jesuits, &c.,  
under Ordi-  
nance 68 of  
1830.

6. And be it enacted that the clerk of the peace of the district in which any circuit shall be holden shall for the purposes of the seventh section of the fifth chapter of the order of the Queen's Most Excellent Majesty in Council bearing date at Windsor, the 27th of August, 1842, commonly called the Masters and Servants Order in Council, be deemed and taken to be the clerk of the peace for the district in which any such judgment as in the said section mentioned, and which shall come in appeal or review before such circuit court, was made or pronounced.

Master and ser-  
vants order in  
council.

7. And be it enacted that in any district in which shall be a matrimonial court or board under and by virtue of the Ordinance No. 33, made and passed on the 19th of December 1827, entitled "Ordinance for creating Resident Magistrates and Clerks of the Peace in certain Districts and Places of this Colony," or under and by virtue of any other law or ordinance, of which court or board the clerk of the peace shall be appointed to be a member, the clerk of the resident magistrate shall be such member in place and stead of such clerk of the peace in case there shall not be a clerk of the peace in and for such district.

Matrimonial  
courts under  
Ordinance 33  
of 1827.

8. And be it enacted that in any district for which there shall not be a clerk of the peace the duties touching affidavits and affirmations which by the Ordinance No. 9 of 1839, entitled "Ordinance for amending Ordinance No. 60, entitled 'Ordinance for preventing the Mischiefs arising from the printing and publishing Newspapers and Papers of a libellous nature by persons not known, and for regulating the printing and publication of such papers in other respects, and also for restraining the abuses arising from the publication of blasphemous and seditious Libels,'" are imposed upon the

Affidavits  
taken under  
Ordinance 9 of  
1839.

clerk of the peace shall be and the same are hereby imposed upon the resident magistrate of such district.

Ordinance not  
to extend to  
Natal.

9. And be it enacted that nothing in this ordinance contained shall extend to the district of Natal.

Time of taking  
effect

10. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 28th day of December, 1847.

By command of His Excellency the Administrator of the  
Government,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 1.—Sd. H. G. Smith.]

[8th Jan., 1848.

Ordinance for Improving the Port of Table Bay.

[Repealed by Act No. 11, 1857. *Vide* Act No. 20, 1858,  
and Act No. 6, 1860.]

No. 2.—Sd. H. G. Smith.]

Ordinance for exempting Newspapers and certain other  
Publications from Stamp Duty.

Preamble.

WHEREAS by the Ordinance No. 26, bearing date the 23d of October, 1826, certain duties were imposed upon newspapers and other periodical works printed and published in this colony : And whereas it is expedient that all such duties should be abolished : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said Ordinance No. 26 and every matter therein or in the schedules thereto contained shall be repealed, and the same are hereby repealed accordingly.

Repeal of Ordinance 26 of 1826.



And be it enacted that this ordinance shall commence and take effect as law from and after the date of the promulgation thereof. <sup>Time of taking effect.</sup>

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 27th day of June, 1848.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 3.—Sd. H. G. Smith.]

[27th June, 1848.

Ordinance to amend the Ordinance No. 49.

[This ordinance, legalizing a proclamation which had reference solely to the apprenticeship of Kafir youths, is wholly inapplicable at present. The employment of Kafirs is regulated by the Kafir Employment Act, No. 27, 1857, and the Master and Servants Act, No. 15, 1856.]

No. 4.—Sd. H. G. Smith.]

Ordinance for rendering legal certain Marriages supposed to be invalid.

WHEREAS His Excellency Sir Henry George Wakelyn <sup>Preamble.</sup> Smith, Baronet, G.C.B., &c., &c., &c., Her Majesty's High Commissioner for the settling and adjustment of the affairs of the territories of Southern Africa adjacent and contiguous to the eastern and north-eastern frontier of the colony of the Cape of Good Hope, did by his proclamation bearing date the 17th of May, 1848, of which a copy is set forth in the schedule hereunto annexed, make provision for rendering valid and effectual certain marriages or reputed marriages in the said proclamation described: And whereas it is expedient that the marriages so legalized by the said High Commissioner in and for the certain territories in the said proclamation

Proclamation  
of 17th May,  
1848, given the  
force of law.

mentioned (being part and parcel of Her Majesty's dominions, but not part or parcel of this colony) should likewise be rendered valid and effectual within this colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all and singular the provisions of the proclamation aforesaid and hereunto annexed shall within this colony have the force and effect of law, and that the registration of marriages in and by the said proclamation provided shall for purposes civil or criminal have the same effect and none other within this colony which under and by virtue of the said proclamation it is declared or intended to have within the territories aforesaid.

Certificate of  
marriage evi-  
dence.

2. And be it enacted that the certificate in the fifteenth section of the said proclamation mentioned shall be good evidence of every such marriage as aforesaid before all courts and magistrates in this colony.

Time of taking  
effect.

3. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

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SCHEDULE.

*Proclamation.*

WHEREAS I did by a proclamation bearing date the 3rd of February, 1848, issued by me in my capacity as Her Majesty's High Commissioner for settling and adjusting the affairs of certain territories adjacent to the colony of the Cape of Good Hope proclaim, declare, and make known the sovereignty of her said Majesty over certain territories north of the Great Orange River in the said proclamation mentioned and described: And whereas at various times during the period for which Her Majesty's emigrant subjects have occupied parts or portions of the said territories many marriages have taken place amongst them which owing to the impossibility of obtaining the presence or aid of any minister of the gospel and of conforming to divers requirements of law have not as it is supposed been solemnized in such a manner as to render the same valid and effectual: And whereas the said marriages were so irregularly contracted by reason solely of the necessity under which the parties lay while deprived alike of religious teachers and of regular and established laws, and arose from no want of due reverence for the holy ordinance in question or for the spiritual sanctions with which amongst christians it is customarily and fitly solemnized: And whereas taking these things into my consideration and being desirous to confer upon Her Majesty's said subjects the important advantage of

having their children's legitimacy established and their said marriages legalized for all purposes of law, I have determined to exercise for that end the powers and authorities in me vested: Now therefore I do, as Her Majesty's High Commissioner as aforesaid, hereby proclaim, declare, and make known the several following provisions and regulations touching and concerning the marriages aforesaid, that is to say:

1st. The British resident in the territories aforesaid is hereby authorized and required to frame and preserve a general register of all such marriages as shall under any of the provisions hereinafter contained be transmitted or reported to him for registration.

2nd. Such general register shall set forth or show the names and residence of the husband and of the wife, their respective ages and condition in life, the date of the marriage, and any other particulars which the said British resident may be instructed by the High Commissioner to record.

3rd. Every couple (except as hereinafter excepted) united together within the said territories as man and wife in the presence of witnesses by any form of words expressive of their mutual and solemn consent to become and be then and there and from thenceforth married people, married together, may have their said marriage registered; but no marriage or pretended marriage shall be registered in which the parties are connected with each other by consanguinity or affinity in such a degree that the Governor of the colony of the Cape could not by law have granted to them if resident in the said colony a valid dispensation or authority to marry, and that no valid marriage could by the laws of the said colony be therein solemnized between them if domiciled in the said colony; and if any marriage or pretended marriage hereby declared incapable of registration shall yet be registered such registration shall have or possess no force or effect. But no ground of objection arising from consanguinity or affinity which could in the said colony have been dispensed with by the authority of the said Governor shall prevent registration or its consequences as hereinafter declared.

4th. Whenever any two spouses married as aforesaid shall together come before the British resident or any magistrate resident in the said territories and shall declare the fact of such marriage, the resident or magistrate (as the case may be) shall ascertain and record in writing the names of the said spouses, their residence, the date and place of their said marriage, and their respective conditions in life at the time of such marriage, whether they were previously married or not; and such record shall be signed or acknowledged by the said spouses in presence of the resident or magistrate. When any doubt shall appear to rest upon the fact or date of the alleged marriage, the resident or magistrate may call for the certificate in writing or the solemn declaration before himself of such credible witness or witnesses as were present at or cognizant of the said marriage. But when and as often as any such marriage shall have been contracted

before and attested by any person or persons recognized at the time amongst Her Majesty's emigrant subjects as holding a public office or authority entitling him or them to attest marriage, any such attestation or a copy thereof shall upon the identity of the married people being ascertained be conclusive proof of the fact and date of the said marriage.

5th. In case it shall be inconvenient for both spouses to repair to the said resident or to any magistrate, the latter may ascertain from the husband alone the circumstances aforesaid, and from them prepare the record. But when the husband shall appear alone he will provide himself with a written certificate or statement signed by the wife, or acknowledged by her in the presence of two neighbours who shall witness the same, in which certificate or statement the wife shall set forth the date of the marriage between herself and her husband. And this certificate or statement shall be preserved together with the record signed by the husband. In case of any doubt as to the fact or date of the marriage, the resident or magistrate shall proceed as before in order to remove the same.

6th. Should either of the spouses have departed this life since contracting any such marriage as aforesaid, leaving the other of them still surviving, such survivor may appear before the British resident or any magistrate as aforesaid, and thereupon the record shall be prepared as if both spouses were living and present; except that the signature of the survivor alone shall be sufficient and that the record shall set forth the death of the deceased. In every such case, moreover, the resident or magistrate shall require clear evidence, whether oral or by certificate or affidavit as he shall judge necessary, of the fact and date of the marriage, and shall when it is practicable ascertain that the relatives or friends of the deceased concur in recognizing the said marriage.

7th. Should it happen in any instance in which any such marriage shall have been contracted before and attested by any such persons in office or authority as are hereinbefore referred to that either of the spouses shall refuse to join the other of them in obtaining the registration of the said marriage then the spouse desiring such registration shall be at liberty to appear before the resident or magistrate who shall upon proof of such refusal and production of such attestation as aforesaid or an authentic copy thereof, and upon such further inquiry or proof if any as the said resident or magistrate shall judge necessary, prepare the necessary record, to which the signature of the spouse applying shall be sufficient, and which shall set forth the refusal of the other spouse.

8th. It shall not be any ground for refusing to prepare a record of or to register any marriage that both or either of the parties to the same at the time of contracting the same were under age.

9th. When and as often as any such magistrate as aforesaid shall have prepared any such record as aforesaid, he shall with all convenient speed transmit the same with all other writings or papers connected therewith to the British resident, who shall

register every such marriage; and in all cases in which the necessary records shall be prepared by such resident himself, he shall from or by means of them register the marriage therein mentioned.

10th. Every such marriage as aforesaid when registered by the British resident shall from and after such registration be a marriage as lawful for all objects and purposes as a lawful marriage within the colony of the Cape of Good Hope, and shall for all purposes and objects of a civil nature be deemed and taken to have been a lawful marriage from and after the date of the contracting of the same; but whether the same shall from the date last mentioned be deemed and taken to have been a lawful marriage for the purpose of a prosecution for bigamy or polygamy, in case either party shall afterwards during the lifetime of the other party have contracted another marriage, shall be judged of and determined by the general principles of law and independently of any of the provisions of this proclamation.

11th. And whereas some ministers of the Dutch reformed church of the Cape colony have heretofore proceeded to the said territories for the purpose of performing therein as generally as circumstances would permit the rites and services of religion: And whereas certain of the emigrant subjects aforesaid have from time to time been married by such ministers, as also by the officiating minister in the Dutch reformed church at Pietermaritzburg in the district of Natal: And whereas there is reason to suppose that in all cases in which any such minister as aforesaid shall have solemnized any marriage between parties who had previously lived together as man and wife, by virtue of any such irregular marriage as is hereinbefore mentioned, the said minister has recorded as well the fact and date of such previous marriage as the marriage solemnized by himself: And whereas it is fit that full credit be given to all matters so vouched: It is hereby declared and directed that the British resident shall receive all original marriage records made by any such minister or authentic copies thereof as evidence of the facts therein contained, and shall from or by means of them register the marriages therein mentioned, without requiring the presence of either spouse or any further proof; and that from and after such registration every such marriage shall be deemed and taken to have been a lawful marriage to all intents and purposes from the date of the solemnization thereof by such minister, and to have been for all purposes of a civil nature a lawful marriage from the date mentioned in the marriage record made by such minister as that on which the first or previous marriage if any was contracted. But if in any case the fact or date of such previous marriage shall not appear in or by such marriage record then the spouses or spouse desiring the registration of such first or previous marriage shall proceed in the same manner as is in that or the like behalf hereinbefore provided; but in every case, the marriage solemnized by such minister shall after the registration thereof be

deemed to be a lawful marriage to all intents and purposes from the date of such solemnization.

12th. And whereas it is necessary to make temporary provision for the contracting of marriages within the territory aforesaid pending the opening of churches and the settlement of fixed ministers within the same, it is hereby declared and directed that all persons who shall hereafter be married by any minister belonging to the Dutch reformed church of the Cape colony or person commissioned by the same to solemnize marriages within the said territories shall be deemed and taken to be lawfully married; and such marriage shall be registered by the British resident aforesaid from or by means of the marriage records of such minister or person and no publication of banns shall be necessary.

13th. If it shall so happen that any persons desirous to marry shall be unable to obtain the services of a minister from whom their marriage might receive the solemn and becoming sanctions of religion such persons may apply to and come before the said British resident or to the nearest magistrate, and each of them shall in his presence solemnly declare that they know of no impediment to their marriage and that they desire him to witness that they take each other respectively to be husband and wife; and thereupon a record of the said marriage shall be prepared and the same shall be duly registered; and every such marriage shall be deemed to be as valid and effectual and of the same forcé and obligation as a lawful marriage solemnized within the Cape colony.

14th. If both or either of the intended spouses be under age the resident or magistrate (as the case may be) shall before permitting the marriage (unless in the case of a widow or widower) require proof of the consent of the parents or guardians, unless it shall be made to appear to him that there are none such living, or that they without sufficient reason refuse consent, or that owing to distance or other causes such consent could not possibly or without much inconvenience be obtained. But no marriage once permitted and recorded shall be impeached upon the ground that both or either of the spouses being under age were or was married without consent of parents or guardians.

15th. A certificate signed by the British resident or officer acting as such stating the registered particulars of any marriage registered by him or in his office in pursuance of this proclamation shall be good evidence of such marriage before all courts and magistrates.

And, lastly, I do hereby proclaim, declare, and make known, that while, in my earnest desire to consult as much as in me lies the interests and feelings of all Her Majesty's subjects in the territories aforesaid and those of their wives and children, I have determined to take all measures necessary for establishing their marriages as aforesaid beyond dispute or controversy, nothing in this proclamation contained is to be construed so as to render invalid any marriage contracted in the said territories and not

registered under this proclamation which marriage would otherwise by law be regarded as valid; it being my wish and intention not now to decide that any sort or description of marriage is illegal but to furnish an easy convenient mode by which certain marriages now supposed to be illegal may have their legality placed beyond doubt.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 27th day of June, 1848.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 5.—Sd. H. G. Smith.]

Ordinance for enabling Resident Magistrates to exercise in regard to disputed Rights of Water certain Powers formerly exercised by Landdrost and Heemraden.

WHEREAS in times of drought, disputes not unfrequently arise between farmers and others respecting the enjoyment of the water running through and over their respective properties: And whereas, before the abolition of the boards of landdrost and heemraden such disputes were cognizable by such boards, which were accustomed to settle and arrange the same speedily and at small expense: And whereas since the abolition of the said boards on the 31st of December, 1827, no local court or functionary has had any jurisdiction or authority touching or concerning such disputes, which could alone be entertained by the supreme court of the colony or by some circuit court: And whereas recourse in the first instance to either of such courts is necessarily attended with delay in a class of cases in which a speedy remedy is particularly important, while the expense of resorting to the same is often disproportioned to the injury complained of, whereby wrong-doers, calculating upon probable impunity, are emboldened to deprive their neighbours of their just rights: Preamble.

And whereas, by the Ordinance No. 77, bearing date the 30th October, 1830, and entitled "Ordinance for the better defining and fixing the Duties and Functions of the Civil Commissioners of this Colony," all such duties as were formerly performed by the landdrosts of the same districts, and which had not by any other ordinances been appointed to be performed by the resident magistrates or any other officers were directed to be performed by such civil commissioners: And whereas no law or ordinance has yet bestowed upon such civil commissioners or any other officers the powers or any of them which were formerly exercised by the board of landdrost and heemraden: And whereas it will be expedient in regard to disputes and questions about water to bestow the jurisdiction and authority hereinafter mentioned upon the resident magistrates rather than upon the civil commissioners, the same being of a judicial nature: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that anything in the royal letters patent granted by his late Majesty King William the Fourth, bearing date at Westminster, the 4th of May, in the second year of his reign, and commonly called the Charter of Justice, or in the Ordinance No. 33, bearing date the 19th of December, 1827, entitled "Ordinance for creating Resident Magistrates and Clerks of the Peace in certain districts and places in this Colony," or in any other law or ordinance heretofore in force in this colony which shall be repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed, and the same is hereby repealed accordingly.

Repeal of  
repugnant  
laws.

Powers of  
board of land-  
drost and  
heemraden in  
regard to water  
disputes vested  
in courts of  
resident magis-  
trates.

2. And be it enacted that the respective courts of resident magistrates shall possess and exercise in regard to all complaints and disputes arising within their respective districts relative to the wrongful diversion or appropriation of water or injury to or obstructions in watercourses the same powers, jurisdiction, and authority which the former board of landdrost and heemraden of the same district or of any district which embraced the territory now constituting the district of the resident magistrate, together with other territory, possessed and exercised in like cases: Provided, always, that nothing herein contained shall be construed so as to confer upon any resident magistrate the right or power to frame or enforce any new distribution of any stream or supply of water or to alter rights to water as subsisting at the time of the commencement and taking effect of this ordinance; but in regard



to the vindication of all subsisting rights, whether arising from regulations duly made by any former board of landdrost and heemraden or from contract, condition, prescription, or other legal source or origin, the resident magistrate shall adjudge and determine in like manner as landdrost and heemraden might if now in existence have lawfully adjudged and determined; provided, however, that except in a case in which by some written record, act, or instrument preserved on record and having the force of law some greater sum is fixed by way of damages or penalty for the act complained of and proved before such magistrate, such magistrate, acting under the provisions of this ordinance, shall not be authorized in any civil case to award any damages or in any criminal case to impose any fine exceeding the sums to which his general jurisdiction in civil and criminal cases respectively is limited.

Limit of damages.

3. And be it enacted that in adjudicating upon all such cases and questions as aforesaid the resident magistrate shall proceed according to the rules and regulations in force for the time being in regard to the courts of resident magistrate, and every judgment or sentence of any such magistrate shall be liable to be brought in appeal or review before the supreme or any competent circuit court in manner and form as shall by such rules and regulations be in that behalf provided, and the said supreme or circuit court may reverse or alter the judgment of the said magistrate in such manner as justice shall require; and in case the record of the resident magistrate shall not appear to such court to furnish sufficient evidence or information for the due determination of the case may remit the same to the resident magistrate with instructions in regard to the taking and setting out of further evidence or information, or such supreme or circuit court may order the parties or either of them to produce at some convenient time in such court such further proof as shall seem necessary or desirable, or such court may take such other course as shall seem to tend to the most speedy and the least expensive settlement of the case.

Rules of procedure in magistrate's court.

Review in supreme or circuit court.

4. And be it enacted that nothing in this ordinance contained shall be deemed or taken to impair the rights of Her Majesty the Queen in regard to rivers, streams, or water-courses, or to prevent her from regulating the same in any manner in which she might before the passing of this ordinance lawfully have regulated the same by virtue of her

Reservation of rights of the crown.

royal prerogative or any powers or authorities in that behalf expressly or by implication reserved to or vested in Her Majesty.

Time of taking effect.

5. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 27th day of June, 1848.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 6.—Sd. H. G. Smith.]

Ordinance for enabling certain Public Sales to be held by Persons not licensed as Auctioneers and without the Payment of Auction Duty.

Preamble.

WHEREAS certain associations or societies have from time to time been formed in this colony for the promotion of agriculture and the improvement of live-stock : And whereas the beneficial objects of such associations or societies whether present or future will be advanced by enabling them at their respective periodical meetings to hold or authorize public sales of farming produce and live-stock at which such stock and produce may be sold by persons not licensed as auctioneers and in regard to which no auction duty shall be payable : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the Ordinance No. 6, 1844, entitled " Ordinance for regulating Sales by Auction," as is repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed, and the same is hereby repealed accordingly.

Repeal of repugnant parts of Ordinance No. 6, 1844.

Establishment by Governor of agricultural fairs.

2. And be it enacted that it shall and may be lawful for the Governor of this colony for the time being upon the application of any such association or society as aforesaid

to grant permission to the same to establish during the pleasure of the said Governor fairs or markets to be held upon the occasion of the various meetings thereof, at which fairs or markets it shall be lawful to sell by public sale or auction, horses, mules, asses, horned cattle, sheep, goats, pigs, implements of agriculture or husbandry, and all agricultural and farming produce, and no person holding such sale as aforesaid under or by virtue of any such appointment as is hereinafter mentioned shall be required to take out or possess any licence in order to act thereat as auctioneer, nor shall any auction duty be paid or payable in regard to any such sale: Provided, always, that not more than four such fairs or markets shall be held in any one year by or in connection with any one association or society; provided, also, that no such fair or market shall continue longer than two days.

Sale without  
auctioneer's  
licence.

Frequency and  
duration of  
fairs.

Appointment  
and remunera-  
tion of  
auctioneer.

3. And be it enacted that it shall and may be lawful for any association or society which shall have received any such permission as aforesaid to appoint subject to the approbation of the resident magistrate of the district within which any such fair or market shall be held some fit and proper person or so many fit and proper persons as shall be deemed to be expedient to conduct as auctioneer or auctioneers the sales at such fair or market, and such resident magistrate with the advice of such association or society shall approve of and authorize such rate of remuneration for such person or persons as shall appear just and reasonable: Provided, always, that no such resident magistrate shall by reason of his having approved of such person or persons or of the rate of remuneration which he or they shall receive be deemed or taken to be in any degree responsible for the acts or conduct of such person or persons in regard to the sales held by him or them.

4. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking  
effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 27th day of June, 1848.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 7.—Sd. H. G. Smith.]

[4th July, 1848.

Ordinance for amending and continuing certain Provisions of the Ordinance No 8, 1843, entitled “Ordinance for improving the Public Roads of the Colony.”

[Repealed, with Ordinance No. 8, 1843, by Act No. 9, 1858.]

No. 8.—Sd. H. G. Smith.]

Ordinance for enlarging in certain respects the Powers of Municipal Commissioners in regard to the Common Pasture Lands of the Municipality.

Preamble.

WHEREAS by the thirty-ninth section of the Ordinance No. 9, 1836, entitled, “Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony on which the Local Regulations of each shall be founded,” it is provided in regard to the common pasture lands the property of any municipality erected under or by virtue of the said ordinance that the commissioners of such municipality shall not be authorized or permitted to dispose of, alienate, build upon, enclose, or cultivate any such common pasture lands nor suffer any other person to build upon, enclose, or cultivate the same, and that any such alienation by sale, gift, or otherwise shall be null and void: And whereas in certain of the municipalities established under and by virtue of the ordinance aforesaid it has become necessary to provide for locating in an orderly and proper manner such Fingoes and others as are now to be found irregularly squatting or living upon such common pasture lands to the serious detriment of the pasturage thereof: And whereas the nature and extent of such common pasture lands are in some places such that portions thereof may be appropriated for the purpose aforesaid and for other purposes useful to the public and profitable to the municipality without prejudicing or interfering with any of objects for which such common pasture lands were originally reserved: And whereas it is expedient to authorize and empower the commissioners of the several municipalities aforesaid under certain limitations and conditions to carry into effect any such plan or purpose as aforesaid which shall appear to them as necessary or desirable: Be it enacted by

the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the ordinance aforesaid No. 9, 1836, as is repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed, and the same is hereby repealed accordingly.

Repeal of repugnant parts of Ordinance No. 9, 1836.

2. And be it enacted that when and as often as any board of commissioners appointed under or by virtue of the said ordinance aforesaid shall at any meeting thereof duly convened in pursuance of the said ordinance or of the municipal regulations for the time being determine that it is expedient for or on account of any such object or purpose as is in the preamble of this ordinance mentioned to dispose of or alienate or permit to be built upon, enclosed, or cultivated any part or portion of the common pasture lands of the municipality to which such board of commissioners belongs or any other lands of which the property shall be vested in such board, it shall and may be lawful for such board to apply in writing for the consent of the Governor of this colony for the time being, with the advice of the Executive Council, to the proposed sale, lease, or other arrangement for the occupation or enclosure of any part or portion of such lands, and upon obtaining such consent but not otherwise to execute or carry into effect such sale, lease, or other arrangement: Provided, always, that no such application shall be made to the Governor aforesaid until a notice in writing of such intended application shall have been posted for general information at some conspicuous place of public resort within the municipality for a period of not less than fourteen days, which notice shall in some part thereof describe the part or portion of land proposed to be sold, leased, or otherwise permitted to be occupied or intended to be enclosed, and the object, terms, and conditions of the proposed sale, lease, or other right of occupation or enclosure, and shall require any person objecting to the proposed proceeding to lodge with the commissioners within fourteen days from and after the date of the posting of such notice his objections thereto in writing.

Application by commissioners to Governor for consent to alienation of common pasture lands.

Posting of notice of intended application.

3. And be it enacted that in every case in which any such board as aforesaid shall apply to the Governor for such consent as aforesaid they shall transmit together with such application a copy of the notice posted as aforesaid and of all objections which shall have been lodged in pursuance

Transmission of notice and objections to Governor.

thereof, with such observations if any upon such objections as they shall deem necessary or fitting.

Execution of instrument of alienation, &c., on consent of Governor.

4. And be it enacted that when and as soon as the Governor aforesaid shall have signified his consent to the object of any such application as aforesaid all contracts, leases, or other instruments necessary to effect the said object may be signed or executed by any two or more of the said commissioners on behalf of the rest of them in case they do not all join; and every such contract, lease, or other instrument shall thereupon be deemed and taken to be binding upon the municipality and the said commissioners and their successors in office; and it shall and may be lawful for any person lawfully claiming under any such contract, lease, or other instrument to build upon, enclose, or cultivate such part or portion of common pasture land or other land in manner and form as he shall by such contract, lease, or other instrument be authorized to build, enclose, or cultivate: Provided, always, that nothing herein contained shall be deemed or taken to deprive any such commissioner as aforesaid of the right or power to carry into effect any plan for locating Fingoes or others upon the common pasture or any other lands, or any other plan involving the building upon, enclosure, or cultivation of any part or portion of the said lands by means of municipal regulations duly made and published.

Moneys payable to commissioners as part of municipal funds.

5. And be it enacted that all moneys arising from the sale or occupation of any part or portion of any such lands as aforesaid shall be payable to the commissioners of the municipality for the time being as part and portion of the municipal funds of such municipality.

Prohibition of purchase, &c., by municipal officers under penalties.

6. And be it enacted that no person holding any office in or under any board of commissioners for any municipality shall purchase or hire from or acquire any right of occupation under the board of commissioners in or under which such person holds office; and if any such person shall directly or indirectly so purchase or hire or acquire any such right or occupation he shall thereby forfeit a sum not exceeding five hundred and not less than one hundred pounds: Provided, always, that nothing herein contained shall extend or be construed to extend so as to prevent any such person from being chosen to fill any such office as aforesaid at any time after the expiration of twelve months from the completion of any such sale or lease or the acquisition of any such right of occupation as aforesaid; but no such person shall be

eligible to be so chosen before the expiration of such twelve months.

7. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof. Time of taking effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 4th day of July, 1848.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 9.—Sd. H. G. Smith.]

Ordinance for regulating the Duties and Remuneration of  
Field-cornets.

WHEREAS owing to the various alterations made from time Preamble.  
to time in the administration of the country districts of this  
colony the functions of field-cornets have been considerably  
narrowed, and it is now expedient to define or describe their  
duties and to substitute for the principle of a fixed annual  
allowance, a remuneration proportioned to the services per-  
formed : Be it enacted by the Governor of the Cape of Good Repeal of  
former laws  
Hope, with the advice and consent of the Legislative Council  
thereof, that the "Instructions for the Field-cornets in the  
several Country Districts," published by the then Governor  
and Council of this colony on the 24th October, 1805, shall  
be repealed, except in so far as the same repeal any former  
placaats, ordinances, or customs, and the same are hereby  
repealed accordingly : Provided, always, that the field-cor-  
nets and assistant field-cornets shall continue to be appointed  
as at present.

2. And be it enacted that from and after the commence- Duties of field-  
cornets.  
ment and taking effect of this ordinance, the several duties  
belonging to the office of field-cornet shall be the following,  
that is to say :

(a) He is by virtue of his office bound to apprehend without Apprehension  
of offenders.  
warrant every person whom he shall have reasonable

- grounds to suspect of having committed any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or assault in which a dangerous wound is given, arson, housebreaking with intent to commit a crime therein, or theft of any cattle, sheep, or goat, or any other crimes of equal guilt with any of those crimes. And he may also take into custody every person whom he shall see engaged in any affray or whom he shall find attempting to commit a crime or clearly manifesting an intention so do to.
- Inquest in case of sudden death.** (b) Whenever it shall be brought to his knowledge that any person within his ward, has died other than a natural death, namely, by violence or accident, or his own act, or the act of God, the field-cornet shall with all speed repair to inspect the body and hold an inquest thereon
- Notice of untimely death to magistrate.** (c) The field-cornet will obtain and transmit to the resident magistrate the fullest information respecting the circumstances of any such untimely death, and communicate at the same time the result of his own observations.
- Examination of injury in cases of assault.** (d) In cases of assault in which any wound supposed to be dangerous has been given, the field-cornet will repair to and examine the injured party, and apprise the resident magistrate of the case and its circumstances.
- Appointment of field-corporals and special constables.** (e) When he shall arrest any prisoner he is authorized if need be to appoint any proper person or persons to be a field-corporal or field-corporals, special constable or special constables for the custody and conveyance of such prisoner to the nearest field-cornet on the road to the nearest gaol, or in case he himself be the field-cornet nearest to the gaol then he will send the prisoner to the gaol direct. And every such field-corporal or special constable will be paid at the rate of six pence for each mile which he shall convey any prisoner or prisoners and six pence for each mile which he shall be obliged to return to his own residence, besides being repaid any sum which he may have expended in providing necessary food or lodging for such prisoner or prisoners.
- Obligation to receive and pass on prisoners.** (f) Every field-cornet is bound to receive all prisoners brought to him from any field-cornet or justice of the peace at a greater distance from the gaol and to pass such prisoners on towards the gaol in the same manner as if he had arrested them himself. And any field-corporal or special constable appointed by him to convey any such prisoner, whether the same special constable who brought such prisoner or one appointed anew, shall be entitled to the mileage aforesaid.
- Proceedings in cases of wrecks.** (g) Every field-cornet whose ward adjoins the sea shall in all cases of ships or vessels wrecked or stranded upon the coast repair to the spot and use every exertion in his power to save life and property, and he may appoint such number of special constables as may be necessary to protect property and prevent plunder



- (h) Every field-cornet receiving special instructions from the resident magistrate or civil commissioner respecting any special duty to be performed will duly conform to the same. Special duties.

3. And be it enacted that the remuneration to be received by field-cornets shall hereafter be as follows, that is to say: Remuneration.

- (a) When he shall be from home engaged in any such service as aforesaid, he shall receive an allowance for horse-hire at the rate of one shilling and six pence per hour.
- (b) When he shall be from home engaged in any such service as aforesaid, he shall receive an allowance for his time at the rate of seven shillings and six pence per day.
- (c) Besides any claim which he may have for time and horse-hire he shall receive for every inquest which he may hold the sum of one pound.
- (d) For receiving, supplying with necessary food, and forwarding from his residence any person brought to him on his way to gaol he shall be entitled to the sum of one shilling per day.
- (e) For any special service required of him by the resident magistrate or civil commissioner and not adequately repaid by an allowance for time and horse-hire the field-cornet shall receive such a sum as the governor of the colony shall approve of and direct.

4. And be it enacted that from henceforth the field-cornets shall be deemed and taken to be under the authority of the resident magistrate of the district as well as of the civil commissioner of the division. Subordination to civil commissioner and resident magistrate.

5. And be it enacted that nothing in this ordinance contained shall extend to alter or affect any former law or ordinance by which any duty or service has been imposed upon field-cornets; and every field-cornet while acting in the performance of any such duty or service not otherwise remunerated shall be entitled to be paid for time and horse-hire at the rate aforesaid. Duties not under this ordinance.

6. And be it enacted that this ordinance shall commence and take effect as law from and after the 1st January, 1849. Time of taking effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 4th day of July, 1848.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

## No. 10.—Sd. H. G. Smith.]

Ordinance for amending the Ordinance No. 86, entitled  
 “Ordinance for establishing and regulating a new  
 Savings Bank in the Colony of the Cape of Good  
 Hope.”

- Preamble.** WHEREAS the Ordinance No. 86, entitled “Ordinance for establishing and regulating a new Savings Bank in the Colony of the Cape of Good Hope,” requires in some respects to be amended: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the said ordinance as shall be repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed, and the same is hereby repealed accordingly.
- Repeal of inconsistent parts of Ordinance No. 86.**
- Qualification of managers.** 2. And be it enacted that all inhabitants resident in Cape Town or within ten miles thereof shall be eligible to be elected and become managers of the Cape of Good Hope Savings Bank Society.
- Deposits, &c., by members.** 3. And be it enacted that no person by reason merely that such person is a member of the said society shall be deemed or taken to be debarred from making deposits in the said Savings Bank or deriving interest or profit from the funds so deposited in like manner as if such depositor were not a member of the said society.
- Remuneration of managers.** 4. And whereas the attendance of two or more managers as in the twentieth section of the ordinance aforesaid mentioned is at times irregular and it is desirable to provide for greater punctuality in the dispatch of the business devolving upon such managers: Be it enacted that it shall and may be lawful for the committee of management of the said society by any resolution thereof from time to time to authorize and direct the payment out of the surplus funds of the said society of a fee or allowance not exceeding the sum of five shillings to each manager not exceeding two who shall attend at the office or place of business of such society at such time as shall be appointed by any rule or regulation of the said society; and it shall and may be lawful for the said committee of management by any resolution thereof to provide as they shall see fit for the mode in which other managers or another manager shall be called in in case of non-attendance at the proper time of both or either of the managers in their order of rotation and to determine that the fee or

allowance which would have belonged to the person or persons absenting himself or themselves had he or they attended shall be received by the person or persons attending in manner and form as the said committee shall by resolution fix in his or their room and stead.

5. And be it enacted that the general meeting of the committee of management in the tenth section of the said ordinance mentioned and therein directed to be held on the first Thursday in every month may be lawfully held upon such day in the first week of every month as shall by any rule or regulation of the said committee of management be fixed and appointed. General meetings of committee of management.

6. And be it enacted that the general meeting of the said Savings Bank Society in the seventeenth section of the ordinance aforesaid mentioned and therein directed to be holden in the month of January in each year shall be held not in the said lastmentioned month, but in lieu and stead thereof in the month of March in each year: Provided, always, that the said seventeenth section shall in all other respects remain and continue in full force and effect, and that the committee of management now existing shall continue to act until their successors shall be elected at the next general meeting aforesaid which will be held in the month of March, 1849. General meetings of the society.

7. And be it enacted that for the purpose of attesting any such declaration as is in the twenty-first section of the said ordinance mentioned any office-bearer in the said society shall be taken and construed to be a manager and as such to be competent to attest any such declaration. Attestation of certain declarations.

8. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof. Time of taking effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 27th day of June, 1848.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

No. 11.—Sd. H. G. Smith.] [10th July, 1848.]

Ordinance for applying a Sum not exceeding £209,304 3s. 11½d. for the service of the Year 1849.

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No. 12.—Sd. H. G. Smith.] [10th July, 1848.]

Ordinance for enabling Catherine Mary Pigot, Executrix of the Will and Testament of the late George Pigot, to sell and dispose of a certain piece of Perpetual Quitrent Land called "Pigot Park," and to invest the proceeds thereof in the names of Trustees for the purposes provided by the said Will and Testament.

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No. 13.—Sd. H. G. Smith.] [11th July, 1848.]

Ordinance for regulating Weights and Measures.  
[Repealed by Act No. 11, 1858.]

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No. 14.—Sd. H. G. Smith.]

Ordinance to amend the Ordinance No. 1, 1840, entitled "Ordinance for the better regulation of the Municipal Board of Cape Town and the Vicinity thereof."

Preamble.

WHEREAS by the sixty-fourth section of the Ordinance No. 1, 1840, entitled "Ordinance for the better regulation of the Municipal Board of Cape Town and the Vicinity thereof," it is provided (amongst other things) that no commissioner of the said municipality shall be allowed, either directly or indirectly to become a contractor for any work to be done or materials to be found for the commissioners of the said municipality by virtue or for the purpose of the said ordinance, and that no commissioner shall be allowed to tender for any such contract either in his own name or in the name of or jointly with any other person, on pain (amongst other things) of being considered to have vacated his office of commissioner, *ipso facto*, and of becoming ineligible to be

elected at any future period to serve as a commissioner : And whereas since the passing of the said Ordinance No. 1, 1840, a certain joint-stock company or co-partnership was formed in the city of Cape Town, called the Cape of Good Hope Gas Light Company, for the purpose of supplying the said city with gas, in which company or co-partnership a number of the inhabitants desirous of contributing to the safety, comfort, and embellishment of the said city, and amongst others certain of the commissioners of the municipality aforesaid, became shareholders: And whereas on or about the fourth day of March, 1847, a contract was duly entered into between the said Gas Company and the commissioners of the said municipality for the partial lighting with gas of the said city by the said company upon certain terms and conditions and for certain payment and remuneration in the said contract specified : And whereas doubts exist whether those shareholders of the said Gas Company who at the time of the making of the said contract were commissioners of the said municipality or who afterwards and during the existence and operation of such contract became such commissioners did not by force of the said sixty-fourth section vacate the office of commissioner and become ineligible to be elected at any future period to serve as such, and whether moreover the board of commissioners of which such shareholders have continued to act as members has not been since then illegally constituted and its acts and proceedings invalid : And whereas to disqualify commissioners as often as the board of which they are members shall enter whether with their concurrence or without into a contract for any work to be done or material to be found by any joint stock-company in which such commissioners chance to be shareholders would be at once oppressive to the individuals concerned and prejudicial to the public interests, as well by limiting the choice of the householders in regard to eligible persons to be elected commissioners as by restraining commissioners from promoting by becoming shareholders joint-stock companies formed for purposes of obvious utility: And whereas it is expedient to render valid all acts and proceedings of the said commissioners in so far as the same might be impeached or questioned upon the ground aforesaid or any similar ground, and also to amend the ordinance aforesaid in regard to the matter above recited and to other matters also: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the

Repeal of repugnant provisions of Ordinance No. 1, 1840.

Legislative Council thereof, that all and singular the provisions of the ordinance aforesaid so far as the same may be repugnant to or inconsistent with any of the provisions of this ordinance shall be repealed, and the same are hereby repealed accordingly.

Non-forfeiture of office by commissioners notwithstanding their being shareholders in companies having contracts with the municipality.

2. And be it enacted that no commissioner of the municipality of Cape Town heretofore elected shall be deemed or taken to have vacated his office of commissioner or to have incurred any manner of forfeiture or disqualification whatsoever by reason merely that such commissioner was or is a shareholder in any joint-stock company in this colony with which company or the directors or managers of which company the board of commissioners of the municipality to which such commissioner belongs or any former board of commissioners shall have entered into any contract, dealing, or transaction whatsoever, nor shall any act or proceeding of any board of commissioners be avoided, impeached, or questioned by reason merely that all or any of the commissioners or reputed commissioners by whom such act or proceeding was done or taken were shareholders or was a shareholder in any such joint-stock company as aforesaid with which such commissioners as aforesaid had entered into some contract or similar dealing or transaction.

Qualification of commissioners who are shareholders in joint-stock companies contracting with the municipality.

3. And be it enacted that no commissioner of the said municipality shall from and after the commencement and taking effect of this ordinance, be deemed or taken to have vacated his office of commissioner or to have incurred any penalty or forfeiture whatever by reason merely that the board of commissioners to which he belongs or any former board of commissioners shall have entered into any such contract as is in the sixty-fourth section of the ordinance aforesaid mentioned, or any other dealing or transaction, with the directors or other managers of any joint-stock company in this colony of which such commissioners shall be a shareholder or in which he shall be otherwise interested; nor shall any shareholder or person otherwise interested in any joint-stock company with which company the commissioners of the municipality 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 of the said municipality by reason merely of such contract, dealing, or transaction: Provided, always, that no commissioner of the said municipality who is also such a shareholder or

so otherwise interested as aforesaid shall be allowed to vote as a commissioner upon the question of making or entering into any contract, dealing, or transaction with the joint-stock company in which he is interested; and any commissioner who shall so vote in contravention of this restriction shall for every such offence forfeit the sum of one hundred pounds; provided, also, that nothing herein contained shall be deemed or taken to prevent the chairman of the said commissioners, being such a shareholder as aforesaid, from signing any such contract as by the sixty-fourth section aforesaid is required.

Prohibition of vote by commissioners having interest.

4. And be it enacted that if by reason of the number of any shareholders as aforesaid who shall be such commissioners as aforesaid it shall at any time happen that there shall not be sufficient commissioners competent to vote upon any such question as aforesaid to form a quorum for the transaction of such business then the number deficient of such competent commissioners shall for the purpose of that question, but no other, be supplied by wardmasters not being such shareholders, to be chosen by ballot by such competent commissioners; and every wardmaster so chosen shall in regard to the discussion and determination of such question be entitled to sit, deliberate, and vote as if he were such a commissioner, and shall for all purposes of law in regard to such question be received and regarded as if he were a commissioner duly elected.

Supply of deficiency of commissioners by wardmasters.

5. And whereas it has been found that to restrict the resident householders of every separate district of the said municipality in choosing commissioners to the choice of persons being the proprietors of landed property situate within such district limits injuriously the number of persons worthy to be chosen: Be it enacted that the tenth section of the ordinance aforesaid shall be and the same is hereby repealed, and that any resident householder of the said municipality being the proprietor of landed property situate within the said municipality of the value of not less than one thousand pounds sterling shall be eligible to be elected a commissioner for any one of the districts of such municipality for the purposes of the said ordinance.

Repeal of tenth section of Ordinance No. 1, 1840.

6. And whereas the number of wardmasters as required by the ordinance aforesaid is inconveniently large and it is expedient to reduce the same, as also to substitute for residence within the ward for which the wardmaster shall be chosen residence within the district to which such ward belongs, and

Election of one wardmaster only for each ward.

moreover to make provision for enabling wardmasters who attend to and perform the duties of their office to receive should it be deemed necessary and expedient some species of reward: Be it enacted that from and after the commencement and taking effect of this ordinance one wardmaster and no more shall be elected for each ward of the said municipality at each election of wardmasters, and that any resident householder residing within any district of the municipality shall be eligible to be elected a wardmaster for any ward included in such district, and that it shall and may be lawful for the commissioners of the said municipality for the time being to frame if they should so think fit a municipal regulation for affording to the several wardmasters of the municipality, in such manner and form and under such conditions as shall seem most just and expedient, some species of reward, for the due and proper performance by such wardmasters of their various duties; and such municipal regulation when duly approved and published shall be valid and effectual.

Time of taking  
effect

7. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 8th day of November, 1848-

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE,  
Clerk to the Legislative Council.

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No. 15.—Sd. H. G. Smith.]

Ordinance for amending the Law relative to Public Meetings.

Preamble.

WHEREAS by a proclamation of His Excellency the then Governor, Lord Charles Henry Somerset, bearing date the 24th of May, 1822, the said Governor saw fit to declare and enact that public meetings convened without the sanction and authority of the Governor for the time being, or when



such sanction or authority cannot be conveniently obtained without the sanction and authority of the chief local magistrate, for the discussion of public measures and political subjects were and should be deemed to be contrary to law: And whereas there is nothing in the state and condition of this colony which requires or justifies the continuance of a restraint so inconvenient and invidious upon that liberty of speech and freedom of discussion which Her Majesty vouchsafes to regard as the birthright of her subjects: And whereas it is expedient to remove the said restraint: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the proclamation aforesaid of the 24th May, 1822, and every other law heretofore in force in this colony whereby public meetings for the discussion of public measures and political subjects are declared or constituted illegal unless held with or under the previous sanction and authority of the Governor of the colony for the time being or of some other functionary or magistrate, shall be repealed, and the same are hereby repealed accordingly.

Repeal of  
proclamation  
as to public  
meetings.

2. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking  
effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 12th day of December, 1848.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) W. HOPE.  
Clerk to the Legislative Council.

No. 16.—Sd. H. G. Smith.]

[12th Dec., 1848.

Ordinance for applying a Sum not exceeding £24,267, 6s. 3d. for the service of the year 1848, in addition to the sum already in that respect provided.

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No. 1.—Sd. H. G. Smith.]

[15th June, 1849.

Ordinance to postpone the time of the taking effect of the Ordinance No. 13, of 1848, entitled “Ordinance for regulating Weights and Measures.”

[*Vide* Act No. 11, 1858.]

No. 1.—Sd. H. G. Smith.]

[11th Nov., 1851.

Ordinance for appropriating the Public Revenue for Public Service in the years 1850 and 1851.

No. 2.—Sd. H. G. Smith.]

Ordinance for Reviving the Ordinance No. 7, 1843, entitled “Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead.”

Preamble.

WHEREAS a certain ordinance was made and passed in this colony the 8th day of November, 1843, numbered 7, 1843, entitled “Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead:” And whereas a certain other ordinance was made and passed in this colony on the 1st day of December, 1845, numbered 16, 1845, entitled “Ordinance to amend the Ordinance No. 7, 1843, entitled ‘Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead:’” And whereas owing to accidental circumstances it has happened that the confirmation by Her Majesty the Queen of the Ordinance aforesaid No. 7, 1843, has not hitherto been communicated, whereby owing to lapse of time the said ordinance has or may be supposed to have now ceased to be law: And whereas it is expedient to revive the said ordinance: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said Ordinance No. 7, 1843, as amended by the said Ordinance No. 16, 1845, shall be and the same is hereby revived, re-enacted, and declared to be law to all intents and purposes as fully and effectually

Revival of  
Ordinance No.  
7, 1843 and  
Ordinance No.  
16, 1845.

as if the several clauses and provisions thereof as amended in manner aforesaid were herein set forth and word for word repeated.

2. And be it enacted that every matter and thing done and transacted or intended to be done and transacted before the promulgation of this ordinance in conformity with or according to the provisions of the said ordinance or supposed Ordinance No. 7, 1843, shall be taken and judged of in all respects precisely as if Her Majesty's gracious confirmation of the said ordinance had been duly communicated within the time fixed by her royal instructions for the communication of the same.

Confirmation  
of acts under  
Ordinance No.  
7, 1843.

3. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking  
effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 11th day of November, 1851.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) CHARLES J. BOYLE,  
Clerk to the Legislative Council.

No. 3.—Sd. H. G. Smith.]

[11th Nov., 1851.

Ordinance for providing proper Jury Lists in certain Districts within the Colony.

[Temporary.]

No. 4.—Sd. H. G. Smith.]

Ordinance to provide for the Imprisonment of certain Criminals sentenced by Courts-Martial.

WHEREAS an open rebellion of the most dangerous and daring nature has for some time existed and still continues to exist upon and adjacent to the eastern frontier of this colony: And whereas divers of the rebels engaged in the

Preamble.

said rebellion, being persons not subject to the Mutiny Act and Articles of War, after having been tried and convicted by courts-martial under and by virtue of martial law, have been by order of His Excellency the Governor conveyed to a convict station in a portion of this colony which has not been placed under martial law, in order to undergo there or elsewhere within this colony imprisonment with hard labour: And whereas it is necessary to make provision for authorizing the detention and punishment of such prisoners as well as of any other prisoners who may hereafter under similar circumstances be ordered to so undergo imprisonment with hard labour: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every person not being a person subject to the Mutiny Act and Articles of War who may heretofore have been or who may hereafter be convicted by any court-martial convened by the warrant of His Excellency the Commander-in-Chief of having been engaged or concerned in the said rebellion, and who shall be ordered by His Excellency the Governor to undergo hard labour for life or any other term which the said Governor may fix within this colony, shall and may be imprisoned, detained, and treated in every respect and such person shall be deemed and taken to be in precisely the same plight and condition as if the term of imprisonment with hard labour which such person shall by His Excellency the Governor be ordered to undergo had been adjudged against such person by a legal sentence of the supreme court of this colony in respect of some crime or offence within the jurisdiction of the said court: Provided that nothing in this ordinance contained shall be deemed or taken to restrict or abridge in any way the power of the Governor and Commander-in-Chief to carry into effect any sentence of any court-martial upon any person who may hereafter be convicted of any such crime as aforesaid whereby such person shall be sentenced to suffer death.

Rebels convicted by courts-martial and ordered to undergo hard labour in same condition as if sentenced by supreme court.

Proviso as to sentence of death.

Proof of conviction by court-martial.

2. And be it enacted that a certificate signed by the secretary to government setting forth that from documents deposited in his office it appears that the person or persons named in such certificate has or have been ordered by the Governor and Commander-in-Chief to undergo imprisonment with hard labour under the provisions of this ordinance, for such term as shall be specified in such certificate shall in all courts and places whatsoever be deemed and taken to

be conclusive evidence that such person or persons is or are duly imprisoned and kept to hard labour under and by virtue of the provisions of this ordinance.

3. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof. Time of taking effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 11th day of November, 1851.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) CHARLES J. BOYLE,  
Clerk to the Legislative Council.

No. 5.—Sd. H. G. Smith.] [17th Nov., 1851.

Ordinance to regulate for one Year the Dealing in Gun powder and Fire-arms.

[Expired. *Vide* Ordinance No. 2, 1853, amended by Act No. 14, 1857, and continued by Act No. 20, 1860.]

No. 6.—Sd. H. G. Smith.]

Ordinance for regulating the Rates of Wharfage Dues in Cape Town and Simon's Town.\*

WHEREAS by the Ordinance No. 8, 1834, made and passed in this colony on the 10th day of December, 1834, entitled Preamble "Ordinance to abolish the present Rates of Dues payable at the public Wharfs at Cape Town and Simon's Town and to substitute others in lieu thereof," certain Rates or Dues of wharfage and cranage were imposed upon goods, packages, and articles landed or shipped in Table Bay or Simon's Bay : And whereas by a certain other ordinance made and passed in this colony on the 14th day of December, 1846, and numbered 34, 1846, entitled " Ordinance for levying Wharfage

\* Amended by Act No. 14, 1855, exempting certain articles.

and other Dues in Cape Town, and for devoting them to the construction of a Harbour of Refuge in Table Bay, and for other purposes," certain rates or dues of wharfage and cranage upon all goods, articles, matters, and things landed or shipped in Table Bay were substituted in room and stead of the rates or dues imposed by the ordinance aforesaid, No. 8, 1834: And whereas the ordinance aforesaid, No. 34, 1846, having never received the confirmation of Her Majesty the Queen ceased at and after the expiration of three years next after the date thereof to be of any force or effect in law: And whereas upon the expiration of the said Ordinance No. 34, 1846, which repealed in regard to all goods, articles, matters, and things landed or shipped in Table Bay the ordinance aforesaid No. 8, 1834, the said lastmentioned ordinance revived: And whereas after the enactment but before the expiration of the said Ordinance No. 34, 1846, it became known to the then Governor of the colony, the Right Honourable Sir Henry Pottinger, Baronet, G.C.B., &c., &c., &c., that the construction of a harbour of refuge in Table Bay as previously contemplated, and for the construction of which harbour of refuge other and for the most part higher dues of wharfage and cranage had been imposed by the said lastmentioned ordinance than but for such harbour of refuge would have been imposed, must be postponed, whereupon the said Governor, by and with the advice of the Executive Council, did by letter bearing date the 24th day of April, 1847, authorize the collector of customs at Cape Town to levy and receive in lieu and stead of the dues and rates claimable and payable under the said last-mentioned ordinance certain other rates and dues less by one third than such former rates and dues respectively, which lowered scale or tariff of rates and dues the said collector of customs has since continued to levy and receive: And whereas it is necessary to sanction and render valid all wharfage and cranage dues received by said collector of customs during the existence of the said Ordinance No. 34, 1846, but not in accordance with its provisions, and all such dues received by him since the expiration of the said last-mentioned ordinance but not in accordance with the provisions of the said Ordinance No. 8, 1834, as also to make provision for levying wharfage and cranage dues at the port of Cape Town in time to come, and moreover to establish in regard to the port of Simon's Town the same rate of wharfage and cranage dues established in regard to the port

of Cape Town: Be it therefore enacted by the Governor of Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that upon and after the sixth day of January, 1852, the ordinance aforesaid, No. 8, 1834, except so far as the same repeals any former law or ordinance, shall be repealed, and the same is hereby repealed accordingly.

Repeal of Ordinance No. 8, 1834.

2. And be it enacted that all sums of money not exceeding in amount the dues of wharfage and cranage specified in the schedule to the ordinance aforesaid, No. 34, 1846, which have at any time since the passing of the said ordinance been paid to the collector of customs at Cape Town as and for dues of wharfage and cranage payable upon goods, articles, matters, and things landed or shipped in Table Bay shall from and after the taking effect of this ordinance be held and taken to have been legally levied and received, and every such payment shall be deemed to be as legal, rightful, and effectual as if the same had been made under and by virtue of some valid and subsisting law especially authorizing and requiring such payment to be made.

Legalization of dues taken not exceeding due under Ordinance No. 34, 1846.

3. And be it enacted that the said collector of customs shall be and he is hereby declared to be acquitted and indemnified from and against all actions, suits, penalties, and proceedings whatsoever in respect of the levying or receiving by him of any of the payments or sums of money in the last preceding section mentioned and therein ratified and rendered valid.

Indemnification of collector of customs.

4. And be it enacted that upon and after the sixth day of January, 1852, there shall be levied and paid to the officers respectively in that behalf in the schedule to this ordinance mentioned upon all goods, articles, matters, and things landed or shipped in Table Bay or in Simon's Bay the several dues of wharfage and cranage respectively set forth in the said schedule.

Levy of dues after 6th January, 1852.

5. And be it enacted that all moneys to arise from dues of wharfage and cranage levied and paid under this ordinance in respect of goods, articles, matters, and things landed or shipped in Table Bay, and all moneys received by the treasurer-general of the colony since the taking effect of the ordinance aforesaid, No. 34, 1846, as the proceeds of the wharfage and cranage dues levied and received by the collector of customs of Cape Town in regard to Table Bay, and not already applied by the harbour commissioners hereinafter described to harbour improvements or wharfage expenses at

Vesting in harbour commissioners of all moneys received and unapplied.

the port of Cape Town, shall be and the same are hereby vested in the board of commissioners for improving the port and harbour of Table Bay appointed by the Governor under and by virtue of the first section of the ordinance No. 21, 1847, entitled "Ordinance for improving the Ports, Harbours, and Roadsteads of this Colony," to be held and used by the said board of commissioners for the purposes of any of the works under their management or administration or necessary expenses of the wharfs.\*

6. And whereas by the Ordinance No. 1, 1848, entitled "Ordinance for improving the Port of Table Bay," it was provided that a certain sea-wall should be constructed in Table Bay and that the board of commissioners in the last preceding section mentioned should be charged with the construction of the said work: And whereas it is by the said last-mentioned ordinance provided that the moneys to be realized by the sale of the reclaimed and waste lands in the said ordinance described should be applied to repay the cost of constructing the said sea-wall: And whereas in order to provide funds amply sufficient for the construction of the said sea-wall and for making good any sum by which the proceeds of the lands aforesaid may hereafter fall short of repaying the cost of constructing the said sea-wall it is expedient to make provision for raising to a certain extent the dues of wharfage and cranage payable in regard to all goods, articles, matters, and things landed or shipped in Table Bay: Be it therefore enacted that it shall and may be lawful for the Governor of the colony for the time being at any time after the construction of the said sea-wall shall have been begun but not sooner, to declare and announce by any proclamation to be by him for that purpose issued and published in the Government Gazette that the rates of dues in the said schedule to this ordinance respectively set forth shall from and after such day as shall by any such proclamation be fixed for that purpose be respectively raised in regard to all goods, articles, matters, and things landed or shipped in Table Bay to such an amount, not exceeding double the amount of the rates of dues in the schedule to this ordinance mentioned, as shall be judged to be necessary for defraying the cost of the said sea-wall and shall in such proclamation be set forth; and from and after the day so

Proclamation  
of increase of  
dues.

\* This section is repealed by Act No. 20, 1858.



fixed as aforesaid the rates of dues in the said proclamation mentioned and by the same imposed and none other shall be payable and be paid until the said proclamation shall be withdrawn by the said Governor, after which the several rates of dues in the said schedule mentioned shall again become payable and be paid: Provided, always, that in and by such proclamation as aforesaid the rates of dues payable upon all goods, articles, matters, and things respectively according to the table in the said schedule contained shall as much as conveniently may be be raised in equal proportion each to each, according to the respective amounts thereof; provided, also, that any such proclamation as aforesaid may be recalled and another such proclamation issued in its room and stead; and so on from time to time as long as any such proclamation shall be necessary; and provided that nothing in this section contained shall be construed so as to prejudice or affect the rights of the municipality of Cape Town under or by virtue of the ordinance aforesaid, No 1, 1848, nor shall any of the provisions of this section extend to the port of Simon's Town. \*

7. And be it enacted that no goods, ballast, matters, or things shall be suffered to remain upon any public wharf at Cape Town or Simon's Town so as to create obstruction or inconvenience; and if any person who shall have laid down or caused or procured to be laid down on any such public wharf any goods, ballast, matters, or things shall not remove the same within twelve hours after he shall by any wharf clerk or officer of customs be required in writing so to do, such person shall upon conviction forfeit any sum not exceeding ten pounds and shall moreover be adjudged by the court by which he shall be tried for such offence to pay all costs and charges which may have been incurred in removing the goods, ballast, matters, or things which such person shall have neglected to remove; and provided that if such person shall not upon conviction forthwith pay any such fine with all such costs and charges as he shall have been condemned to pay he shall be liable to be imprisoned with or without hard labour for any period not exceeding fourteen days. †

8. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

\* Ordinance No. 1, 1848, is repealed by Act No. 11, 1857, which is again amended and repealed by Act No. 20, 1858.

† This section is, in as far as repugnant, repealed by Act No. 4, 1857.

## SCHEDULE.

Schedule of  
dues.

Table of Dues of Wharfage and Cranage payable to the Collector of Customs at Cape Town and the Sub-collector of Customs at Simon's Town respectively on goods, articles, matters, or things landed or shipped in Table Bay or in Simon's Bay respectively, under Ordinance No. 6, of 1851.\*

LANDED.	s.	d.
Liquids.—On every pipe, puncheon, butt, or other cask of the capacity of 80 gallons imperial or upwards, and containing wine, spirits, or other liquids, the cask.....	1	4
On every hogshead, half puncheon, tierce, or other cask of the capacity of 40 imperial gallons and under 80 gallons, containing wine, spirits, or other liquids, the cask.....	1	0
On every quarter or other such cask of the capacity of 20 imperial gallons and under 40 gallons, containing wine, spirits, or other liquids, the cask.....	0	8
On every barrel, anker, keg, or other cask of less capacity than 20 imperial gallons, containing wine, spirits, or other liquids the cask.....	0	6
In jars, bottles, and other packages (not in bulk) each of the content of one imperial gallon or upwards, the imperial gallon.....	0	1
In jars, bottles, and other packages (not in bulk) each of less content than one imperial gallon, the imperial gallon.....	0	1
Tea, in all packages, per 100 lbs.....	0	10
Coffee, sugar, pepper, sago, salpetre, turmeric, tamarinds, spices, dates, rice, gram, paddy, and drugs, in bags, the bag.....	0	2
Wheat, barley, oats, rye, and other grain and bran in bags or bulk, the imperial quarter.....	0	4
Flour, the 196 lbs.....	0	4
Tobacco, manufactured (except cigars), the cwt.....	0	4
Tobacco, leaf, the cwt.....	0	3
Cigars, the 1,000.....	0	2
Manufactures and all dry goods in cases, bales, or other packages, not otherwise described, measuring 60 cubic feet or upwards the package.....	4	0
40 cubic feet and under 60 do.....	3	0
30 do. and under 40 do.....	2	4
20 do. and under 30 do.....	2	0
10 do. and under 20 do.....	1	4

\* Wharfage dues are doubled by section 3 of Act 20, 1858, for Table Bay.

	s.	d.	
5 cubic feet and under 10 do.....	1	0	Schedule of dues.
2 do. and under 5 do.....	0	6	
under 2 do.....	0	3	
Hams or cheeses, when not in packages containing more than one of either, the ham or cheese .....	0	1	
Paint, the ton.....	4	0	
Earthenware, in crates, the crate.....	1	4	
Glass bottles, empty, the gross.....	0	4	
Bricks, tiles, or slates, the 1,000 .....	2	0	
Paving stones, the ton.....	1	0	
Cocoanuts, the 1,000.....	2	0	
Rattans, the 100 bundles.....	1	8	
Tar, pitch, and rosin, the cask.....	0	4	
Salt and coals, the ton.....	1	0	
Mill stones, the stone.....	1	8	
Fir and teak timber, the load of 50 cubic feet.....	1	4	
Mahogany and timber not being fir or teak, the load of 50 cubic feet.....	2	0	
Deals, planks, boards, battens, and all wood cut from the log (except staves), the load of 50 cubic feet ...	2	0	
Staves, viz., crown pipe, the 1,000 .....	5	0	
Do. crown hogshead, do.....	3	4	
Do. other pipe, do.....	3	4	
Do. other hogshead, do.....	2	4	
Do. barrel and heading do.....	1	8	
Masts or spars under 5 inches diameter, each.....	0	1	
Do. 5 to 8 inches diameter, each.....	0	6	
Do. above 8 inches do.....	2	4	
Heavy goods, not otherwise described, the ton.....	1	8	
Horses, mules, or asses, each.....	3	4	
Calves, sheep, or pigs, each.....	0	2	
Horned cattle, cows, bulls, and oxen, each.....	1	8	
Ivory, per 100 lbs.....	1	0	
Oars, per 100.....	5	0	

## SHIPPED.

Wine, spirits, limejuice, oil, or other liquids, the 100 imperial gallons.....	0	8	
Beef, pork, butter, candles, tallow, flour, meal, fruits (dried and green), buchu leaves, biscuit, fish (dried and pickled), and preserves, the cwt.....	0	2	
Wheat, barley, rye, oats, bran, pease, beans, and lentils, the imperial quarter.....	0	4	
Hay, the 100 lbs.....	0	2	
Hides, of horses or horned cattle, the 100.....	3	0	
Skins, calf, goat, seal, or wild animal, the 100.....	0	4	
Sheep skins, the 100.....	0	2	
Bones, hoofs, or glue pieces, the ton.....	0	8	
Horns, the 1,000 .....	1	4	

Schedule of dues.		s.	d.
Ivory, the 100 lbs.....		0	4
Ostrich feathers, the package.....		1	8
Wool, the 100 lbs.....		0	4
Argol, aloes, gum, or wax the ton.....		1	0
All other articles not enumerated or otherwise described, the ton.....		0	8
If measurement goods not otherwise enumerated or described, the 40 cubic feet.....		1	0
Horses, mules, or asses, each.....		3	0
Horned cattle, each.....		1	0
Sheep, goats, or pigs, each.....		0	2

## EXEMPTIONS.

1st.—All public stores, naval or military baggage, and personal baggage of passengers.

2nd.—All goods coastwise, whether shipped or landed, except imported goods upon which wharfage has not been once paid.

3rd.—Ships' stores outwards.

4th.—All goods exported, upon which wharfage had been paid upon importation.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 5th day of December, 1851.

By command of His Excellency the Governor,

(Signed)      JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed)      CHARLES J. BOYLE,  
Clerk to the Legislative Council.

No. 7.—Sd. H. G. Smith.]

[16th Dec., 1851.

Ordinance for empowering the Commissioners for inquiring into the Rebellion in the Kat River Settlement and in other places upon the Eastern Frontier to take Evidence, and for punishing Perjury committed before the said Commissioners.

[Temporary. Expired.]

No. 8.—Sd. H. G. Smith.]

[16th Dec., 1851.

Ordinance for applying a Sum not exceeding £201,484 18s. 11d. for the service of the year 1852.

No. 9.—Sd. H. G. Smith.]

Ordinance for the better regulation of the Sale of Wines and Spirituous and Fermented Liquors.\*

WHEREAS it is expedient to amend and consolidate the laws now in force touching the sale of wines, malt liquors, and spirituous liquors in this colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the commencement and taking effect of this ordinance the Ordinance No. 29, 1846, entitled "Ordinance for the better regulation of the Sale of Wines and Spirituous and Fermented Liquors," shall be and the same is hereby repealed, save and except so far as the said ordinance repealed any former law, proclamation, or ordinance, or any part thereof, or in so far as the said ordinance relates to or concerns the prosecuting, suing for, and recovering of any duties agreed to be paid or which are imposed by virtue of the said ordinance which shall remain then due and unpaid, and save and except in so far as the said ordinance relates to the recovering of any fine or penalty for any offence against the said ordinance which shall have been or shall be committed before the commencement and taking effect of this ordinance and shall remain then due and unpaid: Provided, always, that nothing in this section contained shall extend or be construed to extend to impair the validity of any licence which shall not have expired at the date of the commencement and taking effect of this ordinance, which licence shall be judged of in the manner hereafter in the fifty-fifth section of this ordinance in that behalf provided.

2. And be it enacted that it shall and may be lawful for the distributor of stamps in Cape Town and the several distributors of stamps in the several districts of the colony respectively and they are hereby required to grant in manner and form as hereinafter provided, to such persons residing within their respective districts as shall make such applications and comply with such regulations as are respectively hereinafter in that behalf mentioned and set forth, licences authorizing the sale of wines, spirituous liquors, malt liquors, ginger beer, and spruce beer: Provided that the term "malt liquor" shall for the purposes of this ordinance include all beer

Preamble.

Repeal of Ordinance No. 29, 1846.

Grant of licences by distributor of stamps.

Interpretation of "malt liquors."

\* Amended by Act No. 10, 1860.

- made from sugar or molasses not being ginger beer or spruce beer; and provided, also, that the term "spirits" shall include all liquors commonly called liqueurs.
- "Spirits."**
- Nature of licence.** 3. And be it enacted that every such licence as is in the last preceding section mentioned shall be either a wholesale licence or a retail licence.
- Form of licence.** 4. And be it enacted that the said licences respectively shall in form correspond with the forms thereof respectively in the schedule to this ordinance in that behalf set forth.
- Duration of licence.** 5. And be it enacted that from and after the first day of April, 1852, all such licences as aforesaid whether wholesale or retail shall be issued to endure for one year and for no other term, and that every such licence shall commence upon the first day of April in every year (save and except the certain licences hereinafter in the eighth section of this ordinance mentioned, which may commence at any period of the year, and be upon stamped paper of the value of twenty pounds) which sum shall be payable for every such licence.
- Quantities salable under wholesale licence.** 6. And be it enacted that from and after the first day of April, 1852, it shall and may be lawful for any person who shall have taken out any wholesale licence as aforesaid to sell spirits in quantities not less than five gallons old measure, and wines, malt liquors, ginger beer, and spruce beer in quantities of such articles respectively, if in cask not less than nine and one half gallons old measure and if in bottle not less than seven and one fifth gallons old measure: Provided, always, that Constantia sweet wine and the sweet wine known as Paarl Constantia wine may lawfully be sold in any quantity whatever.
- Quantities under retail licence.** 7. And be it enacted that from and after the first day of April, 1852, it shall and may be lawful for any person who shall take out any retail licence as aforesaid to sell any of the liquors in the last preceding section mentioned in any quantities of the said liquors less than the quantities in which such liquors might lawfully be sold by wholesale.
- Mode of obtaining wholesale licence in towns and villages.** 8. And be it enacted that it shall and may be lawful for any person desirous of taking out such a wholesale licence as aforesaid to authorize the sale in wholesale quantities within the limits of any town or village which shall be either a municipality or the seat of a court of resident magistrate of any of the liquors in the second section of this ordinance mentioned to apply for the same to the distributor of stamps hereinbefore authorized and required to grant the same, who

shall thereupon grant the same accordingly: Provided that every such distributor shall with all convenient speed transmit to the colonial office in Cape Town the name of every person receiving any such wholesale licence, the place or premises where the licensed dealing is to be carried on, and the date of the issuing of such licence, in order that such particulars may be published in the Government Gazette; and provided, also, that the limits of every town or village as aforesaid which shall be a municipality shall be deemed to be the municipal limits for the time being, and that the limits of every other such town or village shall be deemed to be a circle of two miles in diameter having the court-room of the resident magistrate's court for its centre.

Publication in  
Government  
Gazette.

9. And be it enacted that lodging-houses, club-houses, eating-houses, or other places of accommodation, entertainment, or refreshment at which any of the liquors in the second section of this ordinance mentioned are supplied on the premises to inmates or others, and charged or paid for either directly or indirectly and as part of the board or lodging to be provided or otherwise, shall except as hereinafter is excepted be treated and considered as houses or places requiring that the persons keeping the same respectively should take out the licence aforesaid for selling by retail: Provided, always, that no person who shall receive or accommodate any boarder, or lodger, or other inmate for any period certain not less than one month and who shall not supply to such boarder, lodger, or other inmate any wines or spirituous or fermented liquors other than those of the growth or manufacture of this colony shall be required to take out any licence whatsoever.

Lodging-  
house, club-  
house, &c.

10. And be it enacted that every person desirous of taking out any such wholesale licence as aforesaid to authorize the sale in wholesale quantities beyond the limits of any such town or village as aforesaid of any of the liquors aforesaid or desirous of taking out any such retail licence as aforesaid shall on or before the second Monday of February in the year 1852, and in every succeeding year, make an application in writing to the resident magistrate of the district in which he resides, setting forth the nature or description of licence required and the place or premises where the calling or business to be authorized by such licence is intended to be carried on; and when and as often as any person shall apply for such retail licence such person may should the fact be

Application for  
wholesale  
licence beyond  
limits of towns  
and villages, or  
for retail  
licence.

so set forth that he desires such retail licence for the purpose of keeping a boarding-house and for no other purpose, or if the fact so be for the purpose solely of selling liquors not to be drunk or consumed on the premises.

Application for  
boarding-  
houses, &c.

11. And be it enacted that as often as any resident magistrate shall receive any such application as is in the last preceding section mentioned from any person other than a person desirous to keep only a boarding-house or desirous to sell only liquors not to be drunk or consumed on the premises, such resident magistrate shall affix or cause to be affixed in some conspicuous place at or in his office and at or on the gate or entrance of some place of public worship (if such there be within seven miles of the seat of magistracy) and at or on the gate or entrance of the public prison a notice containing the name of the applicant, the description of the house or premises in which the calling or business aforesaid is intended to be carried on, and the day on which the question of the granting of such licence will come on before such resident magistrate for determination, and such notice shall be affixed for the space of twenty-one days at least next before the day last mentioned: Provided, always, that the validity of no licence subsequently granted shall be impeached by reason that any such notice as aforesaid shall not have been duly posted as herein directed.

Grant of  
wholesale  
licence beyond  
limits of towns  
and villages,  
and of retail  
licence by  
court of jus-  
tices.

12. And be it enacted that all wholesale licences save and except wholesale licences for selling within such towns or villages as are in the seventh section of this ordinance defined and all retail licences whatsoever shall be granted by the court in the next succeeding section mentioned and not otherwise, which court shall sit upon the third Thursday of March in the year 1852, and in every succeeding year, for the determination of such questions: Provided, always, that any such court may adjourn from time to time the hearing of any questions which shall be brought before it.

Examination of  
applications  
before such  
court.

13. And be it enacted that upon the day in the last preceding section appointed for the purpose an open court shall be held by the resident magistrate, at which court every justice of the peace of the district shall be entitled to sit, deliberate, and vote, and all such applications as aforesaid (including applications for retail licences to keep boarding-houses only and applications for retail licences for the purpose of only selling liquors not to be drunk or consumed on the premises) shall be laid before such court, and such court



shall consider all such applications, and grant or refuse the licences applied for by the same as it shall see fit: Provided, <sup>Hearing of objections.</sup> always, that such court shall hear the objections if any of any householder of the district, whether grounded on the character, misconduct, or unfitness of the applicant, or on the unfitness or inconvenience of the place or premises in regard to which the licence is sought, or on the number of previously licensed places already in the neighbourhood, or on any other ground which such court shall deem relevant; and such court shall also hear what shall be urged by any applicant or by any agent authorized in writing by any applicant to appear for him in answer to such objections, and shall if necessary administer an oath to any person who shall be deemed competent to give evidence touching the matter in question: Provided, however, that such court may although no householder or other person shall appear before it to object refuse any licence which such court shall be of opinion ought not to be granted.

14. And be it enacted that in case there shall be at any <sup>Constitution of court.</sup> time in any district less than ten justices of the peace of such district resident within the distance of twenty-five miles from the court-room of the resident magistrate it shall and may be lawful for the Governor for the time being to appoint so many fit and proper persons resident within such distance willing to act as shall together with the justices resident within such distance make up ten in number; and all such persons shall be entitled to sit, deliberate, and vote together with the justices of the peace at every such court as is in the twelfth section of this ordinance mentioned: Provided, always, that every such person so appointed shall remain a member of such court as long as he shall think fit, unless upon cause shown the said Governor shall be required and find it necessary to remove him, and that no subsequent increase in the number of justices of the peace shall deprive such person of his right to remain such member: And provided, also, that <sup>Right of justices to attend court.</sup> the names of all such persons shall be announced by a Government notice in the Government Gazette; and provided, further, that every justice of the peace of the district, no matter where resident, shall be entitled to attend every such court, and sit, deliberate, and vote therein.

15. And be it enacted that every resident magistrate shall, <sup>Notice of holding of court, and of applications.</sup> not sooner than one month nor later than fourteen days next before the third Thursday in every March, cause to be sent

to every justice of the peace of his district and every such other person as may under and by virtue of the last preceding section be entitled to sit, deliberate, and vote in the court in the twelfth section mentioned a notice in writing reminding such justice of the peace or other person of the place, day, and hour at which such court will be held, to which notice shall be subjoined a list of the applications which shall under the provisions of the tenth section of this ordinance have been received by such magistrate.

Disqualifica-  
tion of mem-  
bers of court  
through  
interest, &c.

16. And be it enacted that no justice of the peace or other such person as aforesaid who shall have any direct share or interest in the profit or loss of any dealing in any such liquors as aforesaid shall be competent to take any part whatever in regard to the hearing or determination of any application for a licence to authorize such dealing, nor shall any justice of the peace or other such person as aforesaid be competent to take any part whatever in regard to the application of any applicant who is related to such justice or other person by consanguinity or affinity within the fourth degree; and any justice of the peace or other person who shall contravene any of the provisions of this section shall upon conviction incur and be liable to any penalty not exceeding fifty pounds.

Penalty.

Presidency of  
resident ma-  
gistrate.

17. And be it enacted that the resident magistrate of the district shall preside at every such court as aforesaid, and that all questions at any such court shall be decided by the majority of votes of the resident magistrate and the justices of the peace or other such persons as aforesaid then present, and in case there shall be an equality of votes the resident magistrate shall have besides his original vote a casting vote: Provided that should no justice of the peace or other such person as aforesaid attend at the appointed hour, the resident magistrate shall nevertheless proceed with the business of the court, and his determination in regard to any application shall be of the same force and effect precisely as if some one or more justices or other such persons as aforesaid had attended.

Competency of  
magistrate to  
act in the  
absence of  
other members.

Finality of  
decisions of  
court.

18. And be it enacted that the decision of every such court in regard to the granting or refusing of any application for a licence which shall be laid before such court shall be final and conclusive, and shall not be capable of being brought in appeal or review before any other colonial court or authority whatever.

19. And be it enacted that no person shall be allowed to take out more than one retail licence to authorize the sale of any of the liquors aforesaid to be drunk or consumed on the premises, but the same person may in case the court aforesaid should so permit take out more retail licences than one to authorize the sale of liquors not to be drunk or consumed on the premises.

Grant of only one licence for liquors to be drunk on the premises.

20. And be it enacted that when and as often as the court aforesaid shall see fit to grant any such licence as aforesaid the resident magistrate shall deliver to the person who shall have applied for the same a certificate in the form in the schedule to this ordinance in that behalf set forth, which certificate, when produced and delivered to the distributor of stamps shall entitle the person named therein to receive the licence therein mentioned: Provided that no resident magistrate shall grant any such certificate in any case except one in which the court aforesaid shall have decided that the licence referred to in such certificate should be granted.

Certificate of licence.

21. And be it enacted that every resident magistrate shall keep or cause to be kept a register of all certificates granted by him which shall show the date when the application was received, the name of the applicant, and the description of the trade or calling intended to be carried on.

Register of certificates.

22. And be it enacted that no person who shall have applied for and received a retail licence for the purpose of keeping a boarding-house only shall sell any of the liquors aforesaid except to lodgers for consumption on the premises, nor shall any person who shall have applied for and received a retail licence to authorize the sale of liquors not to be drunk or consumed on the premises permit any liquors to be drunk or consumed on the premises; and any person contravening any of the provisions of this section shall upon conviction forfeit any sum not exceeding ten pounds.

Restrictions on holders of boarding-house licences and licences for sale of liquors not to be drunk on the premises.

23. And be it enacted that as often as a retail licence shall have been granted to any person who shall have applied for the same for any purpose other than that of keeping a boarding-house only or that of authorizing the sale of liquors not to be drunk or consumed on the premises, such person shall thereupon enter into a recognizance before the distributor of stamps, who is hereby authorized and empowered to take the same in the sum of fifty pounds sterling, with two sufficient sureties in the sum of twenty-five pounds sterling each, which recognizance with the condition thereof shall be in the form

Recognizance by holders of retail licences before distributor of stamps.

in that behalf prescribed in the schedule to this ordinance; and in case the person applying for such licence shall be hindered through sickness, infirmity, or other reasonable cause to attend in person for the purpose of entering into such recognizance it shall and may be lawful for the person aforesaid empowered to grant such licences to permit two sufficient sureties to enter into such recognizance, each surety in the penalty of fifty pounds sterling, for performance of the conditions of the said recognizance, and which said recognizance shall be acknowledged in the presence of and signed by the distributor of stamps taking the same, and the same with the condition thereof shall be sent to the resident magistrate of the district to be by him duly entered and recorded; and that for every such licence granted without such recognizance and for every such recognizance taken and not sent as aforesaid the distributor of stamps signing such licence shall incur and be liable to the payment of a fine not exceeding fifty pounds sterling.

Record of retail licences by resident magistrates.

Penalty on forged licence or certificate.

24. And be it enacted that if any person shall forge or counterfeit any licence or certificate, or write any name on any such licence to resemble, imitate, or represent the name of any magistrate or other person empowered to grant the same, or shall tender or produce any paper with such counterfeit name or writing therein knowing such name or writing to be counterfeit, or shall take or receive any sum of money for signing or procuring counterfeit signatures to such licences or certificates, the person so offending shall upon conviction forfeit the sum of one hundred pounds, and be liable, moreover, to undergo imprisonment with or without hard labour for any term not exceeding five years.

Penalties on retail dealing under wholesale licence, wholesale dealing under retail licence, &c.

Exception as to places of public amusement.

25. And be it enacted that any person who shall sell any of the above liquors aforesaid by wholesale without having obtained a wholesale licence or by retail without having obtained a retail licence, or who having obtained either of such licences shall sell any liquors excepting upon the premises mentioned in his licence, shall incur and be liable to the pains and penalties imposed upon persons convicted of selling such liquors without a licence: Provided, always, that any person having a retail licence and who shall have entered into or furnished the recognizance in the twenty-third section of this ordinance mentioned who shall be desirous to expose for sale and sell any of the liquors aforesaid at any place of public amusement or resort may apply

to the resident magistrate of the district for permission in writing so to do, and such magistrate may should he see cause grant such permission, and thereupon such sale shall become and be duly authorized and legal.

26. And be it enacted that nothing in this ordinance contained shall extend or be construed to extend to require a licence for the sale of any of the liquors aforesaid sold by any sheriff or other officer acting under the authority of any court, judge, or magistrate, or officer of Her Majesty's customs.

Sale by sheriff, &c., without licence.

27. And be it enacted that nothing in this ordinance contained shall prevent or be construed to prevent any dealer in the liquors aforesaid to whom a wholesale licence shall have been granted to keep or store any of the liquors aforesaid in any number of stores or places, provided that no one of such stores or places be distant from any other of such stores or places more than two miles and that the description of all such places be entered in the licence; otherwise such dealer shall incur and be liable to the pains and penalties imposed upon persons convicted of selling without a licence: Provided, however, that persons in partnership and carrying on business under one firm and in one house or shop only, and proving such partnerships, shall not be required to take out more than one licence for such house or shop.

Storing by wholesale dealer in places not more than two miles distant from each other.

Licence for partnership.

28. And be it enacted that no person who shall have sold any of the liquors aforesaid by wholesale shall except as hereinafter is excepted permit the same to be removed from his premises in any successive quantities which if separately sold would by this ordinance have required a retail licence to authorize the sale thereof: Provided, however, that any wholesale quantity sold at one time may be removed in any successive quantities which the purchaser shall find convenient, in case not more than twelve hours shall elapse between the first of such deliveries and the last.

Prohibition of removal of quantity sold under wholesale licence in successive retail quantities.

29. And be it enacted that every person having obtained any wholesale or retail licence as aforesaid shall except as hereinafter excepted cause to be affixed on some conspicuous place on the outside of and over the door of his house, shop, store, or stores, a board, on which or on the wall over the door or doors of the building shall be painted in letters publicly visible and legible at least two inches long his name at full length (or where there are partners the name or style

Affixing of name of dealer and nature of licence.

of the firm or partnership), and after such name or style the words licensed dealer or dealers in wines, malt liquors, and spirituous liquors by wholesale or retail (as the case may be), and shall keep up such board or sign in good condition during the continuance of such licence; and in default of affixing such board or sign or keeping the same in manner as aforesaid shall incur and be liable to the payment of a penalty not exceeding five pounds sterling, and in case the whole amount of the penalty imposed and of the costs and expenses be not paid within three days after conviction to imprisonment not exceeding one month and not less than one week, unless the penalty, costs, and expenses be sooner paid; but nothing in this ordinance contained shall be construed so as to require any board to be affixed in regard to any house licensed as a boarding-house only or to any other premises which as being what is commonly called an inn or hotel may by the court aforesaid have been specially authorized not to affix any such board: Provided, always, that a list of all persons to whom any such special authority shall have been given shall be at all times preserved in the office of the resident magistrate.

Penalty on non-affixing of name, &c.

Exceptions.

Penalty on falsely affixing board with name, &c.

Right of magistrates, justices, police constables, &c., to enter premises having retail licence.

Seizure and forfeiture of liquor.

30. And be it enacted that every person who shall not have obtained any such licence as aforesaid who shall affix any such board as aforesaid before or on his house, shop, or store or who shall paint or give any notice importing that he is a dealer in the liquors aforesaid or any of them shall for every such offence incur and be liable to the pains and penalties imposed on persons convicted of selling any of the liquors aforesaid without a licence.

31. And be it enacted that it shall and may be lawful for all resident magistrates and justices of the peace in their respective jurisdictions, and the distributors of stamps in their respective districts, and the superintendent of police in Cape Town, and every chief constable or inspector of police throughout the colony to enter houses where liquor is sold by retail, or on or before which is affixed as by the twenty-ninth section of this ordinance required any board or other notice importing that any of the liquors hereinbefore mentioned are there sold by retail, and demand to see the licence; and if the same be not produced and no good and sufficient reason be given for the non-production of the same it shall and may be lawful for them to seize all such liquors found therein as are mentioned in the second section of this ordinance and

the vessels containing the same, and apply such liquors and vessels as forfeited to the use of the colonial treasury and the occupier of such house shall be liable to the pains and penalties imposed by this ordinance on persons convicted of selling any of the aforesaid liquors without a licence: Provided, always, that the reasonable expenses of such seizure shall be paid out of the proceeds of the articles so seized.

32. And be it enacted that if any person shall make information on oath before a resident magistrate or justice of the peace and show probable cause why he suspects that any person sells any such liquors as aforesaid by retail without a licence to that effect it shall and may be lawful for such magistrate or justice of the peace within his jurisdiction to summon such suspected person before him, and also to summon any other person who such magistrate or justice of the peace shall be satisfied is capable of giving material evidence upon the subject to be examined and give evidence upon the charge against such suspected person; and if such persons so summoned as witnesses shall refuse to appear or shall refuse to be examined on oath and give evidence as aforesaid it shall and may be lawful for the said magistrate or justice of the peace as the case may be to commit every such offender to prison for a period not exceeding one month or until the party shall no longer refuse to be examined and give evidence as aforesaid.

Proceedings against persons suspected of illicit dealing.

Committal of witnesses refusing to be examined.

33. And be it enacted that no person licensed to sell any of the liquors in the second section of this ordinance mentioned by retail shall except as hereinafter is excepted sell any of the said liquors or suffer any of them to be drunk in or upon the licensed premises during any part of Sunday or between the hours of nine o'clock at night and six o'clock in the morning of any other day, and any person contravening any of the provisions of this section shall upon conviction forfeit any sum not exceeding ten pounds and upon non-payment thereof shall be imprisoned for any period not exceeding one month: Provided that nothing in this section contained shall prevent any such licensed person from selling any of the said liquors to any lodger or inmate then *bonâ fide* living at or in the licensed premises, nor extend or apply to any such licensed person as the court hereinbefore in the twelfth section mentioned shall authorize to keep his licensed house or premises open for the refreshment of travellers or others during such hours of Sunday as such court shall think

Hours of sale.

Penalty on contravention.

Exception as to sale to *bonâ fide* lodgers.

House of refreshment for travellers, &c.

Endorsement  
of special  
authority on  
licence.

Special clause  
in recognizance  
specifying  
accommoda-  
tion for tra-  
vellers, &c.

Condition of,  
closing at  
earlier than the  
ordinary hour.

Right of certain  
officers to enter  
premises in  
case of riot,  
&c.

requisite for the public convenience, nor to any such licensed person as may by reason of the nature of his business be by such court permitted to supply any of the liquors aforesaid to his guests after the hour of nine o'clock on days other than Sundays; provided, always, that when and as often as the said court shall see fit to grant any such authority the resident magistrate shall subjoin to or endorse upon the licence the hours during which the licensed premises may be so kept open as aforesaid upon Sunday or after nine o'clock on any other day, together with such limitations or restrictions regarding the persons to be served during such hours as the said court shall have thought it expedient to impose; and provided, also, that every such authority shall be revocable at will by the resident magistrate with the consent of any two justices of the peace of the district signified in writing; and provided, further, that when the said court in the twelfth section mentioned shall see fit with reference to the accommodation of travellers to stipulate with any applicant for a retail licence that he should receiving such licence keep reasonable accommodation for man and horse, it shall and may be lawful for such court with the consent of such applicant to direct that a clause be added to the condition of the recognizance to be entered into or furnished by such applicant specifying the accommodation in the way of lodging and stabling which such applicant during the continuance of his licence shall be bound to keep, and thereupon such clause shall by apt words be added to such recognizance; and provided, also, that the court in the twelfth section mentioned may should it so think fit determine in regard to all or any of the retail licences granted by it that the holders of the same shall not sell any of the liquors in this ordinance mentioned later than some hour earlier than nine o'clock at night, and thereupon the recognizance shall be altered accordingly, and the penalty by this thirty-third section provided for any sale of any such liquors as aforesaid after nine o'clock at night shall be incurred by any sale thereof after such earlier hour.

34. And for the better preservation of the public peace and order be it enacted and declared that it shall and may be lawful for the superintendent of police or any magistrate, justice of the peace, inspector of police, police officer, peace officer, gaoler, or constable to enter any house for which a retail licence is granted where any riot, disturbance, or breach of the peace shall take or have taken place, or any soldiers,



labourers, or other persons of a like description, or by men or women of notoriously bad fame and character, and to remove all persons rioting, making disturbance, or drinking therein and all persons being or remaining therein (not being *boná fide* lodgers in such house) between the hours of nine o'clock at night and six o'clock in the morning; and if the person in charge thereof at the time shall not on demand of entrance admit the superintendent of police or such magistrate or other person as aforesaid or shall obstruct them or any of them in removing persons rioting, making disturbance, drinking, or unlawfully remaining there between the hours aforesaid the holder of such licence shall upon conviction forfeit any sum not exceeding ten pounds, and upon non-payment thereof shall be imprisoned for any period not exceeding one month.

Removal of persons rioting, &c.

Penalty on obstructing officers.

35. And for the better prevention and punishment of drunkenness be it enacted that whenever the superintendent of police or any magistrate or other person as aforesaid shall find any person at any time drunk and lying down from the effect of intoxication in any street, road, or lane, or in any other public place within any town or village, such person shall and may be apprehended without warrant, and if so apprehended during the night time shall and may be lodged in any gaol, watch-house, or house of correction, and shall be brought up in every case as soon as convenient and during the ensuing day at the latest before the resident magistrate or justice of the peace having jurisdiction in such place; and every person so apprehended shall on due conviction thereof incur and be liable to a fine not exceeding one pound, and in default of payment it shall and may be lawful for the magistrate or justice of the peace so convicting to commit such offender to prison with or without hard labour and with or without spare diet for a period not exceeding fourteen days, and in cases of repeated offence for a period not exceeding one month, unless the fine in any case be sooner paid.

Apprehension of drunken persons.

Fine for drunkenness.

36. And be it enacted that no person shall be entitled to or shall maintain any cause, action, or suit for or recover at law any sum of money or demand for or on account of any spirituous liquors sold in any quantity less than one quart at any one time, nor for or on account of any particular item or article in any account or demand for spirituous liquors so sold where the quantity shall be less than one quart; and in case any person shall take or receive any pawn or pledge from

Prohibition of action for liquors sold in quantities less than a quart.

Penalty on taking pledges for such quantities.

any person by way of security for the payment of any sum or sums of money owing by such person for spirituous liquors so sold or shall take or receive in payment thereof any article whatsoever in lieu of money every such person so offending and being convicted thereof shall incur and be liable to the payment of a fine not exceeding ten pounds sterling nor less than two pounds sterling for every pawn or pledge so taken in or received by him or them, and the person or persons to whom any such pawn or pledge shall belong shall have the same remedy for recovering such pawn or pledge or the value thereof as if it had not been given as a pledge.

Prohibition of action for liquors sold to unlicensed retailer;— or by unlicensed retailer against purchasers from him.

37. And be it enacted that no person shall have any remedy for or recover any sum of money on account of any of the liquors in this ordinance mentioned which shall be sold contrary to law to an unlicensed retailer nor shall any such unlicensed retailer have any remedy for or recover from any person any sum of money on account of any of the aforesaid liquors sold by him; and all contracts, bills, promissory notes, bonds, and other writings given as a security for the payment of debts contracted for any of the liquors herein mentioned so sold to or by an unlicensed dealer, save and except negotiable instruments in the hands of holders for valuable consideration and without notice of the illegality, shall be and are hereby declared to be null and void.

Sale by wine-farmers of their own produce, in quantities not less than nine and a half gallons.

38. And be it enacted that it shall and may be lawful for the owner or occupier of any land or farm to sell and deliver at such land or farm wine and brandy in any quantity of either not less than nine and a half gallons old measure, such wine or brandy being the produce of such land or farm or made from grapes otherwise procured or purchased by him and made, sold, and delivered on his premises, and to sell wine and brandy in quantities not less than nine and a half gallons old measure, being such produce as aforesaid, to any person in any public market or to any licensed dealer in wines and spirituous liquors without taking out any licence whatever; and any owner or occupier of land as aforesaid who shall sell any such liquors in contravention of this ordinance shall incur and be liable to the pains and penalties imposed on persons convicted of selling such liquors without a licence: Provided, always, that Constantia sweet wine and the sweet wine known by the name of Paarl Constantia wine may be sold and delivered at the land or farm where it was made in any quantity whatever.

Sale of Constantia and Paarl Constantia in smaller quantities.

39. And be it enacted that from and after the commencement of this ordinance it shall not be necessary for any person to take out a licence to brew malt liquors or to distil spirituous liquors; but all persons whether brewers or distillers or not who shall sell any such liquors shall be obliged to take out a licence, wholesale or retail (as the case may be), to authorize the sale thereof, under pain of incurring the penalties by law provided for selling such liquors without licence.

Abolition of licences to brew or to distil.

40. And be it enacted that if any person who shall have obtained any such licence as is by this ordinance required shall die before the day on which such licence would expire it shall and may be lawful for the distributor of stamps, with the approbation of the resident magistrate testified by writing under his hand first had and obtained, to transfer such licence by endorsement to the executor of the deceased or such other fit and proper person as may be willing by taking over the same to benefit the estate of the deceased: Provided, always, that when and as often as the licence so proposed to be transferred shall be one in regard to which any such recognizance as in the twenty-third section of this ordinance mentioned shall have been entered into or furnished it shall be necessary for the person to whom the same is about to be transferred to enter into or furnish a similar recognizance.

Transfer of licence in case of death, &c.

Renewal of recognizance in such case.

41. And be it enacted that all offences against this ordinance shall except as hereinafter provided be cognizable before the resident magistrate or any justice of the peace within whose jurisdiction they shall have been committed: Provided, always, that no justice of the peace shall have any jurisdiction over or in respect of any such offence as shall have been committed within the limits of any municipality which shall be the seat of any resident magistrate or which shall have been committed within four miles of the office of any resident magistrate not being situate within the limits of a municipality, but all such lastmentioned offences shall be exclusively cognizable by such resident magistrates respectively.

Jurisdiction of magistrates and justices.

42. And be it enacted that in all proceedings against any persons selling or dealing in or disposing of any liquors without licence contrary to the provisions of this ordinance such person shall be deemed to be unlicensed unless he shall at the hearing of the case produce his licence or give other satisfactory proof of his being licensed.

Proof of licence.

43. And be it enacted that it shall and may be lawful for every such resident magistrate or justice of the peace as

Direct evidence of payment not necessary for proof of unlicensed dealing.

aforesaid in any proceedings against any person for retailing without licence as hereinafter mentioned to determine upon the fact of such retailing according to the circumstances of the case and the reasonable inferences deducible therefrom, and such resident magistrate or justice of the peace may find such fact to be proved without direct evidence of money or value having been given for the liquor alleged to have been sold or retailed.

Form of summons, recording judgment, warrant, &c.

44. And be it enacted that in any proceeding relative to the prosecution of any offence against this ordinance before any justice of the peace the form of summonses to be served upon defendant to appear to answer the charge, the form of the process to obtain the attendance of witnesses, the form of recording the judgment or sentence of such justice of the peace shall as much as may be be in the forms respectively provided in regard to the said several matters for the courts of resident magistrates, and the form of warrant for committing any offender to prison shall in substance and effect be agreeable to the form in that behalf in the schedule to this ordinance set forth: Provided, always, that in place and stead of the messenger of the said last-mentioned court shall be inserted the name of any person whom such justice of the peace shall nominate and appoint (which person is hereby authorized to act in regard to any such summons or process as aforesaid as if the same were the summons or process of a resident magistrate's court of which such person was messenger); and provided that no heading other than the direction of the instrument to such person as aforesaid shall be necessary and that no clerk or other person other than the justice of the peace issuing any such instrument need sign the same.

Examination of witnesses, noting of evidence, &c.

45. And be it enacted that upon the day of hearing every justice of the peace shall inquire into the charge by hearing all such competent witnesses upon oath as may be produced in support or in disproof of the same, and shall faithfully take down the evidence and proceedings in writing and note any objections which may be made to any evidence received or to the rejection of any evidence refused to be admitted; and such justice of the peace shall make a record in a book kept for that purpose of every such case, showing in separate columns the name of the prosecutor, the name of the person complained of, the nature of his alleged offence, the date when the complaint was made, the day of hearing, the judgment

Record book.

given, the sentence pronounced on conviction, and any remarks which such justice shall deem it proper to preserve.

46. And be it enacted that in every case in which any resident magistrate or justice of the peace shall see cause to convict any person of any of the following offences the person offending shall incur and be liable to the pains and penalties hereinunder respectively set forth, that is to say :

- For selling, dealing in, or disposing of wines, spirituous liquors, malt liquors, ginger beer or spruce beer without a licence, a penalty of ten pounds, and in default of payment thereof being forthwith made or security given for the same to imprisonment with or without hard labour for any period not exceeding one month unless the fine imposed shall be sooner paid or levied, in which case the offender shall be liberated. Penalties on conviction.  
For dealing without a licence.  
First offence £10 fine, or one month's imprisonment.
- For any second conviction of the offence last aforesaid a penalty of twenty pounds, and in default of payment or security as aforesaid being made or given upon conviction to imprisonment with or without hard labour for any period not exceeding three months. Second offence £20, or three months.
- For a third or any subsequent conviction of the offence last aforesaid a penalty of thirty pounds with or without superadded imprisonment as hereunder mentioned; that is to say, in case the fine imposed, with costs, shall be paid or secured forthwith, to imprisonment, with or without hard labour for any period not exceeding six months, and in case the said fine shall not be paid or secured forthwith to imprisonment with or without hard labour for any period not exceeding nine months, either absolutely or until the said fine shall have been sooner paid or levied as the magistrate or justice convicting shall award; or such magistrate or justice may award such imprisonment as aforesaid for any period not exceeding nine months, with a condition that it shall cease and determine after a certain minimum extent of such imprisonment has been suffered in case the fine imposed shall then be paid or levied. Third offence £30, or six months.
- For the offence of contravening any of the provisions or covenants contained in the condition of any subsisting recognizance (not being a provision in regard to which any other penalty or punishment is by this ordinance provided) and which provisions were by any licensed person stipulated and agreed to be fulfilled and kept, a penalty of ten pounds, and in case the same shall not be paid or secured forthwith to imprisonment with or without hard labour for any period not exceeding one month or until the fine be sooner paid; and a third conviction within the space of three years shall *ipso facto* forfeit the subsisting licence of the offender if such licence there be, and such offender shall be thereupon disqualified for holding any licence to sell liquors in future. For contravention of provisions of recognizance £10, or one month's imprisonment.  
Forfeiture of licence on third conviction within three years.

Mitigation of  
penalty.

47. And be it enacted that it shall be lawful for any such resident magistrate or justice of the peace as aforesaid to mitigate any of the penalties or sums of money last aforesaid so as such mitigation shall not in any case reduce such penalty to less than one third thereof and that the causes of such mitigation shall be recorded under the head of remarks in the record book of such magistrate or justice.

Warrant for  
levying fine or  
penalty.

48. And be it enacted that when and as often as any offender shall be convicted of any offence against any of the provisions of this ordinance it shall and may be lawful for the magistrate or justice of the peace convicting such offender to issue his warrant for levying the amount of any fine or penalty imposed upon such offender by distress and sale of the goods of such offender whether such offender shall be in custody by reason of his conviction of such offence or not and for levying also the costs of such distress and sale, and every such warrant shall in substance be agreeable to the form in the schedule to this ordinance in that behalf set forth, and the overplus if any levied under any such warrant shall be rendered to the said offender; and all goods and chattels taken under and by virtue of any such warrant shall be sold under the like provisions and regulations as are or shall be provided by the rules of the courts of resident magistrate for the sale of goods and chattels taken under the process of execution by such courts: Provided, always, that as often as any such warrant shall be issued by any justice of the peace the person to whom such warrant shall be directed shall for the purpose of such seizure and sale be deemed to be invested with the same rights and obliged to the performance of the same duties and be remunerated at the same rate as the messenger of a magistrate's court would have been invested with or obliged to or remunerated at in case the warrant in question had been issued by such court.

Sale of goods  
seized.

Appeal or  
review of  
conviction.

49. And be it enacted that any person who shall be convicted by the judgment of any resident magistrate or justice of the peace of any offence against any of the provisions of this ordinance may should he so think fit bring such conviction in appeal or review: Provided he shall within three days next after the day of such conviction give sufficient security to the satisfaction of the convicting magistrate or justice in double the amount of the pecuniary penalty imposed that he will take proceedings for prosecuting such appeal or review, if from the sentence of any resident

magistrate or justice of the peace in Cape Town or the district thereof or the Cape division within fourteen days, or if from the sentence of any other resident magistrate or justice of the peace to the next ensuing circuit court to be holden for the district or place in which the alleged offence was committed, and also that he will stand to and perform the judgment of the court before which the appeal or review shall be brought in case the conviction should be there affirmed, together with the costs of such appeal or review; and in case the person convicted shall have been already committed to prison he shall upon giving such security as aforesaid be liberated from custody pending the hearing and determination of such appeal or review; but no person convicted who shall fail in giving such security as aforesaid shall be competent to bring such conviction before the supreme or any circuit court of the colony either by appeal or review, anything contained in the Charter of Justice to the contrary notwithstanding.

50. And be it enacted that the whole amount of every fine, penalty, and forfeiture paid or levied upon conviction of any offence against the provisions of this ordinance shall upon recovery thereof be paid to the person upon whose information the conviction shall have been had, unless such person shall decline to receive the same and shall direct some charitable or other appropriation thereof, in which case it shall be applied accordingly: Provided, always, that it shall not be obligatory upon any convicting magistrate or justice of the peace to issue his warrant for distress and sale of the goods of any offender in manner and form as is in the forty-eighth section of this ordinance mentioned unless the person prosecuting such offender shall in the first instance pay in advance or otherwise secure the reasonable costs and charges of executing such warrant.

51. And be it enacted that for the purposes of this ordinance Cape Town and the district thereof shall be deemed and taken to be in the Cape district.

52. And be it enacted that in regard to all offences against any of the provisions of this ordinance committed within the respective municipalities of Cape Town and Green Point the judge and superintendent of police shall have jurisdiction and shall inquire of and determine the same according to the forms and practice of his court.

Interpretation of terms "resident magistrate" and "distributor of stamps."

53. And be it enacted that in the interpretation of this ordinance the terms "resident magistrate" and "distributor of stamps" shall mean the officers for the time being acting as such respectively.

Indemnity for refusal of licences under Ordinance No. 29, 1846, for periods longer than three months.

54. And whereas in anticipation of the commencement of this ordinance and acting under instructions from His Excellency the Governor the resident magistrates and distributors of stamps throughout the colony or such of them as have been applied to under the ordinance aforesaid, No. 29, 1846, for the grant of licences have recently withheld licences whether wholesale or retail for any period longer than three months from the commencement thereof respectively: Be it enacted that every refusal to grant any licence whether wholesale or retail for any period longer than three months from the commencement thereof shall be deemed to be and the same is hereby declared to have been lawful, and that no action, suit, or proceeding in law shall be competent to any person whomsoever who shall complain against any resident magistrate, distributor of stamps, or other person whomsoever for or on account of any such refusal.

Time of taking effect of ordinance. Effect of licences under Ordinance No. 29, 1846.

55. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof: Provided, always, that notwithstanding the repeal thereupon as aforesaid of the aforesaid Ordinance No. 29, 1846, every subsisting licence whether wholesale or retail issued under the provisions of such lastmentioned ordinance shall during the interval between the date of the commencement of this ordinance and the first day of April, 1852, be deemed and judged of in respect of the sales and dealings which it shall be held to authorize precisely as if the said Ordinance No. 29, 1846, had during such interval still remained in force: Provided, also, that if any licence whether wholesale or retail so issued as aforesaid under the Ordinance No. 29, 1846, shall not have expired upon the said first day of April, 1852, such licence shall from and after such date be deemed and judged of in respect of the sales and dealings which it shall be held to authorize precisely as if it had been issued under this ordinance: Provided, further, that nothing in the repeal of the said Ordinance No. 29, 1846, shall be deemed or taken to destroy, abrogate, or affect any brewer's or distiller's licence or any recognizance entered into or furnished under the provisions of the said ordinance, and that



all contraventions of any of the provisions or covenants in any such recognizance shall be prosecuted in the same manner precisely as if at the time of such prosecution the said Ordinance No. 29, 1846, were still in force and operation: And provided that any person licensed to sell by wholesale or retail or for brewing or distilling, whose licence is not to expire until after the first of April, 1852, and to whom no new licence of the description by him required could under the provisions of this ordinance be granted unless by order of the court in the twelfth section mentioned, may send in on or before the day in the tenth section mentioned an application of the nature in the said tenth section mentioned, but stating the date at which his subsisting licence will expire, and such application shall at the first sitting of the court in the twelfth section come on for consideration, and the said court may should it so think fit order and determine that there shall be granted to the applicant a new licence as by him required, to last from the day of the expiration of his subsisting licence till the thirty-first day of March, 1853, for which new licence the applicant shall pay a sum bearing the same proportion to twenty pounds which the term of such new licence shall bear to one whole year, and such new licence shall accordingly in due time be granted; and provided, lastly, that in case any licence subsisting at the date of the commencement of this ordinance not being such a licence as is in the eighth section of this ordinance mentioned shall expire before the thirty-first day of March, 1852, it shall and may be lawful for the resident magistrate of the district, by endorsement upon the said licence to be made free of charge, to continue the same down to and inclusive of the said thirty-first day of March, 1852.

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SCHEDULE.

*Form of Wholesale Licence.*

I, \_\_\_\_\_, distributor of stamps in \_\_\_\_\_ (or in the district of \_\_\_\_\_), on this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, do hereby authorize and empower \_\_\_\_\_, residing at \_\_\_\_\_ to sell, by wholesale, wines, spirituous liquors, and malt liquors at \_\_\_\_\_, and not elsewhere, for \_\_\_\_\_ from the \_\_\_\_\_ and no longer.

(Signed)

\_\_\_\_\_  
3 0

*Form of Retail Licence.*Form of  
retail licence.

I, \_\_\_\_\_, distributor of stamps, in \_\_\_\_\_ (or in the district of \_\_\_\_\_) on this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, do hereby authorize and empower \_\_\_\_\_, residing at \_\_\_\_\_ (and who has produced to me the certificate required by law), to sell, by retail wines, spirituous liquors, malt liquors, ginger beer, and spruce beer at \_\_\_\_\_, and not elsewhere, for \_\_\_\_\_ from the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, and no longer.

(Signed) \_\_\_\_\_

\* \* The above form will apply to what is commonly called a "canteen," as well as to what is commonly called an "inn" or "hotel."

When the certificate shall describe the licence applied for as intended to authorize the sale of liquors not to be drunk or consumed on the premises the words "This licence not to authorize the sale of any of the liquors aforesaid to be drunk or consumed on the premises" shall be added.

When the certificate shall describe the licence as intended to authorize the keeping of a boarding-house the words "This licence to authorize the keeping of a boarding-house for supplying liquors to lodgers only for consumption on the premises" shall be added.

*Form of Certificate to be granted by the Resident Magistrate.*Form of certifi-  
cate.

I, A. B., resident magistrate for \_\_\_\_\_, do hereby certify that C. D. is entitled to receive a licence for selling wines, spirituous liquors, liqueurs, malt liquors, ginger beer, and spruce beer by retail, at \_\_\_\_\_, in \_\_\_\_\_ street, Cape Town (or at \_\_\_\_\_ in the district of \_\_\_\_\_, as the case may be). *And I further certify that the said C. D. has applied for such licence "in order to sell the liquors aforesaid not to be drunk or consumed on the premises" or "in order to keep a boarding house" (as the case may be.)*

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

(Signed)

A. B., Resident Magistrate for \_\_\_\_\_

\* \* When the licence granted shall be one for keeping a canteen or an inn, &c., the clause in italics is to be omitted. But what is termed an "inn" or a "hotel" has not under this ordinance any legal character or incident attached to it distinct from what is termed "a canteen." The provisions of the thirty-third section are intended to enable the court mentioned in the twelfth section to grant in particular cases the privileges necessary to what are commonly called inns and hotels, as distinguished from common taps, canteens, and public houses.

When the licence granted shall be a wholesale licence to authorize selling by wholesale beyond the limits of the towns and villages mentioned in section seven of this ordinance, the words "by wholesale" should be substituted for the words "by retail."

*Form of Recognizance.*

Before me, \_\_\_\_\_, distributor of stamps for \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, A.B., residing at \_\_\_\_\_, acknowledges himself to be indebted to our Sovereign Lady the Queen in the sum of fifty pounds, and C. D. and E. F. severally acknowledge themselves to be indebted to our said Sovereign Lady the Queen in the sum of twenty-five pounds, to be levied upon their and each of their goods and lands, upon condition that if the said A. B. shall not fraudulently dilute or adulterate any liquors sold by him, and shall not use in the selling thereof any measures that are not of full size, and shall not get drunk nor knowingly permit drunkenness nor tipping on his premises, and shall not permit gambling nor shall knowingly permit men or women of notoriously bad fame to assemble on his premises, nor shall keep open his premises nor permit any drinking therein (except for the accommodation of inmates) between the hours of nine at night and six in the morning on any day nor shall sell any liquors on any part of Sunday unless duly permitted so to do by the resident magistrate of the district according to law, but shall keep good rule and order therein by night and by day, then this recognizance to be void, or else to remain in full force.

\* \* When in any case the court granting the licence shall direct a clause to be added to this condition obliging the licensed dealer to keep accommodation for travellers, &c., such clause shall be here inserted, for example, thus: " And if, moreover, the said A. B. shall at all times during the subsistence of the licence in regard to which this recognizance is made keep in or at his licensed premises for public accommodation not less than \_\_\_\_\_ bedrooms, with good beds and stabling and forage for not less than \_\_\_\_\_ horses (*add any other matters agreed upon*), then this recognizance to be void or else to remain in full force."

If the court should in any case or cases determine that sales of liquor shall cease at some hour earlier than nine o'clock (see the concluding provision of section thirty-three), then the hour fixed upon shall be substituted for the hour mentioned in the above form.

*Form of Warrant for Distress and Sale.*

To \_\_\_\_\_, messenger of the court of the resident magistrate of \_\_\_\_\_ (or in case the warrant be issued by a justice of the peace, " To \_\_\_\_\_," the person to whom the warrant is directed).

Whereas \_\_\_\_\_ (name of the offender), of \_\_\_\_\_, was on this day (or on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_) convicted before me of contravening the Ordinance No. 9, 1851, and was duly adjudged to forfeit as a penalty the sum of £\_\_\_\_; this is therefore to authorize and require you that of the goods and chattels

of the said — you cause to be levied and raised the said sum of £—, with the costs of such conviction, amounting to the further sum of £—, together with your charges about the same, and return to the clerk of this court (or when the warrant is issued by a justice of the peace say “return to me”) what you have done by virtue hereof, for which this shall be your warrant.

Given under my hand at —, this — day of —, 18 —.

(Signed) —, Resident Magistrate or  
—, Justice of the Peace  
(as the case may be).

E. F., clerk of the court (this is to be omitted when the warrant is issued by a justice of the peace).

*Form of Justice's Warrant for committing an Offender to Prison.*

Form of  
warrant for  
committal to  
prison.

To the gaoler or keeper of Her Majesty's gaol at —.

Whereas — (name the offender) has been this day adjudged by me to forfeit and pay the sum of £— for contravening the ordinance No. 9, 1851, but has not paid or secured the payment of the said sum, this is therefore to require you to receive the said — into your custody and him safely to keep to hard labour for the space of — (state the period of imprisonment) now next ensuing, unless the said sum of £— shall be sooner paid or levied.

Given under my hand, this — day of — 18 —.

(Signed) —, Justice of the Peace.

\* \* Should the imprisonment be meant to be without hard labour the words “to hard labour” in the above form are to be omitted. When the imprisonment is meant to be wholly independent of the payment of the fine or for some period fixed as a *minimum* of imprisonment upon the expiration of which the prisoner should the fine be paid or levied shall be discharged, the necessary change in the form should be made.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 20th day of December, 1851.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) CHARLES J. BOYLE,  
Clerk to the Legislative Council.

No. 1.—Sd. H. G. Smith.]

Ordinance for remitting and releasing certain Loans of Money heretofore made from the Public Treasury of this Colony to or for the use of the Orange River Sovereignty.

WHEREAS certain sums of money, amounting in all to nine thousand six hundred and eighty-four pounds two shillings and eleven pence half-penny, have heretofore from time to time been lent or advanced by and under the authority of His Excellency the Governor from and out of Her Majesty's revenues in this colony in order to be applied by or under the authority of Her Majesty's High Commissioner for settling and assigning the affairs of certain territories adjacent to this settlement to defray various charges connected with the territory called the Orange River Sovereignty and with the government and administration thereof: And whereas the said Governor by his minute addressed to and laid before the Legislative Council of this colony and bearing date the 10th day of September, 1850, brought the subject of the said loans under the notice of the said council and recommended for certain reasons in the said minute stated that the said loans should be remitted and forgiven: And whereas it is expedient that the said loans should be remitted and forgiven: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all and singular the loans and advances aforesaid, amounting as aforesaid to the sum of nine thousand six hundred and eighty-four pounds two shillings and eleven pence half-penny, as the said loans and the purposes to which the same were applied and specified in the minute aforesaid of the said Governor, shall be and the same are hereby remitted, discharged, released, and cancelled as fully and completely as if the same had been repaid, and that no claim or demand whatsoever shall hereafter be maintained or made in respect of the said loans or any of them or any part of any of them against the local executive government of the said Sovereignty or otherwise howsoever.

Preamble.

Release of  
loan to Orange  
River  
Sovereignty.

2. And be it enacted that the said Governor and all other persons instrumental or in any way concerned in the making of the several loans aforesaid or any of them shall be and he and they are hereby respectively indemnified and saved harmless from and against all prosecutions, actions, suits, and proceedings whatsoever founded upon or arising out of the making of any of the said loans, and that as fully and

Indemnity to  
Governor and  
other officers.

completely as if all the said loans had been made under and by virtue of the authority of an ordinance of the Governor and Legislative Council of this colony.

Time of taking effect.

3. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 6th day of February, 1852.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council.

(Signed) CHARLES J. BOYLE,  
Clerk to the Legislative Council.

No. 2.—Sd. George Cathcart.] [3d April, 1852.

Ordinance for constituting a Parliament for the said Colony.

[Amended by Order in Council dated 11th March, 1853.]

No. 3.—Sd. George Cathcart.] [3d April, 1852.

Ordinance for regulating in certain respects the Appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof.

[*Vide* Order in Council dated 11th March, 1853.]

No. 4.—Sd. George Cathcart.]

Ordinance for Improving the Kowie Harbour.

Preamble.

WHEREAS the opening of the Kowie harbour in Lower Albany for the reception of vessels drawing from twelve to sixteen feet of water would be attended with much advantage to a large portion of the eastern frontier of the colony as well as to the general trade and commerce of the settlement

And whereas the various engineers and other scientific persons who have from time to time examined into the nature and causes of the existing obstruction at the entrance of the said harbour have been unanimously of opinion that it will be practicable to remove the same in such a way as to allow such vessels as aforesaid to pass without danger or difficulty into the said harbour: And whereas it has by the plans and estimates of competent persons been made to appear to the Legislative Council of the Cape of Good Hope, whilst inquiring in committee into the subject of improving the various ports and harbours of the colony by means of or according to the provisions of the Ordinance No. 21, 1847, entitled "Ordinance for improving the Ports and Harbours of this Colony," that the cost of constructing the works necessary for opening the Kowie harbour aforesaid will not exceed the sum of fifty thousand pounds: And whereas the said Legislative Council, whilst recognizing the importance of the proposed improvement of the Kowie harbour, has nevertheless by a vote of the said Council resolved that it would not under existing circumstances be fit or proper for the said Council to advise or consent that His Excellency the Governor should authorize or empower the harbour commissioners of the said Kowie harbour appointed under the said Ordinance No. 21, 1847, to borrow and take up the said sum of fifty thousand pounds under the provisions of the sixth section of the said last-mentioned ordinance: And whereas whilst refusing as aforesaid to risk the public revenue by pledging it for a loan of such an amount as fifty thousand pounds for the purposes of a harbour of which the future trade and the revenue to arise therefrom are necessarily at present more or less conjectural, the Legislative Council did at the same time decide that it would be fit and proper to encourage and assist the proposed works by every means consistent with the principle of not pledging the public revenue for any sum greater than that which there was a reasonable certainty would be repaid by or from the proposed works: And whereas there lie along or adjacent to the left or east bank of the Kowie River certain waste lands the property of Her Majesty the Queen, in extent about two thousand two hundred acres, which land has hitherto been and must continue to be so long as the Kowie harbour remains unopened wholly valueless, but which land will probably become of very considerable value when the proposed works shall have been completed, if not sooner: And whereas

the said waste land can be applied to no more fitting purpose than that of making good as far as the proceeds thereof will reach the cost of constructing those works to the construction of which it will owe its entire value: And whereas in case the inhabitants of the districts interested in the formation of the proposed works or any other persons shall be prepared to subscribe of their own moneys one half of the said sum of fifty thousand pounds, to wit, twenty-five thousand pounds, upon the condition that the remaining twenty-five thousand pounds, if borrowed under a Government guarantee similar to that in the sixth section of the Ordinance No. 21, 1847, mentioned, shall be a first charge upon the works to be constructed by the outlay of the whole sum of fifty thousand pounds, as well as upon the proceeds of the land aforesaid, there will then be just and reasonable ground for presuming that no loss can be ultimately sustained by the public revenue by the proposed guarantee: And whereas there is reason to believe that the inhabitants aforesaid and other persons will be prepared to subscribe the said sum of twenty-five thousand pounds upon the said condition, and it is expedient to provide by law for the carrying into effect of the proposed plan: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for all persons so disposed to associate themselves together for the purpose of forming a company to improve the harbour aforesaid, which company shall be called "The Kowie Harbour Improvement Company," and shall be subject to the rules, regulations, restrictions, conditions, and provisions hereinafter mentioned.

Authority to form joint-stock company.

Number of shares and amount of capital.

Formation of provisional committee.

2. And be it enacted that the said persons so associating themselves shall amongst themselves subscribe and make up a sum of twenty-five thousand pounds in one thousand two hundred and fifty shares of twenty pounds each, and that no person shall subscribe for less than one share.

3. And be it enacted that pending the establishment of the said company the following gentlemen shall form a provisional committee to assist in establishing the same and to act until the first election of directors as hereinafter mentioned, that is to say, George Wood, Henry Blaine, George Jarvis, James Cawood, Stephen Day Mandy, William Wright, Robert Jarvie, D. H. Kenelly, Nathan Birkenruth, Walter Currie, and Edward Irving, of whom the said George Wood shall be chairman; provided that in case of the death or



resignation of the said George Wood the said committee shall choose another of its members to be chairman.

4. And be it enacted that subscription lists shall be opened, headed as follows: "We whose names are here-  
under written hereby agree with each other to become  
shareholders in the Kowie Harbour Improvement Company,  
created under Ordinance No. 4, 1852, and to take, each of  
us, the number of shares set opposite his name;" and  
every such list shall be signed by the shareholder himself  
or by his attorney lawfully authorized, and all such lists  
shall be preserved by the said provisional committee until  
the completion of the first board of directors, after which all  
such lists shall be handed to and preserved by such directors.

Subscription  
lists.

5. And be it enacted that as soon as the whole one thousand  
two hundred and fifty shares shall be subscribed for in manner  
aforesaid the company shall be deemed to be established, and  
the shareholders shall thenceforth be bound to each other  
for the due fulfilment of the several obligations by this  
ordinance imposed upon the shareholders of the said company,  
as fully and amply as if every such shareholder had executed  
a trust deed containing all and singular the provisions and  
stipulations of this ordinance.

Establishment  
of company on  
completion of  
subscription  
for shares.

6. And be it enacted that as soon as the whole one thousand  
two hundred and fifty shares shall have been subscribed for in  
manner aforesaid, but not sooner, the provisional committee  
aforesaid shall, upon a notice to be published not less than  
fourteen days in the Government Gazette and in whatever  
newspaper in Graham's Town shall for the time being receive  
Government notices for insertion, call a meeting of the share-  
holders of the said company, to be held at some place in  
Graham's Town to be named in such notice, on some day and  
at some hour to be in such notice also named, then to elect by  
ballot four directors of the said company; and at such meeting  
the chairman of the provisional committee shall preside.

Meeting for  
election of  
directors.

7. And be it enacted that no person shall be capable of  
being elected a director who shall not possess in his own  
right ten shares at least in the stock of the said company.

Qualification of  
director.

8. And be it enacted that at the first and every other  
election of directors the shareholders of the said company  
shall have a right to vote in manner following, that is to  
say, each shareholder possessing any number of shares from  
one to five shall be entitled to one vote for every director to  
be elected, each shareholder possessing any number of shares

Voting at  
election of  
directors.

Voting by  
executors,  
gaurdians, &c.

from five to ten to be entitled to two votes, each shareholder possessing any number of shares from ten to twenty to be entitled to three votes, and each shareholder possessing any number of shares more than twenty shall be entitled to four votes, but no more; and any person possessing in the capacity of executor of any deceased person, or tutor, curator, or guardian of any minor or other person any number of shares in the said company shall be entitled to the same number of votes which such deceased person if living or such minor or other person if of full age or otherwise competent to vote would have been entitled to; but so, however, that no person shall under any circumstances be entitled to more than five votes in all; and at the first meeting for the election of directors the subscription lists aforesaid shall be deemed and taken to be sufficient proof of the right of every person who shall in person or by attorney have subscribed the same to the number of shares for which he shall have subscribed.

Voting by  
proxy of  
shareholders  
resident  
beyond twenty  
miles from  
Graham's  
Town.

9. And be it enacted that no shareholder residing within the municipality of Graham's Town or within twenty miles of any part of the municipal limits of the said municipality shall be allowed to vote by proxy, but every shareholder resident elsewhere may by writing under his hand witnessed by two witnesses appoint a person to vote for him by proxy, and such appointment shall be in substance as follows, that is to say:

I, A. B., a shareholder of the Kowie Harbour Improvement Company, do hereby authorize and appoint C. D. to be my proxy at all meetings of shareholders of the said company held for the election of directors, and to vote thereat as I myself if present might lawfully do. Witness my hand this — day of — 18 — .

(Signed) A. B.

Witness: E. F.  
G. H.

Authority of  
appointment of  
proxy.

10. And be it enacted that every such appointment as aforesaid of a proxy shall be and continue of force so as to entitle the person appointed to vote by proxy to do so at every such meeting as aforesaid at which the shareholder who shall have made such appointment shall not be himself present until the same shall be revoked by some writing witnessed by two witnesses under the hand of the shareholder who shall have made such appointment and until notice of such revocation shall be given at the office of the directors:

Provided, however, that no shareholder or other person being proxy for any other person or persons shall under any circumstances be entitled to give more than five votes.

11. And be it enacted that the chairman of the first meeting held as aforesaid for the election of directors shall with all convenient speed certify to the Governor of the colony the names of the four directors chosen at such meeting, whereupon the said Governor shall nominate for and on behalf of Government, by Government notice in the Government Gazette, two other directors, who shall together with the four directors above mentioned form a board of six directors; but it shall not be necessary that the directors nominated by the said Governor shall be shareholders of the said company.

Nomination of directors by Governor.

12. And be it enacted that the six directors forming the first board of directors under this ordinance shall go out of office at the end of the third year from the day of the first election of four directors as aforesaid, and in place of such six directors so going out of office four new directors shall be elected by the shareholders and two new directors be nominated by the Governor as aforesaid who shall remain in office during the then next ensuing three years; and at the expiration of such lastmentioned term of three years go in turn out of office, and be succeeded by six other directors to be so elected and nominated as before; and so on as long as this ordinance shall last; but every outgoing director shall be eligible to be re-elected or re-appointed, or having previously been elected by the shareholders he may afterwards be appointed by the Governor, or *vice versa* having been previously appointed by the Governor he may afterwards be elected by the shareholders, provided he be qualified to be so elected.

Duration of office of directors and their re-eligibility.

13. And be it enacted that upon the fourth Monday next before the day on which any such term of three years shall expire a meeting at which the chairman of the outgoing directors shall preside shall be holden for the election of four directors, whose names when elected shall be forthwith certified to the Governor aforesaid by the chairman of the meeting, in order to the nomination by the said Governor of two other directors to form a board of six directors to come into office when the term of service of the existing directors shall expire: Provided that in case the Governor shall not have nominated as aforesaid previous to the day when the existing directors shall as aforesaid go out of office the four directors last elected by the shareholders shall form a board

Triennial election and transmission to Governor of names of elected directors.

Appointment of nominated directors by Governor.

for all purposes of business pending the nomination by the said Governor of two other directors; and provided that the same notice shall be given of every such meeting as is by the sixth section directed in regard to the meeting therein mentioned, and that every election shall be conducted in the manner hereinbefore by the eighth section provided in regard to the first election of directors under this ordinance.

Disqualifica-  
tion and *ipso*  
*facto* vacation  
of office by  
directors.

14. And be it enacted that any director who shall become insolvent or who shall be absent from the colony for three months at any one time or who being an elected director shall cease to possess in his own right ten shares at least of the said company shall *ipso facto* vacate his office as such director, which office shall thereupon become vacant.

Proceedings in  
case of resigna-  
tion, death, or  
absence from  
the colony of  
elected direc-  
tors.

15. And be it enacted that in the event of the death, resignation, or absence from the colony for a longer period than three months of any elected director it shall be at the option of the remaining directors to determine whether the proprietor who shall on the occasion of the next preceding ballot have stood next in number of votes to the proprietor who was then elected by the smallest number of votes shall succeed to the vacancy or whether they will call a meeting of the shareholders to elect a director to fill up such vacancy; and in either case the director succeeding to such vacancy shall continue in office until the expiration of the period during which the director so dying, resigning, or remaining absent from the colony would otherwise have remained in the direction.

Election of new  
director.

16. And be it enacted that when and as often as the remaining directors shall determine to call a meeting to elect any such new director they shall do so by a notice of the like nature and to be published in like manner as the notice in the sixth section already mentioned; and at such meeting a new director shall be elected in the manner hereinbefore provided for the election of directors.

Appointment  
by Governor in  
case of death,  
resignation, or  
absence of  
nominated  
director.

17. And be it enacted that in the event of the death, resignation, or absence from the colony for a longer period than three months of any director nominated by the Governor it shall and may be lawful for the said Governor to nominate another director in his place and stead, who shall thereupon remain in office as long as the person in whose room and stead he shall have been nominated would but for his death, resignation, or absence from the colony have remained in the direction.

18. And be it enacted that at the first meeting of the first board of directors appointed under this ordinance and at the first meeting of every successive board of directors the said directors shall choose one of them to be chairman, who shall preside at all meetings of directors at which he shall be present, and in his absence some other director chosen by the directors present at the meeting shall preside; and in case of an equality of votes amongst the directors present at any meeting, the chairman or other presiding member shall besides an original or deliberative vote have also a casting vote; and at all meetings of directors three shall form a quorum, unless for the special purpose hereinafter in the thirty-third section mentioned.

Election of chairman.

19. And be it enacted that the said directors shall hold their meetings at such times and at such place or places in Albany as the said directors shall find it convenient for the dispatch of business from time to time to appoint for that purpose.

Place of meeting.

20. And be it enacted that the directors of the said company shall with the moneys from time to time in their hands cause the necessary works for improving the said harbour to be constructed with all convenient dispatch: Provided, always, that such works shall be constructed upon and according to such plan or plans as shall from time to time be approved of by the Governor aforesaid, and that no alteration shall be made in any plan once approved of by the said Governor without his express sanction.

Power to construct works for improving the harbour.

21. And be it enacted that it shall and may be lawful for the said directors to appoint and employ such engineer or engineers, officers, wharf-clerks, masons, workmen, and other persons as they shall find it necessary to employ in carrying this ordinance into effect, and from time to time to remove or dismiss all such persons so by them employed, or any of them, and employ others in their room and stead, and to fix the duties and salaries or wages of every person so employed by the said directors, and if the said directors shall think proper so to do, to take security from any wharf-clerk or other person for the due and faithful execution of his office or employment: Provided, however, that no amount of salary shall be assigned to any person engaged for an indefinite period or for any definite period longer than six months until the same shall have been first approved of by the Governor aforesaid.

Appointment of engineer, officers, workmen, &c.

22. And be it enacted that it shall and may be lawful for the said directors from time to time to enter into any contract

Power to enter into contracts, &c.

with any person or company whatsoever for any work to be done and performed or for any materials, articles, or things to be furnished for the purposes of the works to be constructed by the said company; and all contracts upon which the price or sum to be paid by such directors shall exceed the sum of ten pounds sterling shall be in writing, and shall specify the work to be done or materials, articles, or things to be supplied, and the price or sum to be paid for the same respectively, and in case of work to be done the time within which it shall be completed, and some penalty to be suffered in case of non-performance of the contract, and shall be signed by not less than three directors and also by the person or persons contracting; which contract or a copy thereof shall be preserved by the said directors.

Form of contracts.

Drawing of cheques against moneys lodged in banks.

23. And be it enacted that the said directors shall fix and determine in what manner moneys lodged to their credit in the Graham's Town banks hereinafter in the thirty-second section mentioned or either of them shall be drawn out for the purposes of this ordinance: Provided that every cheque drawn against any of the said moneys shall be signed by not less than two directors and shall be countersigned by the secretary or such other officer of the company as shall from time to time be appointed for that purpose at any meeting of the directors.

Numbering of shares.

24. And be it enacted that the one thousand two hundred and fifty shares aforesaid shall be numbered in numerical progression and be thereby identically distinguished.

Issue and form of certificates.

25. And be it enacted that the directors shall keep a book wherein they shall cause to be entered the names and residences of all the shareholders and the number of shares which they respectively hold; and in respect of each share an extract by way of certificate signed by any three directors shall be delivered to the proprietor thereof, which certificate shall at all times be deemed sufficient evidence of the interest in such share of the shareholder to whom the same shall be granted; and the certificate so to be granted shall be in the form following, that is to say:

No.		No.
	CERTIFICATE OF SHARE.	
£20.	IN THE	£20.
	KOWIE HARBOUR IMPROVEMENT COMPANY.	

We, the undersigned, directors of the Kowie Harbour Improvement Company, do hereby certify that A. B., of \_\_\_\_\_,

is the proprietor of the share No.—, in the capital stock of the said company, established under and by virtue of the ordinance of the Governor and Legislative Council of the Colony of the Cape of Good Hope, No. 4, 1852, and which share is transferable with the consent of the directors of the said company.

Graham's Town, Cape of Good Hope,

C. D.,  
E. F., } Directors.  
G. H., }

No.

Entered, I. K.

26. And be it enacted that it shall be lawful for any proprietor to transfer his share or shares by endorsement upon each certificate specifying the person to whom such share is transferred; but no such endorsement shall as between either the assignor or assignee or pretended assignor or assignee and the said company have any force, effect, or operation whatsoever until such endorsement shall have been registered at the office of the said company and three of the directors shall have certified in writing on the back of such certificate their approval of such transfer, and until the assignee or transferee shall either in person or by attorney in a book to be by the directors provided for that purpose have signed an acknowledgment in substance as follows, that is to say:

Transfer of shares.

I, C. D., do hereby acknowledge to have received by transfer from A. B., the share No.—, in the Kowie Harbour Improvement Company, subject to the conditions, provisions, and regulations of the Ordinance No. 4, 1852.

27. And be it enacted that whenever by marriage, inheritance either testamentary or *ab intestato*, bequest, or in any manner other than by transfer as aforesaid it shall be necessary to make a change in the ownership of any of the shares in the said company the person who shall desire that any such share may be transferred into his name as the owner thereof and who shall be accepted as a shareholder shall in the book aforesaid sign an acknowledgment in substance as follows, that is to say:

Mode of recording change of ownership otherwise than by transfer.

I, A. B., do hereby acknowledge myself to have become the owner of the share No.—, in the Kowie Harbour Improvement Company, subject to the conditions, provisions, and regulations of the Ordinance No. 4, 1852.

Provided that nothing herein contained shall be construed to prevent the directors from refusing to accept as such owner

Power of directors to refuse approval of change of ownership; and course then to be adopted.

any husband, heir, legatee or other person whom they shall deem unfit to be so accepted: Provided, also, that if in any case the directors shall decline to approve of any transfer proposed to be made under this or under the last preceding section it shall be competent for the person who shall have sought such transfer to be made to him to cause the names of such a number of other persons not less than three to be submitted to the choice of such directors as persons each of whom is ready and willing to accept transfer of the share or shares in question, and thereupon the said directors shall be bound to make transfer to some one of the persons so submitted, unless in any suit or action brought against them to compel them select some one of such persons and make transfer to the person so selected the said directors shall succeed in proving the existence of reasonable and probable cause for believing that not any of the persons so submitted for the choice of such directors was when so submitted sufficient in worldly circumstances to answer the liabilities imposed by this ordinance upon the owner of such share or shares, or otherwise that all of the persons so submitted were persons of bad fame and character.

Discharge of person transferring share, on acceptance of transfer.

28. And be it enacted that as often as any share shall be duly transferred in manner aforesaid the person transferring the same shall be wholly released and discharged from any liability in respect thereof, and the person to whom the same shall be so transferred shall become subject to all and singular the same liabilities in respect of such share as if such person had been the original shareholder.

Limitation of liability.

29. And be it enacted that not more than twenty pounds in all shall be due or payable in any case or by any person in respect of any share in the said company and that the liability of every shareholder shall be limited to the making good of that amount by instalments as hereinafter mentioned.

Amount and payment of instalments.

30. And be it enacted that the amount of the shares in the said company shall be payable in four equal instalments each of five pounds per share, the first instalment to be paid at the date in the next succeeding section mentioned, and one of each of the remaining instalments to be payable every six months, the first six months to be reckoned from the date appointed for the payment of the first instalment.

31. And be it enacted that every person who shall in manner aforesaid have subscribed for one or more shares in the said company shall be bound to pay or cause to be paid



the first instalment of five pounds per share before or upon whatever day shall be fixed for that purpose by the board of directors : Provided that the said directors shall by a notice to be published for not less than six weeks in the Government Gazette and in whatever newspaper in Graham's Town shall for the time being receive Government notices for insertion give notice of the day on or before which the said first instalment must be paid.

32. And be it enacted that the directors shall before publishing the notice aforesaid calling in the first instalment open an account as such directors with the Eastern Province Bank in Graham's Town and with the Frontier Commercial and Agricultural Bank in Graham's Town, and announce in such notice as aforesaid that the receipt of the cashier of either of the said banks for the amount of any instalments lodged in such bank by the shareholders to the credit of the directors will be received as cash by the said directors : Provided that in case both of the said banks shall not consent to open such account with the said directors upon the same terms, it shall only be obligatory upon the said directors to open an account with that one of the said banks of which the terms shall be most favourable to the company : Provided, however, that all instalments may at the pleasure of the shareholders be paid to the directors of the said company at their office in Graham's Town, who shall lodge the same to the credit of the said directors in such bank or banks in Graham's Town as shall by the said directors be in that behalf appointed.

Opening of account with certain banks.

33. And be it enacted that on failure of payment of any instalment for the space of fourteen days reckoned from the day on which the same became payable it shall be lawful for the directors of the said company if they shall so think fit to declare by resolution in writing signed by four directors that the share or shares of the proprietor making default shall be forfeited, and the same shall thereupon be forfeited accordingly ; and the directors shall dispose of the same to any other person desirous of possessing the same, and shall if needful cause a fresh certificate or fresh certificates to be delivered to such new proprietor in lieu and stead of any certificate or certificates previously issued in respect of the share or shares so declared to be forfeited, which previous certificate or certificates shall thereupon become null and void : Provided, however, that nothing

Proceedings on failure of payment of instalments.

herein contained shall prevent the said directors from recovering by legal process from any proprietor the amount of any instalment due and in arrear for the said space of fourteen days.

Authority to borrow on pledge of the public revenue.

34. And be it enacted that as soon as five pounds per share upon the whole number of shares amounting to six thousand two hundred and fifty pounds shall have been paid up and lodged by the directors in one or other of the banks aforesaid in Graham's Town, the said directors shall certify to the Governor aforesaid under the hands of not less than three of them that the said amount has been actually and *bonâ fide* paid up and lodged as aforesaid, and thereupon the said Governor shall authorize the said directors to borrow and take up an equal sum of six thousand two hundred and fifty pounds, for the repayment of which sum by the said directors in their said capacity the public revenue of this colony shall stand pledged, charged, and bound to the lender or lenders of the said sum; but the said directors shall not conclude any such loan as aforesaid until the Governor aforesaid shall have been informed and shall have approved of the stipulated rate of interest and of the time or times to be fixed for the repayment of the capital; and in like manner the said Governor, upon being certified as aforesaid of the actual and *bonâ fide* payment of each successive instalment of six thousand two hundred and fifty pounds may authorize the directors to borrow upon the same pledge of the public revenue as aforesaid a sum equal to the sum so paid up, but so, however, that the aggregate amount of all the loans aforesaid effected under the pledge of the public revenue shall not exceed the sum of twenty-five thousand pounds; for the payment of which sums so borrowed under the authority of this ordinance the said Governor is hereby authorized if need be to issue his warrant to the Treasurer-General of the colony, who shall pay the amount stated in any such warrant, and to whom the same shall be a sufficient voucher: Provided that every authority given by the Governor aforesaid for the borrowing of any of the sums of money aforesaid shall be announced for public information in the Government Gazette; and provided that if it shall be found that the whole sum of fifty thousand pounds will not be needed for the construction of the said works and the last instalment payable by the shareholders shall be thereupon reduced, the loan to be effected under the

pledge aforesaid of the public revenue shall be reduced in the same proportion; and provided, also, that the said directors shall in case they shall determine to effect any such loan in this colony call for tenders for the loan of the sum required, and shall accept the tender which specifies the lowest rate of interest, and the necessary instrument for securing the repayment of such loan shall be executed by at least three directors; provided, further, that in case the said directors shall determine to effect any such loan in England the instrument for securing the repayment of such loan shall there be executed by the attorney of the said directors appointed by them by a power of attorney to be executed before some notary public in this colony by any three of the said directors; and provided, lastly, that the said directors may with the sanction of the Governor aforesaid borrow and take up upon the same guarantee as aforesaid for the purpose of paying off any former loan or loans any sum or sums not exceeding the amount of the former loan or loans which it shall be necessary or expedient to pay off.

Tenders for  
loan.

35. And be it enacted that when and as soon as it shall be made to appear to the Governor aforesaid by the directors for the time being that the works aforesaid have been sufficiently advanced to permit the entrance of ships and vessels into the said harbour it shall and may be lawful for the said Governor, by his proclamation to be issued for that purpose and published in the Government Gazette, to announce that from and after some certain day to be specified in such proclamation there shall be levied by and paid to the said directors or such other person or persons as shall be appointed to receive the same for their use upon all goods, articles, matters, and things landed or shipped in or at the said harbour such dues of wharfage not exceeding the several rates of dues respectively set forth in the schedule to this ordinance as the said Governor shall approve of and appoint, and such dues from time to time by proclamation to alter, but so however as never to exceed the rates mentioned in the said schedule; and the said directors shall be entitled to recover by legal process all such dues from the owners of all goods, articles, matters, and things landed or shipped respectively, and shall moreover have the right of retaining all goods, articles, matters, and things landed in or at such harbour in respect of which wharfage dues shall be payable until the same shall be paid, as well as the right of preventing any

Proclamation  
of levy of  
wharfage dues.

goods, articles, matters, or things from being shipped in or at the said harbour until the wharfage dues payable in respect thereof shall have been paid: Provided that the said directors shall erect or provide such cranes and other conveniences as may be necessary for landing and shipping at the said harbour.

Grant in trust to directors of waste land.

36. And be it enacted that as soon as may be after a board of directors shall by such election and appointment as aforesaid have been completed a grant of all and singular the waste land aforesaid shall be made by the said Governor to the said directors and their successors, to be held by them in trust for the purposes by this ordinance declared in respect thereof, and thereupon such lands shall vest in the directors for the time being in trust for the said purposes.

Sale of waste land with the approval of government.

37. And be it enacted that it shall and may be lawful for the said directors to sell by public sale to the highest bidder from time to time and at such time and in such lots as shall be most advantageous so much of the land aforesaid as shall not be needed for harbour or other public purposes: Provided that no such sale shall take place until the Governor aforesaid with the advice of the Executive Council shall have signified to the said directors his approval of the proposed sale and the proposed conditions thereof; and provided, also, that there shall be at all times reserved unsold so much of the said land at or immediately adjacent to the said harbour as shall by the said Governor be deemed necessary for custom-house stores or offices or other purposes connected with the public service, which reserved land shall by the said directors be held in trust for and be applied to such purposes as the said Governor shall from time to time appoint.

Reservation of land for public purposes.

Restriction as to payment of dividends, &c., to shareholders.

38. And be it enacted that no interest, dividend, or payment shall at any time be made to any shareholder in the said company from or out of the capital stock of the said company or from or out of the principal of any sum or sums so borrowed as aforesaid, or from or out of any interest which may be realized by the said directors upon such capital stock or borrowed sums, which capital stock, borrowed sums, and interest thereon shall (except as hereinafter excepted) be reserved for and employed in defraying the charges connected with the construction of the works aforesaid in or at the said harbour: Provided, however, that if interest shall become due and payable upon any sum or sums so borrowed as aforesaid before sufficient moneys for paying the same shall have been received by the said directors from wharfage dues

Payment of interest to lenders.

or sales of land then such interest shall be paid from and out of any funds in the hands or at the disposal of such directors.

39. And be it enacted that the net proceeds of all wharfage dues to be collected under the provisions of this ordinance, after deduction of the expenses of collecting the same and of preserving the works so constructed as aforesaid and of all expenses incident to the execution of this ordinance by the said directors, shall be by the said directors applied to the following purposes in the following order of priority, that is to say:
- Application of net proceeds of wharfage dues.
- First,—In payment of the interest accruing due upon all moneys borrowed and taken up upon the guarantee in the thirty-fourth section of this ordinance mentioned.
- Secondly,—In replacing for the purpose of being expended upon the construction of the works aforesaid or in defraying the charges of executing this ordinance all such sums as may have been taken from and out of the capital stock of the company, or the principal of any sum so borrowed as aforesaid, or any interest received upon such stock or such borrowed sum in order to pay and satisfy any by-gone interest upon borrowed moneys.
- Thirdly,—In paying to the shareholders respectively such interest or dividend upon their paid-up capital as the Governor aforesaid shall with the advice of the Executive Council sanction and allow, not however exceeding (so long as any portion of the debt incurred under the guarantee aforesaid shall remain unpaid) six per cent. per annum, calculated from the date when such capital was paid up.
- Fourthly,—In liquidating from time to time as means exist and as the time fixed for the payment of any such loan as aforesaid will permit the principal of every such loan so contracted as aforesaid.
- Fifthly,—In paying to the shareholders when and as soon as every such loan so contracted as aforesaid shall have been liquidated interest or dividends upon their paid-up capital not exceeding eight per cent. per annum, and such interest or dividends may be so calculated as to give such shareholders eight per cent. per annum on their said capital, reckoned after the principle of simple interest from the date when such capital was paid up after deducting the amount of all interest or dividends previously received.
- Sixthly,—In repaying to the shareholders from time to time, but in instalments of not less than one pound per share, the whole of their paid-up capital.
- Seventhly,—In paying to every shareholder by way of recompense for his risk a bonus of ten shillings for every pound by such shareholder paid up upon his share or shares in the said company.

Application of  
proceeds of  
sales of land.

40. And be it enacted that the moneys arising from every sale as aforesaid of any of the land aforesaid shall (except as hereinafter excepted) be regarded and considered as if such moneys had accrued from wharfage dues and be applied in the same manner and order of priority as in the last preceding section directed in regard to wharfage dues: Provided, always, that no portion of any moneys the proceeds of any land sale as aforesaid shall be applied to pay any interest or dividend or other sum of money whatsoever to any shareholder of the said company so long as any portion of any loan contracted under the guarantee aforesaid shall remain unliquidated: Provided, however, that in case the proceeds of any such land sales shall be received by such directors at a time when there shall have been wharfage dues received by the said directors, but not sufficient, after paying accruing interest upon every such loan as first in the last preceding section mentioned and replacing by-gone interest as secondly in the said last preceding section directed, to pay such interest or dividend as is thirdly in the said last preceding section specified, then and in that case it shall be lawful for the said directors to apply the proceeds of such sale of land to the payment of such accruing interest as aforesaid and the replacing of such by-gone interest as aforesaid, so far as may be necessary in order to set free and leave clear for the payment of such interest or dividend as is thirdly in the last preceding section mentioned any such wharfage dues as shall have been received by the said directors as aforesaid: Provided, further, that when all such loans as aforesaid contracted under the guarantee aforesaid shall have been fully liquidated then the proceeds of all sales of land shall be applicable and be applied to pay interest or dividends to the shareholders as aforesaid and to repay to them respectively their paid-up capital with the bonus aforesaid, in like manner precisely as if such proceeds were wharfage dues.

Accounts of  
directors.

41. And be it enacted that the said directors shall and they are hereby required to cause a true, exact, and particular account to be kept and half-yearly made up and balanced, that is to say, on the 30th day of June and the 31st day of December in each year, of all the moneys received from the shareholders or borrowed under the Government guarantee or in any other manner received by such directors for the purposes of this ordinance, and of the charges and expenses incurred by the said directors in carrying this ordinance into effect; and

a copy of such account together with all necessary vouchers shall be transmitted by the said directors to the Governor aforesaid in order to the same being audited by the Auditor-General ; and the said directors shall cause an abstract of every such account to be published without delay in whatever newspaper in Graham's Town shall for the time being receive Government notices for insertion.

42. And whereas the Honourable Wm. Cock, Esq., the proprietor of the land adjoining the said harbour upon the right or west side of the same, is willing in consideration of the benefit which his property is likely to derive from the improvement of the said harbour to made over a portion of his said property for public purposes: Be it enacted that the said William Cock shall free of charge grant to Her Majesty the Queen should he be required so to do a piece of land situated at a convenient distance from such harbour, not exceeding in extent two hundred and fifty square feet, for the purpose of erecting thereon any stores or buildings which may be needed for the public service.

Grant of land by proprietor on west side to Her Majesty for public purposes.

43. And be it enacted that the right to and property in all and singular the embankments, walls, piers, jetties, wharfs, or other works constructed under the provisions of this ordinance, as also to and in the said harbour itself, shall vest in the directors of the said company for the time being: Provided that the said harbour when completed shall be taken to extend from the end next the sea of the piers to be constructed at the entrance thereof up to the spot or place in the Kowie River at which a line drawn parallel to the line of low water along the sea shore and at a distance from such low water line of one mile would cross the said river; and provided, also, that the said directors shall appoint fit and proper landing-places in the said harbour, and that no articles shall be landed or shipped except at some such landing-place unless by permission of the said directors, under the penalty of forfeiting any sum not exceeding fifty pounds and not less than forty shillings, which sum shall be paid to the said directors for the purposes of this ordinance.

Property in works vested in directors.

Extent of harbour, landing-place, &c.

44. And be it enacted that the directors for the time being may from time to time should they deem it expedient let or farm the wharfage dues payable in or at the said harbour, and all wharfs, cranes, machines, or other conveniences provided by the said directors under this ordinance at such rents and upon such terms and conditions as shall be agreed upon

Power in directors to farm out wharfage dues.

Limitation of term of hiring to one year.

between the said directors and the person contracting with them: Provided that the said directors shall be bound to take good collateral security for the payment of the stipulated rent and that no such hiring shall be for any term exceeding one year; provided, also, that no such contract of hire shall be entered into before the Governor aforesaid shall have been informed of and shall have approved of the terms and conditions thereof and of the amount of rent proposed to be reserved.

Arrangements with persons providing steam-tug.

45. And be it enacted that it shall and may be lawful for the said directors to make arrangements with any person or persons who shall be willing to provide and keep in or at the harbour aforesaid a steam-vessel of the sort commonly called a steam-tug for assisting vessels frequenting the said harbour; and such directors shall approve of a reasonable scale of fees or charges to be paid by vessels employing such steam-tug, and no higher fees or charges shall in any case be demandable or payable: Provided that the said directors before approving of any such scale shall submit the same to the Governor aforesaid and obtain his sanction; and provided, also, that no vessel shall be bound to employ or accept the assistance of such steam-tug.

Liability of owners of ships for damage to works.

46. And be it enacted that the owner of every vessel shall be answerable to the said directors for any damage done by such vessel through the wilful act or negligence of any person employed about the same to any of the works aforesaid or to the said harbour, and the master or other person in charge of such vessel by whose wilful act or negligence any such damage is done shall also be liable to make good the same, and the said directors may detain such vessel until sufficient security has been given for the amount of damage done by such vessel: Provided that every such owner who shall be obliged to pay or make good the amount of any damage arising from any wilful or negligent act or omission of any other person shall be entitled to recover from such other person the amount so paid.

Style and description of directors for legal purposes.

47. And be it enacted that in any action or suit which may be brought by or against the said directors in their capacity as such it shall and may be lawful for such directors to sue or be sued by the style or description of "The Directors of the Kowie Harbour Improvement Company," and in all criminal proceedings the same style may be used: Provided, always, that no director shall be deemed to be an incompetent witness in any such suit or proceeding as



aforesaid civil or criminal by reason of his holding the office of director; and provided, also, that the said directors shall be repaid out of the moneys in their hands under the provisions of this ordinance all such costs and expenses as they shall incur by reason of bringing or defending any suit or action, unless such suit or action shall have arisen from their own gross negligence or wilful default, which costs or expenses shall be deemed and taken to be charges duly incurred in the execution of this ordinance.

48. And be it enacted that when and as soon as the said harbour shall be rendered fit for the reception of vessels it shall and may be lawful for the Governor aforesaid by proclamation to be by him in that behalf issued and published in the Government Gazette to declare and make known that the Ordinance No 4, 1844, entitled "Ordinance relating to Merchant Vessels arriving in the Ports of this Colony," or so many of the clauses or provisions thereof as the said Governor shall deem applicable, is or are in force in the Kowie harbour; and from and after such proclamation the said ordinance or so many of the clauses or provisions thereof as the said Governor shall specify shall be in full force and effect in regard to the said harbour; and the said Governor shall appoint all officers necessary for carrying the same into effect: Provided, always, that until such proclamation shall be issued the said ordinance shall not apply to the said harbour and that no more of the said ordinance than shall be specified in such proclamation shall be at any time of force within the said harbour.

Power of Governor to proclaim Ordinance No. 4, 1844, applicable to Kowie harbour.

49. And be it enacted that so long as any portion of any loan contracted under the guarantee aforesaid shall remain unpaid no director of the said company shall be competent to receive any salary or allowance whatsoever for his services as such director: Provided, however, that when every loan shall have been repaid it shall and may be lawful for such directors to be paid from and out of the wharfage dues or other revenues receivable by the said directors such sum or sums of money by way of recompense for their trouble as the majority of shareholders assembled at any general meeting for the election of any director or directors shall by resolution determine and as the Governor aforesaid shall sanction.

No allowance to directors payable until payment of loan.

50. And be it enacted that as soon as the shareholders of the said company shall be fully repaid their paid-up capital with all interest or dividends due thereon as well as the

Period at which works, &c., shall become property of the Queen.

certain bonus hereinbefore provided then all and singular the works aforesaid and all land granted to or otherwise vested in the said directors and not sold or otherwise disposed of shall cease to be the property of the said directors and become thenceforth the property of Her Majesty the Queen in her colonial government for public purposes, and this ordinance shall thereupon cease and determine: Provided that the directors for the time being shall be bound to execute all necessary surrenders or other deeds requisite for vesting the said property in her said Majesty.

Cessation of board under Ordinance No. 21, 1847.

51. And be it enacted that upon the commencement and taking effect of this ordinance the board of commissioners appointed under the Ordinance No. 21, 1847, for the improvement of the port and harbour of the Kowie River shall be dissolved, and no such board shall again be appointed during the existence of this ordinance.

Determination of ordinance on non-subscription of capital within twelve months.

52. And be it enacted that unless the whole of the sum aforesaid of twenty-five thousand pounds shall be subscribed in manner aforesaid within the term of twelve months from and after the commencement and taking effect of this ordinance then this ordinance shall at the expiration of such term of twelve months cease and determine.

Interpretation clause.

53. And be it enacted that in the interpretation of this ordinance the term "governor" shall mean the officer for the time being administering the government of this colony, and that whenever any public officer is named by his name of office the person meant shall be deemed to be the person acting as such officer, and that the term "month" shall mean a calendar month, and that the term "owner" when used in relation to goods shall be taken to include any consignee, consignee, shipper, or agent for the sale or custody of such goods as well as the proprietor thereof, and that words importing the singular number only shall include the plural number also and that words importing the plural number only shall include the singular number also and that words importing the masculine gender only shall include females, unless there be something in the subject or context repugnant to such construction.

Time of taking effect.

54. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

## SCHEDULE.

Table of Dues of Wharfage and Cranage payable at the Kowie Harbour on goods, articles, matters, or things landed or shipped in said Harbour under Ordinance No. 4, of 1852.

LANDED.	s.	d.	Wharfage dues on goods landed.
Liquids.—On every pipe, puncheon, butt, or other cask of the capacity of 80 gallons imperial or upwards, and containing wine, spirits, or other liquids, the cask.....	2	8	
On every hogshead, half puncheon, tierce, or other cask of the capacity of 40 imperial gallons and under 80 gallons, containing wine, spirits, or other liquids, the cask.....	2	0	
On every quarter or other such cask of the capacity of 20 imperial gallons and under 40 gallons, containing wine, spirits, or other liquids, the cask.....	1	4	
On every barrel, anker, keg, or other cask of less capacity than 20 imperial gallons, containing wine, spirits, or other liquids the cask.....	1	0	
In jars, bottles, and other packages (not in bulk) each of the content of one imperial gallon or upwards, the imperial gallon.....	0	2	
In jars, bottles, and other packages (not in bulk) each of less content than one imperial gallon, the imperial gallon.....	0	2	
Tea, in all packages, per 100 lbs.....	1	8	
Coffee, sugar, pepper, sago, saltpetre, turmeric, tamarinds, spices, dates, rice, gram, paddy, and drugs, in bags, the bag.....	0	4	
Wheat, barley, oats, rye, and other grain and bran in bags or bulk, the imperial quarter.....	0	8	
Flour, the 196 lbs.....	0	8	
Tobacco, manufactured (except cigars), the cwt.....	0	8	
Tobacco, leaf, the cwt.....	0	6	
Cigars, the 1,000.....	0	4	
Manufactures and all dry goods in cases, bales, or other packages, not otherwise described, measuring 60 cubic feet or upwards the package.....	8	0	
40 cubic feet and under 60 do.....	6	0	
30 do. and under 40 do.....	4	8	
20 do. and under 30 do.....	4	0	
10 do. and under 20 do.....	2	8	
5 do. and under 10 do.....	2	0	
2 do. and under 5 do.....	1	0	
under 2 do.....	0	6	

	s.	d.
Hams or cheeses, when not in packages containing more than one of either, the ham or cheese .....	0	2
Paint, the ton.....	8	0
Earthenware, in crates, the crate.....	2	8
Glass bottles, empty, the gross.....	0	8
Bricks, tiles, or slates, the 1,000 .....	4	0
Paving stones, the ton.....	2	0
Cocoanuts, the 1,000.....	4	0
Rattans, the 100 bundles.....	3	4
Tar, pitch, and rosin, the cask.....	0	8
Salt and coals, the ton.....	2	0
Mill stones, the stone.....	3	4
Fir and teak timber, the load of 50 cubic feet.....	2	8
Mahogany and timber not being fir or teak, the load of 50 cubic feet.....	4	0
Deals, planks, boards, battens, and all wood cut from the log (except staves), the load of 50 cubic feet ...	4	0
Staves, viz., crown pipe, the 1,000 .....	10	0
Do. crown hogshead, do.....	6	8
Do. other pipe, do.....	6	8
Do. other hogshead, do.....	4	8
Do. barrel and heading do.....	3	4
Masts or spars under 5 inches diameter, each.....	0	2
Do. 5 to 8 inches diameter, each.....	1	0
Do. above 8 inches do.....	4	8
Heavy goods, not otherwise described, the ton.....	3	4
Horses, mules, or asses, each.....	6	8
Calves, sheep, or pigs, each.....	0	4
Horned cattle, cows, bulls, and oxen, each.....	3	4
Ivory, per 100 lbs.....	2	0
Oars, per 100.....	10	0

## SHIPPED.

Wharfage dues on goods shipped.	Wine, spirits, limejuice, oil, or other liquids, the 100 imperial gallons.....	1	4
	Beef, pork, butter, candles, tallow, flour, meal, fruits (dried and green), buchu leaves, biscuit, fish (dried and pickled), and preserves, the cwt.....	0	4
	Wheat, barley, rye, oats, bran, pease, beans, and lentils, the imperial quarter.....	0	8
	Hay, the 100 lbs.....	0	4
	Hides, of horses or horned cattle, the 100.....	6	0
	Skins, calf, goat, seal, or wild animal, the 100.....	0	8
	Sheep skins, the 100.....	0	4
	Bones, hoofs, or glue pieces, the ton.....	1	4
	Horns, the 1,000 .....	2	8
	Ivory, the 100 lbs.....	0	8
	Ostrich feathers, the package.....	3	4
	Wool, the 100 lbs.....	0	8

	s.	d.
Argol, aloes, gum, or wax, the ton.....	2	0
All other articles not enumerated or otherwise described, the ton.....	1	4
If measurement goods not otherwise enumerated or described, the 40 cubic feet.....	2	0
Horses, mules, or asses, each.....	6	0
Horned cattle, each.....	2	0
Sheep, goats, or pigs, each.....	0	4

EXEMPTIONS.

1st.—All public stores, naval or military baggage, and personal baggage of passengers.

2nd.—Ships' stores outwards.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 3rd day of April, 1852.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) CHARLES J. BOYLE,  
Clerk to the Legislative Council.

No. 5.—Sd. George Cathcart.]

Ordinance to enable Municipal Commissioners appointed under Ordinance No. 9, 1836, to purchase or hire Immovable Property for Municipal Purposes.

WHEREAS the forty-fourth section of the Ordinance No. 9, Preamble. 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," has recently been adjudged to be so worded as to render its meaning and operation doubtful, for which reason it is necessary to repeal the said section and to make other provisions in its room and stead: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said forty-fourth section of the said ordinance shall be repealed and the same is hereby repealed accordingly. Repeal of 44th section of Ordinance No. 9, 1836.

Power to commissioners to purchase or hire houses, &c.

Consent of wardmasters.

Consent of resident householders in certain cases.

2. And be it enacted that the commissioners appointed under and by virtue of the Ordinance No. 9, 1836, for any municipality may and they are hereby authorized and empowered to treat with the owner or owners or occupier or occupiers of any houses, buildings, lands, grounds, or other fixed property required for the purposes of the municipality and to purchase the same for such sum of money or hire the same for such rent as to the said commissioners shall appear reasonable, which purchase-money or rent as the case may be shall be respectively paid out of the municipal revenue arising from the said ordinance: Provided, always, that the said commissioners shall not purchase or hire any such fixed property as aforesaid without the consent first had and obtained of a majority of the wardmasters if any of the municipality present at a meeting of the wardmasters if any of the municipality to be called by the said commissioners for the purpose of considering the expediency of such purchase or hire as the case may be; and provided, also, that in case the purchase-money proposed to be paid shall exceed one hundred and fifty pounds or the rent proposed to be paid shall exceed twenty pounds per annum, or in case there shall be no wardmasters belonging to the municipality, then neither the contract of purchase nor the contract of hire shall be concluded by the said commissioners without the consent first had and obtained of a majority of the resident householders of the municipality present at a meeting of the resident householders of the municipality to be called by the said commissioners for the purpose of considering the expediency of such purchase or hire as the case may be, at which meeting every commissioner may speak but no commissioner shall vote; provided, further, that when and as often as it shall be necessary to call a meeting of the resident householders for any such purpose as aforesaid it shall not be necessary to call any meeting of wardmasters for the same purpose; and provided, also, that every such meeting as aforesaid whether of wardmasters or resident householders shall be called by the said commissioners by a notice in writing, which shall be posted upon or affixed to some public place within the municipality for not less than seven clear days previous to the day appointed for the holding of such meeting and such notice shall also be published for the same space of time in some one or more of the newspapers if any published within the municipality; and provided, lastly, that it shall

not be lawful for any such commissioners as are in this ordinance mentioned who shall without the consent of any such meeting as aforesaid have purchased any such property as aforesaid to purchase within the term or space of twelve months next after such former purchase any other such property as aforesaid without the consent of some such meeting of householders as aforesaid first had and obtained in case the purchase-money of such former purchase and of such other proposed purchase shall together exceed one hundred and fifty pounds; and in like manner no such commissioners who shall without the consent of any such meeting have hired any such property as aforesaid shall within the space of twelve months next after such former hiring hire any other such property without the consent of some such meeting in case the rent of the former hiring and of such other proposed hiring shall together exceed twenty pounds per annum.

3. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof. Time of taking effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 3rd day of April, 1852.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) CHARLES J. BOYLE,  
Clerk to the Legislative Council.

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No. 6.—Sd. George Cathcart.]

Ordinance to prevent the Commission of Nuisances in the River Liesbeek.

WHEREAS a large and increasing number of families resident in Rondebosch and neighbouring places are solely dependent for their supply of water for drinking and domestic purposes upon the water of the River Liesbeek: And whereas owing to the commission of nuisances in the said river and the Preamble.

absence of proper regulations for securing the purity thereof the water of the said river is likely to be rendered, more especially in the summer season, so unwholesome as to be unfit for use: And whereas it is expedient to remedy this growing evil: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all and singular the rules and regulations in the schedule to this ordinance contained and all and singular the penalties and punishments by the said rules and regulations provided for contraventions thereof shall have and they are hereby declared to have the force of law, and to be of the like effect in every respect as if they had been severally and respectively inserted in the body of this ordinance.

Legalization of rules in schedule.

Prosecution of offences in court of resident magistrate.

2. And be it enacted that the offence of contravening any of the rules or regulations aforesaid may lawfully be prosecuted in the court of the resident magistrate of the district in which such contravention shall have taken place; and be it enacted that the amount of every fine imposed and recovered under this ordinance and not exceeding twenty shillings shall be paid to the informer, and that when any such fine exceeding twenty shillings shall be imposed and recovered one half thereof shall be paid to the informer and the other half to the colonial treasury: Provided that if one half of such lastmentioned fine shall amount to less than twenty shillings the informer shall nevertheless receive twenty shillings thereof and the balance only shall be payable to the colonial treasury.

Time of taking effect.

3. And be it enacted that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

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#### SCHEDULE.

Prohibition of dams.

1. No dam (by which is meant any hindrance placed in the river to prevent the ordinary flow thereof) shall be placed or continued in the bed of the river unless provided with a fit sluice or fit sluices. Any person placing or continuing to keep up any dam not provided with a fit sluice or sluices to forfeit any sum not exceeding ten pounds nor less than two pounds, and in default of payment to be liable to imprisonment with or without hard labour for any period not exceeding one month: Provided that nothing herein contained shall be deemed or taken to confer any right or title upon any person whomsoever to place hereafter any dam in



the said river or to continue therein any dam already placed therein, which right or title if any shall be judged of precisely as if this ordinance had never been passed.

2. All sluices in the Liesbeek River shall be raised by the respective persons by whom they shall have been respectively placed or by whom they shall be respectively kept up or used at least once in every month during the period between the 1st of September and the 1st of May in every year; that is to say, they shall be raised so as to allow the free escape of the water on the last Saturday of every month during such period, not later than five o'clock p.m., and shall not be again put down so as to stop the flow of the water before seven o'clock on the same evening. Any person having a dam and neglecting to cause this regulation to be complied with to forfeit for every such offence any sum not exceeding ten pounds nor less than two pounds, and in default of payment to be liable to imprisonment with or without hard labour for any period not exceeding one month: Provided that if any person shall succeed in showing the existence of a legal right antecedent to the passing of this ordinance to object to the opening of his sluice or sluices in the manner above directed if such opening had been enforced by the authority of the colonial government, shall be enabled to claim compensation from the colonial government for any damage which he shall prove himself to sustain by being compelled to obey this regulation.

3. Every person having or keeping up any dam and sluice in the said river must within seven days from the commencement of this ordinance report the same to the resident magistrate of the district in which the same shall be placed; and any sluice found in the said river in regard to which no such report shall have been made shall by order of the resident magistrate of the district be demolished. The person who shall make such report and in case of change of possession the occupier for the time being of the property occupied by such person to be the person bound to fulfil the preceding regulations.

4. Any person erecting or having any privy or watercloset so situated that the filth thereof or therefrom will fall into the said river or by means of any drain, pipe, or other channel find its way into the said river, and any person throwing or conducting night-soil or throwing or conducting the offal or blood of slaughtered animals into the said river, or washing wool, or dressing or steeping skins in the said river, or throwing into the said river any dead carcase of any animal, or drowning any animal in the said river shall forfeit any sum not exceeding twenty pounds and not less than ten pounds, and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding three months.

5. Any person casting or throwing garden or other rubbish into the said river or throwing or suffering to run over the surface of the ground into the said river any water fouled by washing

Raising and putting down of sluices.

Penalty on contravention.

Prior legal rights.

Report of dams to resident magistrate.

Penalty on erecting privies and otherwise polluting the stream.

Penalty on throwing rubbish, &c., into the river.

dirty clothes therein, or doing wilfully and knowingly any other act not specified in these regulations and plainly calculated to make the water of the said river impure shall forfeit any sum not exceeding ten pounds nor less than one pound and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding one month.

Erection  
of washing-  
places.

6. It being in contemplation to raise by public subscription or other means sufficient funds for providing suitable washing-places on the banks of the river furnished with necessaries and conveniences for washing clothes, at which washing-places all persons shall be at liberty to wash clothes free of charge, it shall not be lawful for any person at any time after a sufficient number of such washing-places shall have been provided and suitably supplied with necessaries and conveniences for washing clothes to wash or place dirty clothes in the bed of the said river, under any penalty not exceeding two pounds nor less than five shillings, and in default of payment the person convicted shall be liable to be imprisoned with or without hard labour and with or without spare diet for any period not exceeding fourteen days: Provided that nothing in this regulation shall have any force or effect until one month after His Excellency the Governor shall by a government notice to be published in the Government Gazette announce for general information that a sufficient number of such washing-places furnished with necessaries and conveniences for washing clothes have been provided; and printed notices containing such government notice, both in the English and Dutch languages, and such other matter as may be useful, shall be posted in convenient places at and near the said river for the guidance of all whom it may concern.

Government  
notice of such  
erection, &c.

Regulations  
for washing-  
places.

7. It shall be lawful for the respective resident magistrates of the Cape and Wynberg districts in their respective districts to frame rules for such washing-places when established, regulating the mode in which persons frequenting them shall make use of them and of the several conveniences to be there provided, which rules shall be approved of by the Governor for the time being. Any person who shall disobey any of such rules so approved of may by the magistrate be excluded from the privilege of using any of the washing-places in his district, and may moreover be fined any fine not exceeding ten shillings, and in default of payment may be imprisoned with or without hard labour for any period not exceeding seven days.

Washing-tubs  
on adjacent  
properties.

8. As soon as the sixth of these regulations shall come into force but not before all occupiers of any land by or through which the river runs and generally all persons whomsoever using the water of the said river for washing purposes elsewhere than at some public washing-place shall be bound to be provided with washing-tubs, which tubs must not be placed in the river but only upon or adjacent to one or other of its banks under the like penalty as in the sixth of these regulations provided.

9. Every such occupier or other person as in the eighth regulation mentioned shall be bound by digging a pit or by some other means to prevent the dirty water from the washing-tubs from falling or running back over the surface of the soil into the river, unless from the lie of his ground such dirty water may be emptied upon it without falling or running back into the river; and any occupier who shall permit the washing of clothes upon his land without providing pits or other means of preventing the dirty water aforesaid from running back over the surface into the river when such means shall be necessary for preventing the same shall for each offence forfeit any sum not exceeding five pounds and not less than one pound, and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding one month.

Penalty on allowing foul water to flow back into the stream.

10. In order that the public may be able to obtain occasional supplies of drinkwater comparatively free from impurity pending the time when such washing-places as aforesaid may be established no washing of dirty clothes in the said river shall during the period between the 1st of September and the 1st of May in every year take place sooner than eight o'clock in the morning of any day. Any person found washing dirty clothes in the said river contrary to the terms of this regulation shall incur the like penalty as that by the sixth regulation provided.

Hours within which washing may be done.

11. Any person washing clothes upon private property by or through which the said river runs without being employed or authorized so to do by the occupier of the property in or on which such person shall, be so washing shall forfeit any sum not exceeding two pounds and not less than ten shillings, and in default of payment shall be liable to imprisonment with or without hard labour and with or without spare diet for any period not exceeding one month.

Penalty on washing on private property without leave.

12. All open cuts, ditches, water-courses, or channels whether artificial or natural into which the water of or from the said river passes and out of which the water returns again into the river, either through the same mouth by which it entered such cuts or channels or by any other, shall for the purposes of the fourth, fifth, sixth, eighth, ninth, and tenth of these regulations be deemed to be a part of the said river.

Definition of river.

13. It shall be competent for any police constable or other person authorized in writing by either of the resident magistrates aforesaid to enter upon any private property lying along the sides of the said river in order to ascertain that the foregoing regulations are complied with and to note any contraventions of the same; and any person obstructing any police constable or other person so authorized whilst in the performance of such duty shall for every offence forfeit any sum not exceeding ten pounds and not less than two pounds, and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding one month. But every such constable shall announce to

Duties of constables as to regulations.

the occupier or some person at his residence his office and the object of his visit.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 3rd day of April, 1852.

By command of His Excellency the Governor,

(Signed) JOHN MONTAGU,  
Secretary to Government.

By order of the Legislative Council,

(Signed) CHARLES J. BOYLE,  
Clerk to the Legislative Council.

No. 7.—Sd. George Cathcart.]

[16th April, 1852.

Ordinance to amend the Ordinance No. 5, 1851, entitled “ Ordinance to regulate for one year the dealing in Gunpowder and Firearms.”

[*Vide* Ordinance 2, 1853, Act 14, 1857, and Act 20, 1860.]

No. 8.—Sd. George Cathcart.]

Ordinance for regulating in certain respects the Prosecution of Crimes in Districts in which there shall not be Resident Clerks of the Peace and for other purposes.

Preamble.

Repeal of repugnant laws.

WHEREAS it is expedient pending further provision in that behalf to regulate provisionally the prosecution of crimes in districts the clerks of the peace of which shall not have their homes or usual places of residence within the same: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the Ordinance No. 40, entitled “ Ordinance for regulating the manner of proceeding in Criminal Cases in this Colony,” and the Ordinance No. 73, entitled “ Ordinance for explaining, altering, and amending the Ordinance No. 40,” and any rules of the supreme court or of the circuit court or of the courts of the resident magistrates in so far as the said ordinances and rules shall be repugnant to or inconsistent with the

provisions and operations of this ordinance shall be repealed and the same are hereby repealed accordingly.

2. And be it enacted that in every district of this colony the clerk of the peace of which shall not have his home or usual place of residence within the same it shall and may be lawful for the clerk of the court of the resident magistrate for such district, upon being satisfied that any crime or offence within the jurisdiction of such court and proper to be summarily prosecuted therein at the public expense has been committed, to issue and deliver to the messenger of the the said court or other proper officer of the law the process of the said court in the fifty-sixth rule of the courts of the resident magistrates mentioned, precisely as if the public prosecutor for such district had duly requested the said clerk to issue and deliver such process, save and except only that from the form of the summons in or under the said fifty-sixth rule set forth shall be omitted the following words, that is to say, "Upon the complaint and information of \_\_\_\_\_, Esquire, who prosecutes in the name and on behalf of Her Majesty:" Provided, always, that nothing herein contained shall be deemed or taken to alter or affect the sixth section of the aforesaid Ordinance No. 73, which shall as much as may be be acted upon in every such district as aforesaid.

Issue of criminal process by clerk of magistrates where there is no clerk of the peace.

Retention of section 6 of Ord. No. 73.

3. And be it enacted that when and as often as the clerk of the court shall under or by virtue of the last preceding section issue and deliver such a summons as aforesaid for compelling the appearance of any party to answer any charge the said clerk shall also issue and deliver to the messenger or other proper officer the process of the said court for compelling the attendance of all necessary witnesses in the case, and such process shall be in the form in that behalf provided in the first of the two forms in or under the fifty-seventh rule of the courts of the resident magistrates set forth, save and except only that the following words of the said form, that is to say, "Preferred by the public prosecutor," shall be omitted.

Issue of process for summoning of witnesses.

4. And be it enacted that upon the day appointed by any such summons as is in the second section of this ordinance mentioned for the appearance of any party to answer any criminal charge it shall be lawful for the resident magistrate to issue the warrant in the fifty-eighth rule of the courts of the resident magistrates mentioned without being requested by any prosecutor so to do.

Issue of warrant to enforce appearance.

Proceedings notwithstanding non-appearance of prosecutor.

Assistance by clerk in the conduct of trial.

Reading of charge.

Expenses of witnesses.

Deposit of expenses by private prosecutor.

5. And be it enacted that no charge or complaint in any such lastmentioned summons contained shall be dismissed by reason merely that no prosecutor appears on the court day appointed for the appearance of the party in the last preceding section mentioned, anything in the fifty-ninth rule of the courts of the resident magistrates to the contrary notwithstanding: Provided that nothing herein contained shall be deemed or taken to prevent the clerk of the court from assisting in the conduct of the trial in such manner as shall be in his power; provided, also, that no judgment or sentence of the court of resident magistrate for any such district as aforesaid shall be liable to be reversed or in anywise impeached by reason that no public prosecutor appeared upon the trial of any charge contained in any such summons as aforesaid.

6. And be it enacted that upon the day of the hearing of any charge contained in any such summons as aforesaid the magistrate shall cause the clerk of the court to read in lieu and stead of the statement of the prosecutor in the sixty second rule of the courts of the resident magistrates mentioned a copy of the summons aforesaid, and no reading of any such statement as aforesaid shall be necessary.

7. And be it enacted that all witnesses summoned in any such district as aforesaid by any such process as is in the third section of this ordinance mentioned shall for the purpose of receiving their expenses as such witnesses be taken and considered to be witnesses summoned at the instance of the public prosecutor, and that the clerk of the court shall in lieu and stead of the clerk of the peace make out the bills of the expenses of such witnesses, which bills are by the fourth section of Ordinance No. 59 described and directed.

8. And be it enacted that when in any court of resident magistrate within this colony the prosecution is at the instance of a private person prosecuting under or by virtue of the sixth section of the aforesaid Ordinance No. 73, such private prosecutor or some one on his behalf shall (except as is in the next succeeding section excepted) before or at the time of the delivery to the messenger or other proper officer of the process for procuring the attendance of any person before the said court to give evidence in support of such prosecution deposit in the hands of the clerk of the court such a sum of money as shall be sufficient to pay the expenses which such witness would be by law entitled to receive after giving his

attendance in case he had been summoned at the instance of the public prosecutor; and such witness shall after giving his attendance receive such expenses from the said clerk: Provided that if the court shall for sufficient cause disallow the expenses of any witness in regard to whom any such sum shall have been deposited or if any such witness shall fail to attend the sum so deposited shall be returned to the party who deposited the same.

Return of deposit on disallowance of expenses of witness.

9. And be it enacted that in every district the clerk of the peace of which shall not have his home or usual place of residence within the same no private person prosecuting summarily at his own instance in the court of the resident magistrate of such district shall be required to make any such deposit as is in the last preceding section mentioned or to pay any of the expenses of any witnesses summoned at his instance, nor shall any such private prosecutor be required to pay the expense of the process in the fifty-sixth rule of the courts of the resident magistrates mentioned in case such private prosecutor shall satisfy the clerk of the court that the charge which such private prosecutor prosecutes is one which from its nature and circumstances would be proper to be prosecuted at the public instance by a resident public prosecutor and that the witnesses proposed to be summoned are material and necessary; and bills of expenses for the witnesses summoned at the instance of any such last-mentioned private prosecutor shall be made out and paid in like manner as if such witnesses had been summoned in manner and form hereinbefore in the third section of this ordinance mentioned:

Cases in which the deposit need not be made.

Provided that in every case in which the clerk of the court shall be satisfied as aforesaid by any private prosecutor the said clerk shall before issuing the process in such case, enter, under the head "Remarks," in the "Criminal Record Book," or in some other and more convenient place in the said book, the following words, or words to the same effect, "Process in this case to be executed free;" and provided, further, that it shall be competent for the court upon the hearing of any case in which the process shall have been issued as aforesaid free of charge to the private prosecutor to order such private prosecutor to pay all costs and expenses of process issued and witnesses summoned at his instance in case such court shall pronounce the charge to be unfounded and vexatious, and shall be satisfied by oath that it was through or by means of some misrepresentation or concealment of the true facts of the case upon the part of such private prosecutor or some

Payment by private prosecutor of witnesses' expenses by order of the court.

one acting on his behalf that the clerk of the court was induced to cause the process to be in the first instance executed free, and in such a case the court may order to the witnesses aforesaid their just and reasonable expenses and shall not be obliged to allow them only the rate by law allowed to witnesses summoned at the instance of the public prosecutor; and provided, also, that if from the nature of any case prosecuted at the instance of a private prosecutor for or on whose behalf the process was not executed free the court should upon the hearing thereof see reason to think that the case as it then appears is one proper to have been prosecuted at the public expense, such court may make an order directing that all sums paid or deposited by such private prosecutor in regard to such case shall be returned to him and that the costs and expenses of process and witnesses shall be paid in like manner as if the process had been sued out and the witnesses had been summoned at the instance of the public prosecutor.

Restitution to private prosecutor of expenses.

Authority of clerk of peace or person specially appointed by attorney-general to take up and assume conduct of pending cases.

10. And be it enacted that in every such district as in the last preceding section mentioned it shall be competent for the clerk of the peace thereof or for any other person specially authorized by the attorney-general by any writing under his hand to act in any particular case to appear in court at any stage of any summary prosecution pending in such court and to take up and conduct all the further proceedings in such case or to apply by motion to the court to stop all further proceedings in such case in order that a prosecution for the same crime or offence may be instituted in some other form or court; and the court shall in every such case be bound to make an order in the terms of such motion.

Preparatory examination by resident magistrate and justice of the peace.

11. And be it enacted that in every such lastmentioned district it shall and may be lawful for the resident magistrate or any justice of the peace on receiving information of any crime or offence having been committed within the said district (except it shall plainly appear to be proper for the cognizance of a court of summary jurisdiction) to issue his warrant for the apprehension of any person who from information on oath may be reasonably suspected of having committed such crime or offence and also to issue his warrant for summoning those persons whom it shall appear necessary to examine as witnesses; and in case of refusal or failure to attend after due proof of the service of such summons a further warrant under the hand of such magistrate to enforce the appearance of such witnesses (which warrant may be



executed by the person to whom it is directed either within or without the local limits of the jurisdiction of the magistrate issuing the same), and such magistrate shall proceed with the preparatory examination in the usual manner and do or cause to be done everything which by the said Ordinance No. 40 or any other law or ordinance is enjoined to be done by the officer conducting the preparatory examination, anything in the Ordinances No. 40 and No. 73 respectively to the contrary notwithstanding: Provided, always, that the clerk of the peace of such district or other person specially authorized in writing by the attorney-general to act in any particular case may commence any preparatory examination or appear and intervene at any stage of any preparatory examination and assume the sole conduct and management thereof.

Intervention  
of clerk of the  
peace.

12. And be it enacted that in every such lastmentioned district where a preparatory examination has been taken by any magistrate without the presence of the clerk of the peace or other person deputed by the attorney-general such magistrate shall transmit such preparatory examination to the attorney-general at his office in Cape Town, or to such clerk of the peace as may from time to time be specified by the attorney-general, to be by such clerk of the peace submitted for the consideration of the attorney-general.

Transmission  
of preparatory  
examination  
to attorney-  
general.

13. And be it enacted that at every circuit court held for two or more districts all crimes and offences committed in either or any of the districts for which such court shall be holden may lawfully be prosecuted either by the clerk of the peace of the said district or by the clerk of the peace of the district in which such court is held or by any other person specially authorized by the attorney-general by any writing under his hand to prosecute in such court all and singular the said crimes and offences: Provided that nothing herein contained shall be construed so as to deprive the said attorney-general of any power which he may now possess to grant to any person a special authority to prosecute in any particular case pending in such court.

Conduct of  
prosecutions in  
circuit courts.

14. And be it enacted that when and as often as any clerk of the peace shall by reason of sudden illness or other cause be unable to conduct in any circuit court the prosecutions which he would or might otherwise have conducted, and in consequence of such inability there shall not be any person entitled by law to conduct such prosecutions, it shall and may be lawful for the resident magistrate of the district in which such circuit court shall be holden or for the officer

Appointment  
of prosecutor  
by resident  
magistrate in  
case of emer-  
gency.

acting as such upon being satisfied of such inability, to grant by any writing under his hand an authority to some fit and proper person to prosecute such cases, which written authority shall be in substance as follows, that is to say :

Form of  
appointment.

“ I, the undersigned, do hereby certify that it has been made to appear to me that A. B., Esquire, the clerk of the peace for the district of \_\_\_\_\_, is unable to appear in the circuit court to be holden at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, for the division of \_\_\_\_\_, (or divisions of \_\_\_\_\_ and \_\_\_\_\_, according to the fact), and that in consequence of such inability it is necessary that some other person should be appointed to conduct in the said court the prosecution of all crimes and offences committed in the district of \_\_\_\_\_ (or districts of \_\_\_\_\_ and \_\_\_\_\_, as the case may be), and I do therefore hereby authorize and appoint C. D., of \_\_\_\_\_, to appear in the said court and to conduct therein, in room and stead of the said A. B., the prosecution of such lastmentioned crimes and offences.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(Signed) E. F.,

Resident Magistrate of \_\_\_\_\_.”

And every person producing in any such circuit court any such authority shall be entitled to conduct all such prosecutions as the person in whose room and stead he has been so appointed to act would had he personally appeared in such court been competent to conduct : Provided, always, that no such resident magistrate shall grant any such authority unless from want of time or other cause no authority to prosecute shall have been obtained from the attorney-general upon application to him for that purpose ; provided, however, that no such authority when given shall be impeached or questioned upon the ground that under the circumstances of the case an authority from the said attorney-general might have been obtained had timely application in that behalf been made.

Time of taking  
effect of ordi-  
nance.

15. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 9th day of December, 1852.

By command of His Excellency the Governor,

(Signed) R. SOUTHEY,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) PERCY VIGORS,  
Acting Clerk to the Legislative Council.

No. 9.—Sd. George Cathcart.]

[11th Dec., 1852.

Ordinance for applying a Sum not exceeding £216,357 5s. 8d., for the service of the year 1853.

No. 10.—Sd. George Cathcart.]

[11th Dec., 1852.

Ordinance for applying a Sum not exceeding £4,085 1s. 10d., for the service of the years 1851 and 1852, in addition to the Sums already in that respect provided.

No. 1.—Sd. George Cathcart.]

Ordinance to prevent the spread of the Cattle Disease, commonly called “Long Ziekte.”

WHEREAS there has recently appeared amongst the horned Preamble.

cattle in some of the western districts of this colony a contagious disease of a fatal nature, called in the Dutch language “long ziekte:” And whereas it is expedient to provide against the spread of the said disease: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the owner of every animal which shall have or be commonly deemed and taken to have the said disease called the “long ziekte,” or the usual symptoms of the said disease, shall cause the same to be shut up in some kraal or other complete enclosure; and in case any such animal shall wilfully or by neglect be permitted and allowed by the owner thereof or his servants to be or go from and out of such enclosure as aforesaid unless in the actual and immediate charge of some person conducting the same by means of a riem, reins, or some such thing, such owner shall incur and become liable to a penalty not exceeding five pounds and in default of payment thereof to imprisonment with or without hard labour for any period not exceeding one month.

Enclosure for diseased cattle.

Penalty on allowing cattle to go out of enclosure.

2. And be it enacted that if any person whether the owner of any such animal as aforesaid or not shall ride, lead, drive, or otherwise conduct any such animal upon or along any public road, street, or thoroughfare, or into any common pasture land or any outspan-place, such person shall incur and become liable to a penalty not exceeding five pounds

Penalty on bringing diseased cattle into public thorough-fares.

Cases in which  
penalty will  
not be enforced.

and in default of payment thereof to imprisonment with or without hard labour for any period not exceeding one month, unless he shall prove to the satisfaction of the court before which the case shall be prosecuted that the said animal was not affected by the disease called the "long ziekte," or otherwise that the said animal was at the time and place charged in the act of being conducted to some particular place for the purpose of being examined or physicked or otherwise treated for the sickness or disease under which it may be labouring, or in the act of returning from some such place, or otherwise that the said animal having first exhibited the symptoms of the said disease when absent from the owner's place or residence was at the time and place charged in the act of returning or being conducted to the owner's or some other place in order to be duly secured and taken care of.

Destruction  
after inspection  
by field-cornet,  
of diseased  
animals.

3. And be it enacted that it shall and may be lawful for any person who shall find any such animal as aforesaid, without being in the charge of any person in or upon any public road, street, or thoroughfare, or on any common pasture land or outspan-place, or upon the place or ground of the person finding the same, to destroy any such animal: Provided, always, that every such person shall be bound before destroying any such animal to obtain the approval after inspection of some field-cornet or acting field-cornet, or otherwise of two persons qualified to serve as common jurors, or otherwise of three males of full age who shall not be the servants of the person so destroying the said animal or related to him within the second degree of consanguinity; and in case any person shall destroy any such animal without having obtained some such approval thereof as aforesaid he shall incur and become liable to a fine not exceeding five pounds and shall also be bound to make good to the owner of the animal destroyed whatever damage if any he shall have sustained by the destruction of the same.

Penalty on  
selling flesh  
of diseased  
animals.

4. And be it enacted that if any person shall sell or expose for sale for the food of man or beast or supply to man or beast for food the flesh of any animal which shall have died of the said disease or which had when killed the said disease or the usual symptoms thereof such person shall for every such offence forfeit any sum not exceeding five pounds, and in default of payment shall be liable to be imprisoned with or without hard labour for any period not exceeding one month: Provided that when and as often as any person might

for any such act as is in this section mentioned be proceeded against under or by virtue of any municipal regulation such person may be prosecuted either under such regulation or under this ordinance; but any prosecution for any such act under such regulation shall be a bar to any prosecution under this ordinance, and *vice versa*.

5. And be it enacted that if any person in charge of any such animal as aforesaid so diseased as aforesaid or supposed so to be shall leave the same in any place whatever public or private except in the care and custody of some person who shall have undertaken to take and keep the charge thereof such person shall forfeit any sum not exceeding five pounds, and in default of payment shall be liable to be imprisoned with or without hard labour for any period not exceeding one month. Penalty on turning loose diseased cattle.

6. And be it enacted that every person in charge of any animal destroyed for or dying of the disease aforesaid at the time of its destruction or death shall be bound to bury the carcase thereof without skinning the same or removing the horns thereof at a depth of not less than three feet; and any person contravening this section shall forfeit any sum not exceeding five pounds, and in default of payment shall be liable to be imprisoned with or without hard labour for any period not exceeding one month. Burial of carcases. Penalty on contravention.

7. And be it enacted that any person or persons who shall give such information as shall lead to the conviction of any such offender as aforesaid shall be entitled to receive one half of the penalty aforesaid, and that the other half of the said penalty shall be paid to the colonial treasury. Application of fines.

8. And be it enacted that the terms "horned cattle" and "animal" as used in this ordinance shall extend to and embrace any bull, ox, cow, heifer, or calf. Interpretation of terms.

9. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof. Time of taking effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 7th day of October, 1853.

By command of His Excellency the Governor,

(Signed) RICHARD SOUTHEY,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) PERCY VIGORS,  
Acting Clerk to the Legislative Council.

## No. 2.—Sd. George Cathcart.]

Ordinance to regulate till the expiration of the year 1854  
the Dealing in Gunpowder, Firearms, and Lead.\*

Preamble.

WHEREAS an ordinance was duly made and passed in this colony on the 17th day of November, 1851, and numbered 5, 1851, entitled "Ordinance to regulate for one year the Dealing in Gunpowder and Firearms:" And whereas by the twenty-seventh section of the said ordinance it was enacted that the said ordinance should commence from and after promulgation thereof, in manner and form as in the said section set forth, and should remain and continue in force for one year from the commencement thereof but with the provision nevertheless that it should be lawful for the Governor by proclamation in the Government Gazette to continue the said ordinance in force for such further space or term not exceeding one year from and after the year aforesaid as the said Governor should deem necessary and determine: And whereas the said ordinance was promulgated as aforesaid upon the 29th day of November, 1851, and thereupon took effect as law: And, whereas upon the 16th day of April, 1852, a certain other ordinance, numbered 7, 1852, was duly made and passed in this colony, entitled: "Ordinance to amend the ordinance No. 5, 1851, entitled 'Ordinance to regulate for one year the Dealing in Gunpower and Firearms,'" by which lastmentioned ordinance all dealings in lead were placed under the like restrictions and alienations as those which by the ordinance aforesaid, No. 5, 1851, had been and were provided in regard to firearms: And whereas the Governor of the colony did, upon the 11th day of November, 1852, publish his proclamation bearing date the 8th day of the said month, whereby after reciting as therein is recited he did proclaim, declare, and make known that the said Ordinance No. 5, 1851, would continue and be of force for the space or term of one year, from and after the date upon or at which the said lastmentioned ordinance would but for the said proclamation have expired and become of no effect: And whereas it is expedient to continue for a further limited term the said Ordinance No. 5, 1851, as amended by the said Ordinance No. 7, 1852, and with some other amendments: And whereas the end in view may be most conveniently and advantageously accomplished

\* Continued, as amended by Act No. 14, 1857, by Act No. 20, 1860, to the expiration of 1861.

by repealing both the ordinances aforesaid and by re-enacting in this ordinance the several provisions of the ordinances aforesaid with all necessary amendments: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the commencement and taking effect of this ordinance the ordinance aforesaid, No. 5, 1851, and the ordinance aforesaid, No. 7, 1852, shall be and the same are hereby respectively repealed, save and except in so far as either of the said ordinance, repeals any former law or ordinance or any part thereof or relates to the prosecution and punishment of any offences committed before the commencement and taking effect of this ordinance, in regard to which repeal and which offences the said ordinances shall respectively remain and be in full force and effect.

Repeal of former laws.

2. And be it enacted that no gunpowder and no gun or pistol, or lock, stock, barrel, or other part of any gun or pistol, and no percussion caps such as are used for firing off guns or pistols, and no lead, shall at any port or place within this colony be shipped or placed on board any ship or vessel or be placed or put on board any boat in order to be conveyed to any ship or vessel being in or near such port or place in order to be carried to any port or place whatsoever, whether in Africa or elsewhere, without the permission in writing of the chief officer of Her Majesty's customs at or nearest to such port or place of shipment first had and obtained; and if any person shall at any such port or place as aforesaid ship or place or cause to be shipped or placed in or on board any ship or vessel any of the said articles without having previously obtained the permission in writing by this section required such article or articles shall be forfeited to Her Majesty, and such persons shall for every such shipment in or upon any ship or vessel be liable to a penalty of five hundred pounds sterling; and any person so offending may be arrested under the warrant of any resident magistrate or justice of the peace of the colony and committed to the public prison nearest to the place where such offence shall have been committed, there to remain until such offender shall enter in a recognizance before such or some other resident magistrate or justice of the peace with two sufficient persons as sureties and co-principal debtors in the sum of five hundred pounds sterling, conditioned to abide such judgment as may by law be given against such offender in respect of such offence or until such offender

Permission of chief officer of customs for shipment of gunpowder, firearms, &c.

Penalty on contravention.

Arrest of offender.

Exception as to property of the Queen and as to property passengers in ships clearing for places not in Africa.

shall be liberated in due course of law: Provided, always, that nothing in this section contained shall be construed to extend to or affect any of the articles aforesaid the property of Her Majesty the Queen or any of the said articles really and *bonâ fide* intended for the use of the mariners or others navigating the ship or vessel in or on board of which such article or articles may be shipped or for the use of any passenger in or on board of any such ship or vessel not being a ship or vessel clearing out for some port or place in Africa.

Contents of application for permission to ship.

3. And be it enacted that every person applying for any such permission as aforesaid to such officer of customs shall do so in writing, which writing shall set forth the place to which and the person to whom it is intended to send, address, or consign the articles described in such application, and the name of the ship or vessel by which it is desired to forward the same; and no such officer of customs shall grant any such permission as aforesaid to any person to ship any of the articles aforesaid on board any ship or vessel bound to or empowered to touch at any port or place in Africa until he shall have transmitted such written application with his report thereon to His Excellency the Governor, and shall have received the said Governor's authority to grant the permission sought: Provided, also, that in case the said Governor should upon the report of such officer of customs and under the circumstances of the case see fit to authorize such officer of customs to grant such permission to the person applying for the same, then it shall and may be lawful for such officer of customs before granting such permission to require such person to enter into a bond or obligation with two sufficient sureties for the payment of such sum as such officer of customs shall in each particular case fix and determine, conditioned to produce and deliver within such time as the said bond shall specify in that behalf to such officer of customs or to such other person as shall be named by him in such bond such proof or evidence as such bond shall specify that the article or articles regarding which such permission is sought and intended to be given have been delivered or dealt with in the particular manner by the applicant for such permission alleged and by the Governor approved of (which manner shall in and by such bond be described), on failure of the due production of which proof or evidence such bond shall become forfeited: Provided, also, that every such bond or obligation

Authority of governor to grant permission for vessels touching at places in Africa.

Bond of shipper.



shall in substance correspond with the form marked No. 1, in the schedule to this ordinance annexed.

4. And be it enacted that when and as often as any such officer of customs as aforesaid shall see reason so to do it shall and may be lawful for him before granting any such permission as aforesaid for authorizing the shipment in or on board of any ship or vessel, which though not bound to or empowered to touch at any such port or place in Africa as aforesaid might yet contravene the object and intention of this ordinance, to require the person applying for such permission to enter into a bond or obligation of the like nature *mutatis mutandis* with the bond or obligation in the third section of this ordinance mentioned.

Bond in certain cases from shippers in vessels not bound to ports in Africa.

5. And be it enacted that the master of every ship or vessel clearing out at any port in this colony for any port or place in Africa shall furnish in duplicate to the collector of customs at the port of clearance a list signed by the said master of all firearms, gunpowder, and lead on board such ship or vessel for ship's use, one copy of which list shall be retained by such collector and the other copy shall be attached to the vessel's clearance; and any gunpowder, firearms, or lead found on board any such ship or vessel after the time of her clearance not being entered on such list and not being part of her cargo may be seized by any officer of customs or officer of the law proper for the execution of criminal warrants, and the same shall be forfeited to Her Majesty the Queen, together with a fine of three times the full value of the matter or thing so forfeited, such fine to be paid by the said master.

List of firearms, &c., for ship's use.

Seizure of arms, &c., not on list.

Penalty thrice the value of article seized.

6. And be it enacted that a return in writing of all gunpowder, firearms and lead not being cargo brought or had on board of any such ship or vessel as in the last preceding section mentioned by any person proceeding as a passenger thereby shall after being signed by such passenger be by him or by some one on his behalf delivered to such chief officer of customs as aforesaid at or before the time of the clearing out of such ship or vessel, who is hereby empowered in case it shall appear to him that the quantity of gunpowder or of lead or the number of firearms stated in such return is not greater than such passenger might reasonably require for the personal defence of himself and his servants or for sporting to grant to such person a permission in writing to take or have the same; and if any gunpowder, firearms, or lead in

Return of arms, &c., of passengers.

regard to which such a return as aforesaid ought to have been made but in regard to which no such return has been made shall be found on board any such lastnamed ship or vessel after the same shall have cleared out, then the said gunpowder, firearms, or lead as the case may be may be seized by any such officer as in the last preceding section mentioned, and the same shall be forfeited to Her Majesty the Queen, together with a fine of three times the full value of the matters or things so forfeited, such fine to be paid by such passenger, who may be arrested in manner and form as in the second section provided in regard to the person whose arrest is therein authorized, and may be committed to such prison as in the said section mentioned, there to remain until he shall by some such recognizance as aforesaid have given security in a sum sufficient to cover and make good such treble value as aforesaid that he will abide such judgment as may by law be given against such passenger in respect of such offence, or until such passenger shall be liberated in due course of law: Provided, also, that such chief officer of customs may should he see fit require such passenger to enter into a bond or obligation of the like nature with the bond or obligation hereinbefore in the third section of this ordinance described.

Seizure of articles not in such return.

Penalty, thrice the value.

Arrest of passenger pending security for penalty.

Refusal of delivery of gunpowder by officers of customs.

Bond before delivery.

Issues from private magazine by authority of resident magistrate.

7. And be it enacted that every such officer of customs as is in the ordinance aforesaid, No. 7, 1834, mentioned, shall be authorized and empowered to refuse to deliver from any bonding magazine for colonial consumption any gunpowder stored therein until it shall be made to appear to his satisfaction by the person applying to have the same delivered that the object for which such delivery is sought is a safe and proper one, and every such officer of customs may and he is hereby authorized should he think fit to require the person applying for such delivery to enter into a bond or obligation which shall in substance correspond with the form marked No. 2 in the schedule to this ordinance annexed; and provided that such officer of customs shall grant a licence in writing authorizing the removal of any such gunpowder as he shall permit to be delivered.

8. And be it enacted that no storekeeper of any private magazine situate within this colony shall from and after the commencement of this ordinance issue any gunpowder in any quantity whatsoever from any such magazine without the previous permission in writing of the resident magistrate of the district in which such magazine shall be situated; which

permission shall set forth the quantity of gunpowder to be issued and the name of the person to whom it is to be issued, and which permission, which shall in substance correspond with the form marked No. 3 in the schedule to this ordinance annexed, shall be delivered to and preserved by such storekeeper; and any storekeeper who shall deliver any gunpowder contrary to the provisions of this section shall for every offence be liable upon conviction to be imprisoned and kept at hard labour for any term not exceeding seven years: Provided that if in any case any private magazine shall be situated at a greater distance than twelve miles from the office of the resident magistrate of the district in which such magazine shall be situated, then the permission in writing of any justice of the peace of the said district (not being the owner of or interested in the gunpowder mentioned in such permission) may be received by such storekeeper in lieu and stead of the permission of the said resident magistrate; provided, also, that in any district in which there shall not be at the time of the commencement of this ordinance such safe and fitting private magazines as shall be required for the secure storing of such gunpowder as shall be in or come to such district, every such building, store, or place as the resident magistrate of such district shall approve of and appoint to be a private magazine for the time being shall be deemed and taken to be a private magazine within the meaning of this ordinance; provided, also, that such resident magistrate may subject to the confirmation or disallowance of the Governor appoint a fit and proper person to be storekeeper to any such temporary magazine as well as to any private magazine in his district which shall not already have a storekeeper duly appointed; and provided also, that every store or place belonging to Her Majesty's Board of Ordnance in which gunpowder belonging to private persons shall be permitted to be placed shall also so far as such last mentioned gunpowder is concerned, but no farther, be deemed to be a private magazine; and provided, also, that no storekeeper of any such magazine shall open or permit to be opened within any such magazine any barrel, keg, or other case containing gunpowder, and any such storekeeper as aforesaid who shall contravene this provision of this section shall upon conviction forfeit fifty pounds; and provided, also, that in case there shall be in any town or place in which there shall be one private magazine or more private magazines than

Form of  
authority.

Penalty on  
delivering  
without  
authority.

Cases in which  
justice of the  
peace may  
grant autho-  
rity.

Approval by  
magistrate of  
private  
magazine and  
appointment of  
temporary  
storekeeper.

Penalty on  
opening barrel,  
&c., in private  
magazine.

Appointment by magistrate of place where gunpowder in quantities not more than 100lbs. may be opened.

one any licensed dealers therein at whose premises it shall be deemed to be inadvisable that gunpowder should be retailed in the manner hereinafter contemplated and provided for, it shall and may be lawful for the resident magistrate of the district in which any such private magazine shall be situated by writing under his hand to authorize and require the storekeeper thereof to remove from and out of such magazine, at the desire of the owner of any of the gunpowder stored therein, any quantity of such owner's gunpowder not exceeding one hundred pounds weight at any one time to some safe and convenient place adjacent to such magazine and to be mentioned in such written authority, there to be strictly kept by such storekeeper, at which safe place any barrel, keg, or other case containing such removed gunpowder may be opened by such storekeeper, and any quantity of gunpowder mentioned in any such permission as is in this section mentioned may be from time to time delivered by such storekeeper; but no second or subsequent removal as aforesaid of any gunpowder belonging to any one owner shall take place as long as any of that owner's gunpowder first or previously removed shall not have been delivered by such storekeeper under and by virtue of some such permission as aforesaid, and all gunpowder in any such place as aforesaid and not yet delivered by such storekeeper shall be regarded, deemed, and judged of for all purposes of this ordinance precisely as if such place were actually part and parcel of the private magazine under such storekeeper's control.

Proof of proper purpose for which gunpowder is needed.

9. And be it enacted that no such resident magistrate or justice of the peace as is in the last preceding section mentioned shall grant any such permission as in the said section mentioned until it shall have been made to appear to his satisfaction by the person applying for the same that the gunpowder sought to be taken from or out of such private magazine is needed for some necessary and proper purpose; and every such resident magistrate or justice of the peace is hereby authorized, in every case in which he shall see reason or think it necessary so to do, to require before granting such permission that the person desiring the same shall enter into a bond or obligation, which shall in substance correspond with the form marked No. 2 in the schedule to this ordinance annexed, conditioned for the production of such proof or evidence as such bond shall specify that the gunpowder to be mentioned in such permission has been actually delivered or

dealt with in the manner proposed by such person and agreed to by such magistrate or justice of the peace.

10. And be it enacted that every justice of the peace who shall under the circumstances in the said eighth section mentioned grant any such permission as therein authorized shall forthwith transmit to the resident magistrate of the district a copy of such permission, in order that the same may by such resident magistrate be recorded.

Transmission of copy of permission from justice of the peace to resident magistrate.

11. And be it enacted that every resident magistrate shall within the first seven days of every calendar month prepare and transmit to the Secretary to Government, for the information of His Excellency the Governor, a tabular statement, showing in regard to every such permission as aforesaid granted by or reported to him during the month next preceding that in which such statement shall be prepared, the date when such permission was issued the name and residence of the person to whom it was issued and the quantity of gunpowder which it authorized to be delivered; and every such resident magistrate shall moreover within the same period of seven days affix a copy of such tabular statement to some conspicuous place at or near his public office for general information.

Transmission monthly of tabular statements of permissions by resident magistrate to secretary to government.

Copy of statement at public offices

12. And be it enacted that every storekeeper of every private magazine shall within the first seven days of every calendar month prepare a tabular statement of the like nature with that which is in the last preceding section mentioned, showing the date of every issue from such private magazine during the previous month and the name of the person to whom such issue shall have been made and the quantity delivered to such person; and to every such tabular statement the storekeeper shall subjoin a solemn declaration, which shall be in substance as follows that is to say :

Tabular statement monthly of storekeeper to magistrate.

“I, A. B., storekeeper of the private gunpowder magazine situated in ———, do solemnly and sincerely declare that the above statement contains, to the best of my knowledge and belief, a true and correct account of all the gunpowder delivered from or taken out of the said magazine during the month ending the ——— of ——— last. Dated at ——— this ——— day of ——— 18 ———.

Storekeeper's declaration.

(Signed) “A. B., storekeeper.”

And every such storekeeper shall within the said period of seven days deliver such statement and declaration at the office of the resident magistrate of the district in which such private magazine shall be situated, to be by him preserved; and if

Penalty on neglect to make statement.

any such storekeeper shall deliver any wilfully false statement with such a declaration subjoined he shall upon conviction incur the penalties by law provided for the crime of perjury : Provided that in case any storekeeper shall not be able truly to make the said declaration, it shall and may be lawful for him to declare according to the truth ; and provided that any storekeeper who shall neglect to deliver such statement as aforesaid within the term aforesaid shall for every such neglect forfeit upon conviction the sum of one hundred pounds.

Penalty of £500 or seven years' imprisonment on delivery of firearms, &c. by persons licensed or unlicensed, unless to a magistrate or justice of the peace ;

13. And he it enacted that no person whomsoever whether licensed or unlicensed shall from or after the commencement of this ordinance, under or by virtue of any sale, barter, gift, or other transaction, or for any cause or reason whatsoever, deliver (except as hereinafter is excepted) at any shop, store, private dwelling, or other place within this colony any gun or pistol, or any lock, stock, barrel, or other part of any gun or pistol, or any percussion caps exceeding in any one week one box containing not more than five hundred in number, or any gunpowder or any lead, and any person contravening any of the provisions of this section shall upon conviction forfeit the sum of five hundred pounds ; or such person may instead of being sentenced to forfeit such sum be sentenced to be imprisoned and kept at hard labour for any period not exceeding seven years : Provided that nothing in this section contained shall be deemed or taken to prevent any sale barter, gift, or loan to any resident magistrate or justice of the peace, nor to any person who shall produce and deposit with the person delivering the gun or other matter or thing mentioned in such certificate a written certificate signed by either of the last-mentioned persons, certifying that the bearer, who must be named in such certificate, is to the knowledge of the person signing such certificate a fit and proper person to obtain such gun or other matter or thing as aforesaid, which certificate shall in substance correspond with the form marked No. 4 in the schedule to this ordinance annexed : Provided, also, that no justice of the peace residing or being within twelve miles of the office of the resident magistrate of the district shall grant any such certificate as aforesaid : Provided, at the same time, that no certificate granted in contravention of this prohibition shall be deemed to be on that account invalid, so as to subject any person acting upon it to any pains or penalties ; and provided, further, that nothing

Or unless a certificate from a resident magistrate or justice of the peace shall have been produced ;

herein contained shall be deemed or taken to prevent one member of any military or burgher force from delivering without the production of any such certificate as aforesaid any of the matters or things aforesaid to any member of the same or any similar force, or to prevent any person from delivering any of the matters or things aforesaid to any other person then living with him under the same roof or being in his service for the private use of such other person; and provided, lastly, that nothing in this section contained shall extend to any gunpowder duly delivered by any storekeeper from any private magazine under and by virtue of the permission in writing hereinbefore in the eighth section of this ordinance mentioned, nor to any gunpowder or firearms delivered by any person in the military, naval, or civil service of Her Majesty, acting by or under Her Majesty's authority.

Or unless both party delivering and party receiving be members of military or burgher force, or person receiving be inmate with or servant of person delivering.

Exception as to gunpowder.

14. And be it enacted that from and after the commencement of this ordinance no distributor of stamps or other officer shall grant a licence to any person to deal in gunpowder until there shall be delivered to such distributor or other officer a certificate in writing, signed by the resident magistrate of the district, certifying that the licence applied for by such person is one fit and proper to be granted.

Certificate of magistrate before grant of licence.

15. And be it enacted that if any person not being licensed to deal in gunpowder shall store, keep, or have any gunpowder whatsoever other than such gunpowder as such person shall *bona fide* have and keep for his own private use, or if any person licensed to deal in gunpowder shall from or after the commencement of this ordinance store, keep, or have in any warehouse, shop, or place not being a bonding or private magazine, any quantity of gunpowder exceeding at any one time fifty pounds weight thereof, every such person shall for every such offence forfeit upon conviction the sum of five hundred pounds, or he may instead of forfeiting such sum be imprisoned and kept at hard labour for any term not exceeding seven years; and when and as often as it shall be made to appear to any resident magistrate or justice of the peace, from information taken on oath, that any gunpowder is stored or kept in any dwelling-house or other place in contravention of this section, such resident magistrate or justice of the peace may in person demand entrance into such dwelling-house or other place, and upon refusal or neglect of any person or persons therein to admit such resident magistrate or justice, such resident magistrate or justice may

Penalty of £500 or seven years imprisonment on unlicensed person having more gunpowder than *bona fide* for private use, and on licensed person having more than 50lbs. out of bonding store.

**Forfeiture.**

Penalty of seven years' imprisonment on refusal to admit magistrate or justice.

force an entrance thereto, and remove all gunpowder found therein, and the same shall be forfeited to Her Majesty the Queen; and every person who shall be within in any such house or place at the time of demand made for admittance and refusal or neglect to admit shall upon conviction of the offence of contravening this section by refusing or neglecting to admit such magistrate or justice be imprisoned and kept at hard labour for any period not exceeding seven years.

Declaration of licensed dealer to obtain gunpowder from magazine.

16. And be it enacted that no such resident magistrate or justice of the peace as in the eighth section of this ordinance mentioned shall grant to any licensed dealer any such permission as in the said eighth section mentioned to obtain from any private magazine any quantity of gunpowder to be disposed of by such dealer until such dealer shall make in the presence of such resident magistrate or justice of the peace his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say:

“ I, A. B., of ———, licensed dealer in gunpowder, do solemnly and sincerely declare that there is not now in my possession or at my disposal or under my control, any gunpowder whatsoever,” (or if the fact be that such dealer does possess gunpowder stored in some private magazine, then let him make his declaration as above, adding to it, “ save and except such as is stored in”—*here describe the private magazine.*)

(Signed) A. B.

Declared before me, this — day of ———, 18—.

C. D.,  
Resident Magistrate, or  
Justice of the Peace (as  
the case may be).

Production of certificates to cover first quantity, before permission for second quantity may be granted.

17. And be it enacted that when and as often as any resident magistrate or justice of the peace shall have given to any licensed dealer as aforesaid any one such permission as aforesaid to obtain from any private magazine fifty pounds weight of gunpowder to be by him disposed of, no second such permission shall be granted to him until he shall produce to and deposit with such resident magistrate or justice of the peace (as the case may be) certificates, such as are in the thirteenth section of this ordinance mentioned, covering and accounting for all the gunpowder by such dealer obtained by virtue of the first permission granted to him under this ordinance; and in like manner, no fresh permission shall at any time be granted to any licensed dealer to obtain a still



further supply of fifty pounds weight until he shall have produced and deposited certificates covering and accounting for the whole of the fifty pounds weight last issued to him; and so on as long as this ordinance shall remain in force; and, moreover, such licensed dealer shall upon the occasion of every second or subsequent application for such a permission as aforesaid make in the presence of the resident magistrate or justice of the peace (as the case may be) his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say :

“ I, A. B., of ———, licensed dealer in gunpowder, do solemnly and sincerely declare that I have not had in my possession or sold or otherwise disposed of to any person whomsoever, since the — day of ———, 18 —, [state the date of the “ permission ” last issued] any other gunpowder than the quantity mentioned in the permission granted to me on the day last mentioned, and which quantity I have disposed of under and by virtue of the certificates now by me produced.”

Declaration on application for second and further quantities.

(Signed) A. B.

Declared before me, this — day of ———, 18 —,

C. D.,

Resident Magistrate or Justice of the Peace,  
(as the case may be).

18. And be it enacted that if any person shall make any wilfully false statement in any declaration required by either of the two immediately preceding sections such person shall upon conviction incur the penalties by law provided for the crime of perjury.

False declarations punishable as perjury.

19. And be it enacted that in every case in which any such licensed dealer as aforesaid shall have obtained under and by virtue of any such permission as aforesaid, the fifty pounds weight of gunpowder mentioned in such permission, it shall and may be lawful for the resident magistrate or justice of the peace who shall have granted such permission to enter at all reasonable times the licensed premises of such dealer, and require the production of such gunpowder, or otherwise the production of certificates covering and accounting for so much thereof as shall not be produced, and in case such dealer shall fail to produce either the whole quantity of gunpowder obtained by him under and by virtue of such permission or certificates covering and accounting for so much thereof as shall not be produced, such dealer shall for such offence incur the like penalty as that which is in the

Entry of magistrate into dealer's premises.

Penalties of § 13 on dealers not properly accounting.

Monthly  
return of  
receipts and  
deliveries.

thirteenth section of this ordinance provided for or in regard to the offence therein described: Provided, also, that every such dealer shall on or before the seventh of every month deliver or cause to be delivered to the resident magistrate of the district a return or account in writing signed by such dealer, setting forth the several receipts and deliveries of gunpowder if any made or received by such dealer during the preceding month and the quantity of gunpowder in his possession at the expiration of such preceding month; and such return or account shall specify in regard to each delivery the quantity delivered, the person to whom delivered, and the granter of the certificate by virtue of which such delivery was made; and any licensed dealer who shall without lawful and sufficient cause neglect to deliver or cause to be delivered in manner aforesaid any such return or account, or who shall deliver or cause to be delivered any such return or account containing anything wilfully erroneous, shall for every such offence forfeit the sum of five hundred pounds.

Penalty on  
neglect of  
return—£500.

Transmission  
by justices of  
certificates  
deposited by  
dealer to  
resident magis-  
trate.

20. And be it enacted that every justice of the peace with whom any such certificates as aforesaid shall be deposited by any licensed dealer as aforesaid when applying under the provisions of the eighth section of this ordinance for a fresh permission to obtain a further quantity of fifty pounds weight of gunpowder to be by him disposed of at his premises shall forthwith transmit to the resident magistrate of the district copies of all such certificates, in order that such resident magistrate shall, as he is hereby required to do, include such certificates, as well as all certificates which may have been in like manner deposited with himself, in the monthly tabular statements which are hereinbefore in the eleventh section of this ordinance directed to be transmitted to the Secretary to Government, and affixed at or near such resident magistrate's public office.

Licence for  
removal of  
guns, &c., or  
gunpowder  
from place to  
place.

21. And be it enacted that it shall not be lawful for any person not being in the military or burgher service of Her Majesty to remove or convey or cause to be removed or conveyed from any place within the colony to any other place within the same (except as hereinafter is excepted) any gun or pistol, or lock, stock, or barrel of any gun or pistol, or any percussion caps or any gunpowder (not being arms or ammunition for the defence of the person or persons carrying the same), or any lead, without having a licence for removing or conveying the same signed by some resident magistrate

of the colony, which licence shall in substance correspond with the form marked No. 5 in the schedule to this ordinance annexed; and it shall be lawful for any two or more of Her Majesty's subjects who shall find or come up with any person or persons or any wagon or other vehicle removing or conveying any matter or thing for the removing or conveying of which such a licence as aforesaid is by this section required to demand to see such licence, and unless the same shall be produced and shown to seize and take possession of all such matters and things as shall have been in progress of removal without the licence by this section required; and all such matters and things shall, unless proof be made that the licence required by this section had been obtained but was lost or mislaid, be forfeited to Her Majesty, together with any wagon, cart, or other vehicle in which the said matters and things shall have been when seized, and any ox or other beast employed in drawing any such vehicle or in carrying any of the said matters and things; and every person engaged in removing and conveying such matters or thing in contravention of the provisions of this section shall upon conviction forfeit the sum of five hundred pounds, or such person may instead of being sentenced to forfeit such sum be sentenced to be imprisoned and kept at hard labour for any period not exceeding seven years, and may be lawfully apprehended without warrant in order to be tried for such offence; provided, also, that all and singular the provisions in the ninth section of this ordinance contained relative to the permission therein referred to shall apply to the licence by this section required; provided, always, that nothing in this section contained shall be construed so as to require any licence as aforesaid for the removal of any gunpowder from the landing-place thereof to some bonding magazine or from any bonding magazine to any private magazine, nor to any gunpowder the property of Her Majesty the Queen.

Seizure on non-production of such licence.

Forfeiture of wagon, &c.

Penalty, £500 or imprisonment for seven years.

Exceptions.

22. And be it enacted that if any person shall within this colony wilfully deliver or cause to be delivered to any person whomsoever any gunpowder, gun, or pistol, or any lock, stock, barrel, or other part of any gun or pistol or any percussion caps or any lead, with the purpose, design, or knowledge that the same should or would be conveyed to and made use of by the Queen's enemies or by any of her subjects in rebellion against her authority, such person shall whether the gunpowder or other matter or thing shall or

Delivery of gunpowder, &c., to Queen's enemies, high treason.

shall not come into the hands of such enemies or rebels be deemed and taken to have committed by such delivery an overt act of high treason, and shall upon conviction suffer death as a traitor.

Return of dealer to resident magistrate within 14 days of promulgation of ordinance.

Further monthly return.

Access of resident magistrate to dealer's book, and right to examine stock.

Penalty on false statement £500.

Definition of dealers.

23. And be it enacted that every person dealing in fire-arms within this colony shall within fourteen days next after the commencement and taking effect of this ordinance, return an account to the resident magistrate of the district in which such person shall reside of every gun and pistol and part of any gun or pistol and of all percussion caps and of all lead in his possession, and shall verify such return by a solemn declaration at the foot of or attached to such return, and shall provide a book in which the guns and pistols or parts thereof and percussion caps, and lead mentioned in such return shall be entered, and shall from time to time in the first week of every calendar month, and also upon receiving any number of guns, pistols, or parts thereof or percussion caps or lead to be sold, make a like return verified as aforesaid and a like entry; and every such dealer shall also enter separately in such book an account of every gun or pistol and of all percussion caps and of all lead sold and delivered or otherwise disposed of, with the time when and the person to whom the same shall have been delivered; and it shall and may be lawful for such resident magistrate or any person authorized by him by any writing under his hand at all reasonable times to have access to such book and to examine the stock of guns, pistols, and unconnected parts or portions thereof and of percussion caps and of all lead in the possession of such dealer, and compare and balance the same with the account kept in such book, and if it shall appear that any error has been designedly committed, either in regard to any such return as aforesaid or to the non-entry in the said book of any gun, pistol or any unconnected part of any gun or pistol, sold and delivered or otherwise disposed of, or of any percussion caps or of any lead, such dealer shall for every such error forfeit the sum of five hundred pounds: Provided, also, that every person being the keeper either individually or as one of some number of co-partners in trade of any store, shop, or other place where wares and merchandise are exposed for sale who shall have in his possession any guns, pistols, or unconnected parts thereof, or percussion caps or lead other than those used by him for the defence of his person or property or for sporting, shall be deemed

and taken until the contrary be proved, to be a dealer in firearms within the meaning of this section, but that no other person shall be deemed to be such dealer, and provided also, that the acts or omissions of any co-partner in trade of any such dealer or of any clerk, agent, or servant of any such dealer in regard to any of the matters by this section required shall be deemed to be act or omission (as the case may be) of such dealer himself; and provided, also, that any dealer who shall without lawful and sufficient cause neglect to make such return as aforesaid within the time aforesaid shall upon conviction forfeit the sum of five hundred pounds; provided that nothing in this section contained shall extend to any firearms the property of Her Majesty the Queen.

Liability of dealer for acts of clerk, &c.

Penalty on neglect of dealer's returns £500.

24. And be it enacted that it shall and may be lawful for His Excellency the Governor should he see reason so to do to remit or mitigate any fine or forfeiture incurred under this ordinance.

Governor's power to remit fines.

25. And be it enacted that of every fine levied or paid under the provisions of this ordinance there shall be paid to the person who shall have given the information that shall have led to the conviction so much thereof, not in any case exceeding fifty pounds, as His Excellency the Governor shall direct, and the residue shall be paid into the colonial treasury.

Informer's share of penalty.

26. And be it enacted that in the construction of this ordinance the word "lead" shall include all pig or bar lead, rolled or sheet lead, pipe lead, and all lead made or capable of being made into balls, shots, slugs, or other forms fit for firearms and that the word "governor" shall mean the officer for the time being administering the government of this colony; and that whenever mention is made of any public officer the officer mentioned shall be deemed to be the officer for the time being acting as such officer; and that unless there shall in the context be something repugnant to such construction, every word importing the singular number only shall extend to several persons or things, every word importing the plural number shall apply to one person or thing, and every word importing the masculine gender only shall apply to a female.

Interpretation clause.

27. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof, and shall continue and be in force till the expiration of the year 1854, and no longer.

Time of taking effect.

## SCHEDULE NO. 1.

*Form of Bond or Obligation in case of Shipment.*

Form of bond  
in case of ship-  
ment.

Know all men by these presents that we [the person about to ship the articles and his sureties] are held and firmly bound unto Her Majesty Queen Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, in the sum of [such sum as under the particular circumstances the officer of customs shall fix] of good and lawful money of this colony, to be paid to her said Majesty, her heirs and successors, to which payment well and truly to be made we bind ourselves, and each of us by himself, *in solidum*, each for the whole, and our heirs, executors, and administrators, and every of them firmly by these presents. Sealed with our seals. Dated this — day — in the year of our Lord, 18—. Whereas the above bounden [the person about to make the shipment] hath, under the ordinance —, entitled, “Ordinance to regulate till the expiration of the year 1854 the Dealing in Gunpowder, Firearms, and Lead,” applied for permission to ship on board the [vessel’s and master’s name] the matters following, that is to say [quantity of gunpowder and lead, and number of firearms intended to be shipped] to be in and by the said ship carried to and landed at [place of destination]: Now the condition of this obligation is such that if the said [the person about to make the shipment] shall within — months from the date hereof, produce and deliver to [the officer of customs at the port of shipment or other functionary, as agreed on], as proof that the matters and things aforesaid have been duly disposed of [whatever mode of proof may have been agreed on, as such certificate in writing, signed by — certifying that all and singular the said matters and things have been landed at —, or otherwise according to the circumstances] or if the above bounden [the person about to make the shipment] shall account for the said matters and things to the satisfaction of [the officer of customs at the port of shipment or other functionary, as agreed on], then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and  
declared in pre-  
sence of

} A. B. L. S.  
} C. D. L. S.  
} E. F. L. S.

## SCHEDULE NO. 2.

*Form of Bond or Obligation in case of Inland Transport.*

Form of bond  
for inland  
transport.

Know all men, &c. [as in form No. 1, down to the condition]. Whereas the above bounden [the person about to remove the gunpowder] hath under the ordinance —, entitled, “Ordinance to regulate, till the expiration of the year 1854 the Dealing in Gunpowder, Firearms, and Lead,” applied for permission to receive

from [bonding magazine or private magazine as the case may be] — pounds weight of gunpowder to be conveyed by him to [private magazine or other approved place where the powder is to be deposited]. Now the condition of this obligation in such that if the said [the person about to remove the gunpowder] shall within — from the date hereof, produce and deliver to [the resident magistrate granting the permission or other functionary as agreed on] as proof that the gunpowder aforesaid has been duly disposed of a [certificate in writing signed by the resident magistrate of the district of — or the officer for the time being acting as such, certifying that the gunpowder aforesaid has been deposited in a private magazine at —, or such other proof as shall in every particular case be agreed on], or if the above bounden [the person about to remove the gunpowder] shall account for the said gunpowder to the satisfaction of [the resident magistrate granting the permission, or other functionary as agreed on], then this obligation to be void; otherwise to remain in full force and virtue.

Signed, sealed, and  
declared in pre-  
sence of

}	A. B. L. S.
	C. D. L. S.
	E. F. L. S.

NOTE.—This form can, by making the necessary changes, be adapted to every case contemplated by the ordinance, whether removal from a bonding magazine to a private magazine, or from one private magazine to another private magazine or from a private magazine for private consumption, and whether the permission with which it is connected be granted by an officer of customs, a resident magistrate, or a justice of the peace.

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SCHEDULE NO 3.

*Form of Permission by Resident Magistrate to authorize issue of Gunpowder from Private Magazine.*

I, —, resident magistrate of —, do hereby authorize [the name of the applicant] of [the residence of applicant] to receive from the storekeeper of [describe the magazine] — pounds of gunpowder, it having been made to appear to my satisfaction that such gunpowder is needed for a necessary and proper purpose.

Authority for  
issue from  
private maga-  
zine.

Dated this — day of — 185 —.

A. B., Resident Magistrate.

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SCHEDULE NO. 4.

*Form of Certificate authorizing the purchase of Guns, Powder, &c.*

I, —, do hereby certify that the bearer [the name of the applicant] of [the residence of the applicant] is to my knowledge

Authority for  
purchase of  
guns, &c.

a fit and proper person to obtain and have — pounds of gunpowder [or a gun, or — pounds of lead] which he requires for his own use. Dated this — day of — 185 —.

A. B., Resident Magistrate  
[Or otherwise, as the case may be.]

SCHEDULE NO 5.

*Form Licence for removing Gunpowder, &c.*

Licence for  
removing gun-  
powder, &c.

Know all men to whom these presents shall come that [name of person to whom such licence shall be granted] is hereby authorized to remove from [place from which the thing in question shall be taken] to [place to which the thing in question shall be taken;—here describe the number of any kegs or packages in which the gunpowder shall be contained, and the weight of the entire, and firearms and lead, shall be described as accurately as may be]. And all Her Majesty's subjects are required to respect this licence, and allow the abovementioned gunpowder [or firearms or lead] to pass without hinderance from — aforesaid to — aforesaid. Dated this — day of — 185 —.

A. B., Resident Magistrate of the District of —

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 10th day of October, 1853.

By command of His Excellency the Governor,

(Signed) R. SOUTHEY,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) PERCY VIGORS,  
Acting Clerk to the Legislative Council.

No. 3.—Sd. George Cathcart.]

Preamble.

Ordinance for declaring the Ordinance No. 9, 1836, to be in force and operation.\*

WHEREAS a certain ordinance, numbered 9, 1836, was duly made and passed in this colony, bearing date the 15th August,

\* Ordinance No. 9, 1836, is made perpetual by Act No. 15, 1860.



1836, and 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 : " And whereas a certain other ordinance, numbered 2, 1844, was duly made and passed in this colony, bearing date the 30th January, 1844, entitled " Ordinance for amending the Ordinance No. 9, 1836, entitled ' An Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony, on which the local Regulations of each shall be founded : ' " And whereas no express confirmation and allowance by Her Majesty the Queen of the said Ordinance No. 9, 1836, has been at any time communicated ; but the said Ordinance No 2, 1844, has been by her said Majesty, in customary form, confirmed and allowed ; and whereas doubts are entertained whether the confirmation and allowance of the said amending Ordinance No. 2, 1844, was in law a confirmation and allowance of the amended Ordinance No. 9, 1836, whereby it is also further doubted whether the said Ordinance No. 9, 1836, has been legally in force at any time since the expiration of three years next after the date thereof : And whereas it is necessary to remove such doubts and to render valid all acts, matters, and things done in pursuance of or in conformity with the provisions of the said Ordinance No. 9, 1836, since the expiration of the said three years : Be it therefore declared and enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all acts, matters, and things whatsoever hitherto done and performed at any time since the expiration of the said term of three years and purporting to be done and performed under the authority of the said Ordinance No. 9, 1836, shall be deemed and taken to be in precisely the same plight and condition as if the most gracious confirmation and allowance of the said ordinance by her said Majesty had within the said term of three years been granted and announced.

Ratification of  
acts done under  
Ordinance 9,  
1836.

2. And be it enacted that the said Ordinance No. 9, 1836, shall from henceforth be in full force and operation, precisely as if all and singular the several clauses thereof as amended by the said Ordinance No. 2, 1844, were herein again set forth and word for word repeated.

Re-enactment  
of Ordinance  
9, 1836.

3. And be it enacted that the said Ordinances No. 9, 1836, and No. 2, 1844, shall continue in force until the first day of January, one thousand eight hundred and sixty-one.

Duration.

Time of taking  
effect.

4. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 10th day of October, 1853.

By command of His Excellency the Governor,

(Signed) **RICHARD SOUTHEY,**  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) **PERCY VIGORS,**  
Acting Clerk to the Legislative Council.

No. 4.—Sd. George Cathcart.] [10th Oct., 1853.

Ordinance for applying a Sum not exceeding £154,497 2s., for the Service of the Year 1854.

No. 5.—Sd. George Cathcart.] [10th Oct., 1853.

Ordinance for applying a Sum not exceeding £73,480 8s. 8½d., for the Service of the Years 1852 and 1853.

No. 6.—Sd. George Cathcart.]

Ordinance for the general Management and Regulation of the Customs in the Colony of the Cape of Good Hope.\*

Order in  
council—cus-  
toms.

WHEREAS Her Majesty has made and issued an Order in Council in the words and figures following, that is to say:

*“At the Court at Buckingham Palace,  
the 5th day of March, 1852.*

PRESENT:

The Queen's Most Excellent Majesty,  
His Royal Highness Prince Albert,

Lord Chancellor,	Earl of Jersey,
Lord President,	Earl of Hardwicke,
Lord Privy Seal,	Earl of Malmesbury,
Lord Steward,	Lord John Manners,
Duke of Northumberland,	Mr. Chancellor of the Exchequer,
Lord Chamberlain,	Mr. Henley.
Earl Derby,	

Preamble.

“Whereas by a certain Act of Parliament made in the session of Parliament holden in the third and fourth years of the reign of

\* Vide Act No. 1, 1855, for the present Customs Tariff, which is further amended by Act No. 2, 1861.

his late Majesty King William the Fourth, entitled 'An Act to regulate the Trade of the British Possessions abroad,' it was amongst other things enacted that it should be lawful for His Majesty, by and with the advice of his Privy Council, by any Order or Orders in Council to be issued from time to time, to give such directions and make such regulations touching the trade and commerce to and from any British possessions on or near the continent of Europe, or within the Mediterranean Sea, or in Africa, or within the limits of the East India Company's Charter (excepting the possessions of the said company) as to His Majesty in Council should appear most expedient and salutary, anything in the said act to the contrary notwithstanding, which provisions were re-enacted by a certain other act made in the session of Parliament holden in the 8th and 9th year of her present Majesty Queen Victoria, similarly entitled 'An Act to regulate the Trade of the British Possessions abroad:'

"And whereas by certain orders made by Her Majesty in Council on the 11th day of July, 1839, the 26th September, 1846, and the 24th April, 1847, in pursuance of the said acts respectively Her Majesty made certain regulations and ordered that certain duties of customs should be levied in the island of St. Helena, the district of Natal, and the colony of the Cape of Good Hope respectively :

"And whereas it is expedient to enable the legislatures of the said island, district, and colony respectively to alter or repeal all or any of such duties of customs as aforesaid and all such regulations as are made in and by the said orders respectively :

Power of local legislatures to alter customs, &c., subject to Her Majesty's confirmation.

"Her Majesty doth therefore, with the advice of her Privy Council, and in pursuance and exercise of the powers so vested in her by the said recited Acts of Parliament and of all other powers enabling her in that behalf, order and it is hereby ordered :

"That if and whenever the legislatures of the island of Saint Helena, district of Natal, and Cape of Good Hope respectively shall make or pass any act or ordinance in the manner and subject to the conditions which are or may be by law required in respect of acts or ordinances of such legislatures respectively, altering or repealing all or any of the said duties of customs imposed or regulations made in and by the said orders respectively, and if Her Majesty shall confirm or assent to such act or ordinance in such manner as acts or ordinances passed by such legislatures respectively are or shall be by law subject to her confirmation or assent, such duties or regulations shall upon the proclamation of such confirmation or assent in the said island, district, or colony, or at any time thereafter which may be fixed by such act or ordinance, be so altered or repealed as if such alteration or repeal had been effected by order of Her Majesty with the advice of her Privy Council.

"Provided, always, that no duty be imposed by any such act or ordinance upon the importation into any of the said colonies of any article the produce or manufacture of or imported from any particular country or place which shall not be equally imposed on the

Prohibition to impose differential duties.

importation into the same colony of the like article the produce or manufacture of or imported from all other countries and places whatsoever.

“ And the Right Honourable Sir John Pakington, Baronet, one of Her Majesty’s principal Secretaries of State, is to give the necessary directions herein accordingly.

“ WM. L. BATHURST.”

Non-repeal of Order in Council of 31st October, 1848.

And whereas it is expedient that such an ordinance as aforesaid should be enacted for establishing certain regulations in lieu and in stead of all regulations heretofore in force touching the trade and commerce to and from this colony, save and except those regulations contained in an order of Her Majesty in Council made and bearing date the 31st October, 1848, for imposing a duty on spirits of all sorts imported and permitting the delivery duty free of one gallon of such spirits for every ten gallons of Cape wine exported, which said lastmentioned order and every portion thereof is to be and remain in force precisely as if this ordinance never had been passed: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the commencement of this ordinance the whole of the regulations and provisions contained in the aforesaid order of Her Majesty in Council, bearing date the 24th April, 1847, shall be and are hereby repealed, excepting the following words and figures, contained in and being part of section two of the said Order in Council:

Repeal of Order in Council of 24th April, 1847—except as to tariff of customs.

“ Now, therefore, Her Majesty, with the advice of her Privy Council and in pursuance and exercise of the power so vested in her as aforesaid by the said recited Act of Parliament doth order, and it is hereby ordered, that upon all goods, wares, and merchandise imported into the said colony for consumption there shall be levied the several duties of customs as the same are respectively set forth in figures in the table of duties hereinafter contained, that is to say:

“ A TABLE of Duties of Customs payable on Goods, Wares, and Merchandise, imported into the Colony of the Cape of Good Hope.\*

	DUTY.		
	£	s.	d.
“ Coffee, viz.:			
The produce of British possessions, the cwt.....	0	5	0
The produce of foreign possessions, the cwt... ..	0	10	0
“ Fish, dried or salted, and fins and skins the produce of creatures living in the sea, of foreign fishing or taking, for every £100 of the value thereof.....	12	0	0

\* This tariff has been wholly repealed by the Customs Tariff Act, No. 1, 1855  
*Vide also Act No. 2 1861.*

	DUTY.			Tariff of Customs.
	£	s.	d.	
“ Flour, wheaten, not being the manufacture of the United Kingdom or of any British possession, the barrel of 196 lbs.....	0	3	0	
“ Gunpowder, the lb....	0	0	3	
“ Meat, salted or cured, of all sorts, not being the production or manufacture of the United Kingdom or of any British possession, the cwt.....	0	3	0	
“ Salted or cured, of all sorts, being the production or manufacture of the United Kingdom or of any British possession, the cwt.....	0	1	3	
“ Oil, train and blubber, the produce of fish or creatures living in the sea, of foreign fishing, the tun (imperial measure).....	3	0	0	
“ Spermaceti, of foreign fishing, the tun (imperial measure).....	7	10	0	
“ Pepper, the cwt.....	0	4	0	
“ Rice, the cwt.....	0	1	6	
“ Sugar, viz. :				
Not refined, the produce of any British possession, the cwt.....	0	2	3	
Not refined, the produce of any other place, the cwt.....	0	4	6	
Refined or candy, not manufactured in the United Kingdom or any British possession, the cwt.....	0	6	0	
Refined or candy, the manufacture of the United Kingdom, or of any British possession, the cwt.	0	3	0	
“ Tea, the lb.....	0	0	4½	
“ Tobacco, viz. :				
Not manufactured, the cwt.....	0	12	0	
Manufactured (not cigars), the cwt. ....	1	0	0	
Cigars, the 1,000.....	0	5	0	
“ Wood, unmanufactured, viz. :				
Mahogany, rosewood, and teakwood, the cubic foot	0	0	3	
All other wood not the produce of the United Kingdom or of any British possession, the cubic foot.....	0	0	2	
“ Wine, viz. :				
In bottles, each not of greater content than six to the imperial gallon, the dozen bottles.....	0	4	0	
In bottles, each not of greater content than twelve to the imperial gallon, the dozen bottles.....	0	2	0	
Not in bottles, the imperial gallon.....	0	1	6	
“ Goods, wares, and merchandise not otherwise charged with duty, and not herein declared free of duty, being the growth, produce, or manufacture of the United Kingdom or of any British possessions abroad, for every £100 of the value.....	5	0	0	

	DUTY.		
	£	s.	d.
Not otherwise charged with duty, and not herein declared to be free of duty, being the growth, produce, or manufacture of any foreign state, for every £100 of the value.....	12	0	0

FREE.

Free.

- “ Bullion.
- “ Casks, staves, hoops, and coopers' rivets.
- “ Coin.
- “ Diamonds.
- “ Horses, mules, asses, sheep, cattle, and all other live stock and live animals.
- “ Seeds, bulbs, and plants.
- “ Specimens illustrative of natural history.
- “ Provisions or stores of every description imported or supplied for the use of Her Majesty's land or sea forces.

Admission of foreign goods entered for consumption in the United Kingdom as British.

Provided, always, that whenever any article being the growth, production, or manufacture of any foreign country hereinbefore charged with any duty is imported into the said colony from the United Kingdom, having been there entered for consumption and re-exported without any drawback of duty having been first paid thereon, such article shall be liable only to such duty as is hereinbefore charged upon similar articles being the growth, production, or manufacture of the United Kingdom or of any of the British possessions abroad :

Foreign goods from bonded warehouses or on which duties have been drawn back.

Provided, also, that if any goods being the growth, produce, or manufacture of any foreign country shall be imported into the said colony through the United Kingdom (having been warehoused therein and being exported from the warehouse or the duties thereon if there paid having been drawn back) there shall be charged on such goods, over and above the duties hereinbefore imposed on similar goods being the growth, produce, or manufacture of the United Kingdom or of any of the British possessions abroad three fourths of the difference if any between such duties and the duties hereinbefore charged on goods not being the growth, produce, or manufacture of the United Kingdom or of any of the British possessions abroad ; which several duties and exemptions as therein set forth and expressed and as herein recited shall continue in full force and effect and continue to be levied and collected as if the present ordinance had not been passed, and also excepting as to any penalties or forfeitures incurred or offences committed at any time before the coming into operation of this ordinance.

2. And be it further enacted that the following goods, <sup>Exemptions.</sup> wares, and merchandise shall be admitted free of duty, that is to say :

Bottles, of common glass, imported full of spirits or wine.

Coals and coke.

Patent fuel.

Wine imported or taken out of bond for the use of military officers serving on full pay in this colony or in British Kaffraria, and also for the use of the 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 or in British Kaffraria, 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.

3. That for the purposes of this or any future ordinance <sup>Interpretation clause.</sup> or act of the legislature of this colony relating to the customs the following terms whenever they occur shall respectively have the following significations, that is to say : the terms "Cape of Good Hope" and "this colony" shall signify respectively the colony of the Cape of Good Hope, exclusive of the district of Natal; the term "governor" shall signify the person who for the time being shall be lawfully administering the government of this colony; the terms "ship" and "vessel" shall respectively signify any ship or vessel generally; the term "master" of any ship shall signify the person having or taking the charge or command of such ship; the term "owners" or "owner" of any ship shall signify alike one owner if there be only one and any or all the owners if there be more than one; the term "mate" of any ship shall signify the person next in command of such ship to the master thereof; the term "seaman" shall signify alike seaman, mariner, sailor, or landsman being one of the crew of any ship; the term "warehouse" shall signify any place, whether house, shed, yard, or other place, in which goods entered to be warehoused upon importation may be lodged, kept, and secured without payment of duty; the term "Queen's warehouse" shall signify any place provided by the crown for lodging goods therein for security of the customs; and whenever mention is or shall be made of any public officer the officer mentioned shall be deemed to signify and to be such officer for the time being.

4. And whereas under the authority of a proclamation of the then Governor of this colony, made in the year 1803,

Abolition of  
government  
fees and stamps  
on manifests.

there have been and still are charged, levied, and collected at the custom-houses of the several ports in this colony sundry fees, that is to say, upon the entering and clearing of vessels, upon entries for the landing and shipping of goods, upon the manifests of export cargoes, upon permits or sufferances for the shipment of ship's stores: And whereas also under the authority of a proclamation of the then Governor, bearing date the 10th day of December, 1824, certain stamps are required to be produced at the several custom-houses aforesaid upon the clearing outwards of vessels, such stamps being of the respective amounts specified in letter E of the stamps tariff contained in the said proclamation: And whereas it is desirable and expedient to relieve the shipping trading to this colony and also the importers and exporters of goods from the abovementioned several charges under the heads of fees and stamps respectively: Be it further enacted that from and after this ordinance coming into force and effect each and every of the aforesaid fees and stamps shall cease, determine, and be no longer payable.

Officers of  
customs.

5. That every person employed on any duty or service relating to the customs within this colony or its dependencies by the order or with the concurrence of the Governor or the collector of customs, whether previously or subsequently expressed, shall be deemed to be the officer of customs for that duty or service; and that every act, matter, or thing required by any law at any time in force to be done or performed by, to, or with any particular officer nominated in such law for such purpose, being done or performed by, to, or with any person appointed by the Governor or the collector of customs to act for or in behalf of such particular officer, the same shall be deemed to be done or performed by, to, or with such particular officer.

Declaration on  
on admission to  
office.

6. That every person who shall be appointed to any office or employment in the service of the customs shall at their respective admissions thereto make the following declaration, that is to say:

I, A. B., do declare that I will be true and faithful in the execution to the best of my knowledge and power of the trust committed to my charge and inspection in the service of the customs of the Cape of Good Hope, and that I will not require, take, or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any sort or description whatever, either directly or indirectly, for any service, act, duty, matter, or thing done or performed or to be done or performed in the execution or discharge



of any of the duties of my office or employment on any account whatever, other than my salary and what is or shall be allowed me by law or by any special order or regulation of the Governor."

7. That if any officer, clerk, or other person acting in any office or employment in or belonging to the customs in this colony shall take or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any other sort or description whatever, directly or indirectly, from any person (not being a person duly appointed to some office in the customs) on account of anything done or to be done by him in or in any way relating to his said office or employment except such as he shall receive under any order or permission of the Governor, every such officer so offending shall on proof thereof to the satisfaction of the Governor be dismissed from his office; and if any person (not being a person duly appointed to some office in the customs) shall give, offer, or promise to give any such fee, perquisite, gratuity, or reward, such person shall for every such offence forfeit the sum of one hundred pounds.

Dismissal of officers taking unauthorized fees.

Penalty on persons giving fees.

8. That upon examinations and inquiries made by the collector or other principal officer of the customs in this colony for ascertaining the truth of facts relative to the customs or the conduct of officers or persons employed therein any person examined before him or them as a witness shall deliver his testimony on oath, to be administered by such collector or principal officer of customs as shall examine any such witnesses, and who are hereby authorized to administer such oath; and if any person shall be convicted of making a false oath touching any of the facts so testified on oath or of giving false evidence on his examination on oath before any such collector or principal officer every such person so convicted as aforesaid shall be deemed guilty of perjury and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.

Inquiry by collector upon oath.

9. That in all cases wherein proof on oath shall be required by this ordinance or by any other law relating to the customs, or for the satisfaction or consideration of the Governor, in any matter relating to any business relating to the customs, the same may be made before the collector or other principal officer of the customs at the port where such proofs shall be required to be made or before the persons acting for them respectively, and who are hereby authorized and empowered to administer the same.

Officers before whom oath may be taken.

Hours of  
attendance.

10. That it shall be lawful for the Governor from time to time to appoint the hours of general attendance of the respective officers of the customs at their proper offices and places of employment, and to appoint the times during such hours at which any particular parts of the duties of such officers respectively shall be performed by them.

Holidays.

11. That no day shall be kept a public holiday by the customs except Christmas Day, Good Friday, New Year's Day, in every year, and any days appointed for the purpose of a general fast or of a general thanksgiving, and also such days as shall have been or shall be appointed for the celebration of the birthdays of Her Majesty and of her successors.

Boarding and  
searching of  
ships.

12. That it shall be lawful for the proper officers of customs to board any ship arriving at any port in this colony or being within one league of the coast thereof and freely to stay on board until all goods laden therein shall have been duly delivered from the same, and such officers shall have free access to every part of such ship, with power to fasten down hatchways and to mark any goods before landing, and to lock up, seal, mark, or otherwise secure any goods on board such ship; and if any place or any box or chest be locked and the keys be withheld such officers, if they be of a degree superior to tidewaiters, may open any such place, box, or chest in the best manner in their power, and if any goods liable to duty be found concealed on board any such ship they shall be forfeited; and if the officer shall place any lock, mark, or seal upon any goods on board, and such lock, mark, or seal be wilfully opened, altered, or broken before due delivery of such goods, or if any such goods be secretly conveyed away, or if the hatchways after having been fastened down by the officer be opened, the master of such ship shall forfeit a sum not exceeding one hundred pounds.

Stationing of  
officers on  
board of ship.

13. That it shall be lawful for the collector or other principal officer of customs to station any officer or officers on board any ship while within the limits of any port in this colony, and the master of every ship on board of which any officer is so stationed shall provide every such officer sufficient room under the deck in some part of the forecastle or steerage for his bed or hammock, and in case of neglect or refusal so to do shall forfeit any sum not exceeding twenty pounds.

Master's name  
on registry of  
ship.

14. That it shall be lawful for the officers of the customs at any port in this colony to refuse to admit any person to do any act at such port as master of any British ship unless the

name shall be inserted in or have been endorsed upon the certificate of registry of such ship as being the master thereof, or until the name shall have been so endorsed by the proper officer at such port as aforesaid.

15. That the unshipping, carrying, and landing of all goods and the bringing of the same to the proper place after landing, for examination or for weighing or for gauging, and the putting the same into the scales and the taking of the same out of and from the scales after weighing, shall be performed by or at the expense of the importer. Examination of goods at importer's expense.

16. That the several sorts of goods enumerated or described in the table following, denominated "A table of prohibitions and restrictions," are hereby prohibited to be imported or brought into this colony, or shall be so imported or brought only under the restrictions mentioned in such table, according as the several sorts of such goods are set forth herein, that is to say: Prohibitions.

*A Table of Prohibitions and Restrictions.*

<p>Gunpowder, Arms, Ammunition or utensils of war,</p>	}	<p>Prohibited to be imported except from the United Kingdom or from some other British possession.</p>
<p>Articles of foreign manufacture and any packages of such articles bearing any names, brands, or marks purporting to be the names, brands, or marks of manufacturers resident in the United Kingdom.</p>		
<p>Base or counterfeit coin.</p>		
<p>Books wherein the copyright shall be subsisting, first composed, or written, or printed in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the commissioners of customs a notice in writing that such copyright subsists; such notice also stating when such copyright will expire.*</p>		

*Prohibited to be imported.*

And if any goods shall be imported or brought in this colony contrary to any of the prohibitions or restrictions mentioned in such table in respect of such goods the same shall be forfeited, and if the ship or vessel in which such goods shall be imported be of less burthen than sixty tons, such ship or vessel shall be forfeited.

17. That no goods shall be imported into nor shall any goods be exported from this colony by sea, except into or from the several ports called "free ports," that is to say, the Free ports.

\* *Vide Act No. 4, 1855.*

ports of Cape Town, Simon's Town, Port Elizabeth, and East London, or such other ports within this colony as may be hereafter declared by the Governor by proclamation to be free ports fit for such importation and exportation, all which ports shall be "free ports;" and if any goods shall be imported into this colony contrary hereto such goods shall be forfeited.

Liability to duty of crown property on sale thereof.

18. That all goods, wares, and merchandize the property of the crown shall in case of the sale thereof after importation into this colony be liable to and be charged with such and the same duties of customs as may by law be payable or charged on the like goods, wares, and merchandize not being the property of the crown.

Duties in sterling money.

19. That all sums of money granted or payable under any order or orders of Her Majesty in Council now in force in this colony or under this or any future ordinance or act of the legislature of this colony relating to the customs as duties, penalties, or forfeitures, shall be deemed and are hereby declared to be sterling money of Great Britain, and shall be collected, recovered, and paid to the amount of the value which such nominal sums bear in Great Britain, and such money may be received and taken in sterling money of Great Britain; and all such duties shall be paid and received on and according to the imperial weights and measures now by law established in England; and in all cases where such duties are imposed according to any specific quantity or any specific value the same shall be deemed to apply in the same proportion to any greater or less quantity or value; and all such duties shall be under the management of the Governor of the said colony.

Imperial weights and measures.

Payment of gross duties by collector to treasurer.

20. That the gross produce of the duties so received by the means and powers of any order or orders of Her Majesty in Council now in force in this colony or under this or any future ordinance or act of the legislature of this colony relating to the customs shall be paid by the collector of customs into the hands of the Treasurer-General of this colony or other proper officer authorized to receive the same.

Report of ship's arrival at custom-house within 24 hours.

21. That the master of every ship arriving at any port or place in this colony, whether laden or in ballast, shall within twenty-four hours after such arrival and before bulk be broken come to the custom-house for the port or place where he arrives and there make due report in writing of

of such ship, and shall make and subscribe a declaration to the truth of the same before the collector or other proper officer of customs at such port; and such report shall contain the particulars of the arrival and voyage of such ship, stating her name, country, and tonnage, and if British the port of registry, the name and country of the master, the country of the owners, the number of the crew, and how many are of the country of such ship, and whether she be laden or in ballast, and if laden the marks, numbers, and contents of every package and parcel of goods on board and where the same was laden and where and to whom consigned, and where any and what goods if any had been unladen during the voyage, as far as any such particulars can be known to him; and the master shall further answer all such questions concerning the ship and cargo, and the crew, passengers, and voyage as shall be demanded of him by such officer of customs; and if any goods be unladen from any ship before such report be made, or if the master fail to make such report or make an untrue report, or do not truly answer the questions demanded of him he shall forfeit the sum of one hundred pounds, and if any goods be not reported such goods shall be forfeited.

Particulars of report.

Examination of master.

22. That the master of every ship bound from this colony shall before any goods be laden therein deliver to collector or other proper officer of customs an entry outwards under his hand of the destination of such ship, stating her name, country, and tonnage, and if British, the port of registry, the name and country of the master, the country of the owners, the number of the crew, and how many are of the country of such ship; and if any goods be laden on board any ship before such entry be made, the master of such ship shall forfeit the sum of fifty pounds; and before such ship depart the master shall bring and deliver to the collector or other proper officer of customs a content in writing under his hand of the goods laden, and the names of the respective shippers and consignees of the goods with the marks and numbers of the packages or parcels of the same, and shall make and subscribe a declaration to the truth of such content as far as any such particulars can be known to him; and the master of every ship bound from this colony, whether in ballast or laden, shall before departure come before the collector or other proper officer of customs and answer all such questions concerning the ship and the cargo if any and

Entry outwards of ship bound from the colony.

Delivery of content to officer of customs before departure.

- the crew, passengers, and voyage as shall be demanded of him by such officer, and thereupon the collector or other proper officer of customs if such ship be laden shall make out and give to the master a certificate of the clearance of such ship for her intended voyage, containing an account of the total quantities of the several sorts of goods laden therein, or a certificate of her clearance in ballast as the case may be; and if the ship shall depart without such clearance, or if the master shall deliver a false content or shall not truly answer the questions demanded of him he shall forfeit the sum of one hundred pounds.
- Certificate of clearance.**
- Statement as to produce of the colony in entry and clearance.**
23. That no goods shall be stated in such certificate of clearance to be the produce of this colony unless such goods shall have been expressly stated so to be in the entry outwards of the same.
- Entry of goods landed or shipped.**
24. That no goods shall be laden or waterborne to be laden on board any ship or unladen from any ship in this colony until due entry shall have been made of such goods and warrants granted for the lading or unlading of the same, and that no goods shall be so laden or waterborne or so unladen except at some place at which an officer of customs is appointed to attend the lading or unlading of goods or at some place for which a sufferance shall be granted by the collector or other principal officer of customs for the lading and unlading of such goods, and that no goods shall be so laden or unladen except in the presence or with the permission in writing of the proper officer: Provided, always, that it shall be lawful for the Governor to make and appoint such other regulations for the carrying coastwise of any goods or for the removing of any goods for shipment, as to him shall appear expedient, and that all goods laden, waterborne, or unladen contrary to the regulations of this ordinance or contrary to any regulations so made and appointed shall be forfeited.
- Goods coastwise.**
- Particulars of bill of entry.**
25. That the person entering any goods shall deliver to the collector or other proper officer of customs a bill of the entry thereof, fairly written in words at length, containing the name of the exporter or importer, and of the ship and of the master, and of the place to or from which bound, and of the place within the port where the goods are to be laden or unladen, and the particulars of the quality and quantity of the goods and the packages containing the same, and the marks and numbers on the packages, and setting forth whether such goods be the

produce of the United Kingdom or of the British possessions or not, and shall also deliver at the same time one or more duplicates of such bill, in which all sums and numbers may be expressed in figures; and the particulars to be contained in such bill of entry shall be written and arranged in such form and manner and the number of such duplicates shall be such as the collector or other principal officer shall require, and such person shall at the same time pay down all duties due upon the goods, and the collector or other proper officer of customs shall thereupon grant their warrant for the lading or unlading of such goods.

26. That if the importer of any goods shall make and subscribe a declaration before the collector or other proper officer of customs that he cannot for want of full information make perfect entry thereof it shall be lawful for the collector or such other proper officer to receive an entry by bill of sight for the packages or parcels of such goods by the best description which can be given, and to grant a warrant thereupon in order that the same may be landed and secured to the satisfaction of the officer of the customs and at the expense of the importer, and may be seen and examined by such importer in the presence of the proper officers; and within three days after the goods shall have been so landed the importer shall make a perfect entry thereof and pay down all duties due thereon or duly warehouse the same; and in default of such entry such goods shall be taken to the Queen's warehouse, and if the importer shall not within one month after such landing make perfect entry of such goods and pay the duties due thereon, or duly warehouse the same, paying at the same time the charges of removal and Queen's warehouse rent, such goods shall be sold for the payment thereof, and the overplus if any shall be paid to the proprietor of the goods.

Entry by bill  
of sight.

27. That in all cases where the duties imposed upon the importation of articles into this colony are charged not according to the weight, tale, gauge, or measure, but according to the value thereof, such value shall be ascertained by the declaration of the importer of such articles or his known agent in manner and form following, that is to say:

Entry of  
valuation of  
goods subject  
to *ad valorem*  
duties.

I, A. B., do hereby declare that the articles mentioned in the entry and contained in the packages (here specifying the several

packages and describing the several marks and numbers as the case may be) are of the value of \_\_\_\_\_

Witness my hand the \_\_\_\_\_ day of \_\_\_\_\_

A. B.

The above declaration, signed the \_\_\_\_\_ day of \_\_\_\_\_ in the presence of

C. D., collector (or other principal officer).

Subscription of declaration in presence of customs officer.

Which declaration shall be written on the bill of entry of such articles and shall be subscribed with the hand of the importer thereof or his known agent in the presence of the collector or other principal officer of the customs: Provided that if upon view and examination of such articles by the proper officer of the customs it shall appear to him that the said articles are not valued according to the true price or value thereof and according to the true intent and meaning of this or any future ordinance or act of the legislature of this colony relating to the customs, then and in such case the importer or his known agent shall be required to declare on oath before the collector or other proper officer what is the invoice-price of such articles, and that he verily believes such invoice-price is the current value of the articles at the place from whence the said articles were imported, and such invoice-price with the addition of ten pounds per centum thereon shall be deemed to be the value of the articles in lieu of the value so declared by the importer or his known agent and upon which the duties imposed shall be charged and paid: Provided, also, that if it shall appear to the collector or other proper officer that such articles have been invoiced below the real and true value thereof at the place from whence the same were imported or if the invoice-price is not known the articles shall in such case be examined by two competent persons to be nominated and appointed by the Governor or Lieutenant-Governor of this colony, and such persons shall declare on oath before the collector or other proper officer of customs what is the true and real value of such articles in this colony, and the value so declared on the oaths of such persons shall be deemed to be the true and real value of such articles and upon which the duties imposed shall be charged and paid.

Proceedings on refusal of importer to pay *ad valorem* duty.

28. That if the importer of such articles shall refuse to pay the duties imposed thereon it shall and may be lawful for the collector or other principal officer of customs and he is hereby required to take and secure the same with the casks



or other packages thereof and to cause the same to be publicly sold within the space of twenty days at the most after such refusal made, and at such time and place as such officer shall by four or more days' public notice appoint for that purpose, which articles shall be sold to the best bidder; and the money arising from the sale thereof shall be applied in the first place in payment of the said duties together with the charges that shall have been occasioned by the said sale, and the overplus if any shall be paid to such importer or proprietor or any other person authorized to receive the same.

29. That every importer of any goods shall within twenty days after the arrival of the importing ship make due entry inwards of such goods and land the same; and in default of such entry it shall be lawful for the officers of the customs to convey such goods to the Queen's warehouse, and if the duties due upon such goods be not paid within three months after such twenty days shall have expired, together with all charges of removal and warehouse rent, the same shall be sold, and the produce thereof shall be applied first to the payment of freight and charges, next of duties, and the overplus if any shall be paid to the proprietor of the goods or any other person authorized to receive the same.

Entry of goods within twenty days of ship's arrival.

30. That whenever any goods shall be taken to and secured in any of the Queen's warehouses in this colony for security of the duties thereon or to prevent the same coming into home use it shall be lawful for the collector or other principal officer of customs to charge and demand and receive warehouse rent for such goods for all such time as the same shall remain in such warehouse: Provided, always, that it shall be lawful for the collector of customs with the sanction of the Governor to fix the rates or amount of rent which shall be payable for any goods secured in any of the Queen's warehouses aforesaid.

Rent of Queen's warehouse.

31. That no goods shall be imported into this colony as being imported from the United Kingdom or from any other British possession (if any advantage attach to such distinction) unless such goods appear upon the cockets or other proper documents for the same to have been duly cleared outwards at the port of exportation in the United Kingdom or in such other British possession, nor unless the ground upon which such advantage be claimed be stated in such cocket or document.

Importation of British goods.

32. That no entry nor any warrant for the landing of any goods or for the taking of any goods out of any warehouse

Particulars of goods in entry.

shall be deemed valid unless the particulars of the goods and packages in such entry shall correspond with the particulars of the goods and packages purporting to be the same in the report of the ship or in the certificate or other document where any is required, by which the importation or entry of such goods is authorized, nor unless the goods shall have been properly described in such entry by the denomination and with the characters and circumstances according to which such goods are charged with duty or may be imported; and any goods taken or delivered out of any ship or out of any warehouse by virtue of any entry or warrant not corresponding or agreeing in all such respects or not properly describing the same shall be deemed to be goods landed or taken without due entry thereof and shall be forfeited.

Free ware-  
housing ports.

33. And whereas it is expedient to constitute and appoint certain ports in this colony to be free warehousing ports for all the goods which may be legally imported into the same: It is therefore hereby enacted that the ports of Cape Town, Simon's Town, Port Elizabeth, and East London, and such other ports within this colony as may hereafter be declared by the Governor by proclamation to be fit for that purpose, shall be "free warehousing ports" for the purposes of this ordinance or of any future ordinance or act of the legislature of this colony relating to the customs.

Ports for limit-  
ed purposes.

34. And whereas it may be necessary to establish ports within this colony for particular and limited purposes only: Be it therefore enacted that it shall be lawful for the Governor, with the advice of the Executive Council, in making the appointment of any free port to limit and confine such appointments respectively to any and such purposes only as shall be expressed in such order of appointment.

Bonded ware-  
houses.

35. And whereas it is necessary to make regulations for the appointing proper warehouses at certain of the ports aforesaid and for the lodging and securing of goods therein: It is hereby further enacted that it shall be lawful for the collector of customs, by notice in writing under his hand, to appoint from time to time such warehouses at that port as shall be approved of by him for the free warehousing and securing of goods therein for the purposes of this or any future ordinance or act of the legislature of this colony relating to the customs, and also in such notice to declare what sort of goods may be so warehoused, and also by like notice to revoke or alter any such appointment or declaration:

Provided, always, that every such notice shall be published in the Government Gazette.

36. That it shall be lawful for the importer of any such goods into this colony to warehouse the same in the warehouses so appointed without payment of any duty on the first entry thereof, subject nevertheless to the rules, regulations, restrictions, and conditions hereinafter contained: Provided, always, that any goods warehoused at any warehousing port in this colony, being first duly entered, may be delivered under the authority of the proper officer of customs without payment of duty, except for any deficiency thereof, for the purpose of removal to another warehousing port in this colony, under bond to the satisfaction of such officer for the due arrival and re-warehousing of such goods at such other port.

Storing of goods in bonded warehouses without payment of duty.

37. That all goods so warehoused shall be stowed in such parts or divisions of the warehouse and in such manner as the collector shall direct, and that the warehouse shall be locked and secured in such manner and shall be opened and visited only at such times, and in the presence of such officers, and under such rules and regulations as the collector shall direct, and that all such goods shall after being landed upon importation be carried to the warehouse, or shall after being taken out of the warehouse for exportation be carried to be shipped under such rules and regulations as the collector shall direct.

Authority of collector as to stowage, &c., of goods.

38. That upon the entry of any goods to be warehoused the importer of such goods instead of paying down the duties due thereon shall give bond with one sufficient surety, to be approved of by the collector, in double the duties payable on such goods, with condition for the safe depositing of such goods in the warehouse mentioned in such entry and for the payment of all duties due upon such goods, or for the exportation thereof or shipment thereof as stores, according to the first account taken of such goods upon the landing of the same; and with further condition that no part thereof shall be taken out of such warehouse until cleared from thence upon due entry and payment of duty or upon due entry for exportation or for shipment as stores; and with further condition that the whole of such goods shall be so cleared from such warehouse, and the duties upon any deficiency of the quantity according to such first account shall be paid within two years from the date of the first entry thereof; and if after such bond shall have been given the goods or any part

Importer's bond with surety for double the amount of duty.

Fresh security on cessation of bonder's interest. thereof shall be sold or disposed of so that the original bonder shall be no longer interested in or have any control over the same it shall be lawful for the collector to admit fresh security to be given by the bond of the new proprietor or other person having control over such goods, with his sufficient surety, and to cancel the bond given by the original bonder of such goods or to exonerate him to the extent of the fresh security so given.

General bond of proprietor, &c., of bonded warehouse. 39. That it shall be lawful for the proprietor or occupier of any bonded warehouse appointed under authority of this ordinance, if he be willing, to give general security by bond with two sufficient sureties for the payment of the full duties of importation on all such goods as shall at any time be warehoused therein or for the due exportation thereof, and where such general security shall have been given in respect of any bonded warehouse it shall not be necessary for the importer to give bond as by the last section required in respect of the particular goods imported and entered to be warehoused therein.

Forfeiture of goods entered to be warehoused if removed without permission. 40. That if any goods which have been entered to be warehoused shall not be duly carried into and deposited in the warehouse or shall afterwards be taken out of the warehouse without due entry and clearance, or having been entered and cleared for exportation shall not be duly carried and shipped or shall afterwards be re-landed, except with the permission of the proper officer of the customs, such goods shall be forfeited.

Taking of account of goods landed to be warehoused. Delivery from warehouse. Account of goods cleared, &c. 41. That upon the entry and landing of any goods to be warehoused the proper officer of the customs shall take a particular account of the same and shall if he see fit mark the contents on each package, and shall enter the same in a book to be kept for that purpose; and no goods which have been so warehoused shall be taken or delivered from the warehouse except upon due entry and under the care of the proper officers for exportation, or upon due entry and payment of duty for home use; and whenever the whole of the goods warehoused under any entry shall be cleared from the warehouse, or whenever further time shall be granted for any such goods to remain warehoused, an account shall be made out of the quantity upon which the duties have been paid and of the quantity exported and of the quantity (to be then ascertained) of the goods still remaining in the warehouse as the case may be, deducting from the whole the quantity contained

in any whole packages if any which may have been abandoned for duties; and if upon such account there shall in either case appear to be any deficiency of the original quantity the duty payable upon the amount of such deficiency shall then be paid.

Payment of duty on deficiency.

42. That it shall be lawful for the collector or other principal officer, under such regulations as he shall see fit, to permit moderate samples to be taken of any goods so warehoused without entry and without payment of duty, except as the same shall eventually become payable as on a deficiency of of the original quantity.

Samples of warehoused goods.

43. That it shall be lawful for the collector or other principal officer, under such regulations as he shall see fit, to permit the proprietor or other person having control over the goods so warehoused to sort, separate, and pack and re-pack any such goods, and to make such lawful alterations therein or arrangements and assortments thereof as may be necessary for the preservation of such goods or in order to the sale, shipment, or legal disposal of the same, and also to permit any parts of such goods so separated to be destroyed, but without prejudice to the claim for duty upon the whole original quantity of such goods: Provided, always, that it shall be lawful for any person to abandon any whole packages to the officers of customs for the duties without being liable to any duty for the same.

Sorting and repacking under collector's authority.

Abandonment of whole packages.

44. That all goods which have been so warehoused or re-warehoused shall be duly cleared either for exportation or for home consumption within two years from the day of first entry for the warehousing thereof; and if any such goods be not so cleared it shall be lawful for the collector or other principal officer to cause the same to be sold, and the produce shall be applied first to the payment of the duties, next of warehouse rent and other charges, and the overplus if any shall be paid to the proprietor: Provided, always, that it shall be lawful for the collector or other principal officer to grant further time for any such goods to remain warehoused if he shall see fit so to do.

Clearing of goods within two years.

Power of collector to grant further time,

45. That upon the entry outwards of any goods to be exported from the warehouse the person entering the same shall give security by bond in double the duties of importation on the quantity of such goods, or if such goods are prohibited to be imported for home use in double the value of such goods, with one sufficient surety to be approved of by the collector or other principal officer, that the same shall be

Export of bonded goods.

Exporter's bond with surety for double duty or double value.

Transhipment  
of bonded  
goods.

landed at the place for which they be entered outwards or be otherwise accounted for to the satisfaction of the collector or other principal officer: Provided, always, that it shall be lawful for any person who shall have duly made entry at any port in this colony of any goods to be there lodged in the warehouse and who shall in all other respects have complied with the law respecting the warehousing of such goods to tranship the same for exportation within the limits of the said port into any vessel without the actual landing thereof on shore, if such person shall in all respects comply with and observe the regulations in the next following section mentioned or such other regulations and conditions as may be hereafter made or required by the collector for effecting any such transhipment.

Manner of  
transhipment.

46. That in cases of the transhipment of goods entered to be warehoused at any of the free warehousing ports of this colony the bond required to be given by the thirty-eighth section of this ordinance upon the entry of the goods is to be dispensed with and the transhipment allowed to take place under the care and superintendence of the officers of customs, on due entries inwards and outwards being previously passed for the goods and bond being entered into for the exportation of the same, in like manner as if they had been actually landed and deposited in the warehouse.

Existing bon-  
ded ware-  
houses.

47. That all appointments of warehouses for the warehousing of goods made under the authority of any order of Her Majesty in Council heretofore or at present in force in this colony shall continue in force as if the same had been made under the authority of this ordinance, and all bonds given in respect of any goods warehoused or entered to be warehoused under any order in Council in force at the time of the commencement of this ordinance shall continue in force for the purposes of this ordinance.

Liability of  
goods in bond  
to duty at date  
of entry.

48. That all goods whatsoever which now are or may be deposited in any warehouse or place of security under orders of Her Majesty in Council authorizing the warehousing of goods without payment of duty upon the first importation thereof, or which may be imported and on board any ship or vessel, shall upon being entered for home consumption be subject and liable to such and the like duties as may at the time of passing such entry be due and payable on the like sort of goods under this or any future ordinance or act of the legislature of this colony relating to the customs.

49. That it shall be lawful for the officers of customs to go on board any ship in any port in this colony and to rummage and search all parts of such ships for prohibited and uncustomed goods, and also to go on board any ship hovering within one league of the coast of this colony, and in either case freely to stay on board such ship so long as she shall remain in such port or within such distance; and if any such ship be bound elsewhere and shall continue so hovering for the space of twenty-four hours after the master shall have been required to depart, it shall be lawful for the officer of customs to bring such ship into port and to search and examine her cargo, and to examine the master on oath touching the cargo and voyage; and if there be any goods on board prohibited to be imported into this colony such ship and her cargo shall be forfeited, and if the master shall not truly answer the questions which shall be demanded of him on such examination he shall forfeit the sum of one hundred pounds.

Boarding and searching of ships by customs officers.

Examination of ship hovering about port.

Penalties on discovery of prohibited goods,—and on master untruly answering.

50. That all vessels, boats, carriages, and cattle made use of in the removal of any goods liable to forfeiture under this or any future ordinance or act of the legislature of this colony or under any act of the Imperial Parliament relating to the customs or to trade and navigation shall be forfeited; and every person who shall assist or be otherwise concerned in the unshipping, landing, or removal, or in the harbouring of such goods, or into whose hands or possession the same shall knowingly come, shall forfeit the treble value thereof or the penalty of one hundred pounds at the election of the officers of the customs, and the averment in any information or libel to be exhibited for the recovery of such penalty that the officer proceeding has elected to sue for the sum mentioned in the information shall be deemed sufficient proof of such election without any other or further evidence of such fact, and that such officer shall be a competent witness in any such suit or proceeding.

Forfeiture of vessels, &c., carrying goods liable to forfeiture.

Penalty on persons unshipping, landing, &c., such goods.

51. That all goods and all ships, vessels, and boats, and all carriages, and all cattle liable to forfeiture under this or any future ordinance or act of the legislature of this colony relating to the customs shall and may be seized and secured by any officer of the customs; and every person who shall in any way hinder, oppose, molest, or obstruct any officer of customs or any person acting in his aid or assistance shall for every such offence forfeit the sum of two hundred pounds.

Seizure of vessels, &c., by customs officers.

Penalty on obstruction of officers, £200.

Collusive seizure and agreements not to seize.

52. That if any officer of customs or any person duly employed for the prevention of smuggling shall make any collusive seizure or deliver up or make any agreement to deliver up or not to seize any vessel, boat, or goods liable to forfeiture under this or any future ordinance or act of the legislature of this colony relating to the customs, or shall take any bribe, recompense, gratuity, or reward for the neglect or non-performance of his duty, every such officer or other person shall forfeit for every such offence the sum of five hundred pounds; and every person who shall give or offer, or promise to give or procure to be given any bribe, recompense, or reward to or shall make any collusive agreement with any such officer or person as aforesaid in this colony to induce him in any way to neglect his duty or to do or conceal or connive at any thing whereby the provisions of this or any future ordinance or act of the legislature of this colony relating to the customs may be evaded shall forfeit the sum of two hundred pounds.

Penalty on officers, £500.—on other persons, £200.

Notice of claim by owner, &c., within one month, and in default thereof barring of action grounded on seizure.

53. That all vessels, boats, goods, and other things which shall have been or shall hereafter be seized as forfeited in this colony under this or any future ordinance or act of the legislature of this colony relating to the customs shall be deemed and taken to be condemned, and may be dealt with in the manner hereinafter by the fifty-sixth section of this ordinance directed, unless the person from whom such vessel, boats, goods, and other things shall have been seized, or the owner of them or some person authorized by him, shall within one calendar month from the day of seizing the same give notice in writing to the person or persons seizing the same or to the collector or other principal officer of customs at the port within this colony where the same shall have been seized that he claims the vessel, boat, goods, or other things, or intends to claim them, and in default of the giving of such notice as aforesaid no action, suit, or proceeding shall be capable of being brought or instituted against any officer of customs grounded merely upon the seizure of any of the vessels, boats, goods, or other things so seized as aforesaid.

Writs of assistance by supreme court and court of vice-admiralty.

54. And it is hereby further enacted that under the authority of a writ of assistance granted by the supreme court of this colony or court of vice-admiralty having jurisdiction in this colony (which court or courts are hereby authorized and required to grant such writ of assistance upon application made to them for that purpose by the principal



officer of customs within this colony), it shall be lawful for any officer of the customs, taking with him any officer of the law proper for the execution of criminal warrants, to enter any building or other place in the day time and to search for and seize and secure any goods liable to forfeiture under this or any future ordinance or act of the legislature of this colony relating to the customs, and in case of necessity to break open any doors and any chests or other packages for that purpose; and such writ of assistance when issued shall be deemed to be in force during the whole of the reign in which the same shall have been granted and for twelve months from the conclusion of such reign.

Search under such writs.

55. That if any person shall by force or violence assault, resist, oppose, molest, hinder, or obstruct any officer of the customs or other person employed as aforesaid in the exercise of his office or any person acting in his aid or assistance, such person being thereof convicted shall be liable to a fine not exceeding five hundred pounds or to be imprisoned with or without hard labour for any period not exceeding five years.

Penalty on obstruction of officers, &c., £500, or imprisonment for five years.

56. That all things which shall be seized as being liable to forfeiture under this or any future ordinance or act of the legislature of this colony relating to the customs shall be taken forthwith and delivered into the custody of the collector or other principal officer of the customs at the custom-house next to the place where the same were seized, who shall secure the same, and after condemnation thereof the collector or such other principal officer shall cause the same to be sold by public auction to the best bidder: Provided, always, that it shall be lawful for the Governor to direct in what manner the produce of such sale shall be applied, or in lieu of such sale to direct that any of such things shall be destroyed or shall be reserved for the public service: Provided, also, that the produce of such sale shall be exempt from the payment of auction dues thereon.

Delivery into custody of collector of seizures.

Sale by auction.

Appropriation of proceeds.

57. That all penalties and forfeitures which may have been heretofore or may be hereafter incurred under this or any future ordinance or act of the legislature of this colony relating to the customs shall and may be prosecuted, sued for, and recovered in the supreme court or in any circuit court having jurisdiction, or in the vice-admiralty court of this colony.

Recovery of penalties, &c.

58. That if any goods or any ship or vessel shall be seized as forfeited under this or any future ordinance or act of the

Authority of court with collector's consent to order delivery of seizures on security to double value.

Form and custody of bond.

Mode of proceeding in suits for penalties, &c.

Proof that seizure has been improperly made upon the claimant.

Proceedings for condemnation within one month of claim.

legislature of this colony relating to the customs and detained it shall be lawful for the supreme court or any judge thereof, or the judge of the vice-admiralty court aforesaid, with the consent of the collector of customs, to order the delivery thereof on security by bond with two sufficient sureties to be first approved by such collector, to answer double the value of the same in case of condemnation; and such bond shall be taken to the use of Her Majesty in the name of the collector or officer of the customs in whose custody the goods or the ship or vessel may be lodged, and such bond shall be delivered and kept in the custody of such collector or officer, and in case the goods or the ship or vessel shall be condemned the value thereof shall be paid into the hands of such collector or officer, who shall thereupon cancel such bond.

59. That no suit shall be commenced for the recovery of any penalty or forfeiture under this or any future ordinance or act of the legislature of this colony relating to the customs except in the name of some superior officer of the customs or of Her Majesty's attorney-general for this colony; and if a question shall arise whether any person is an officer of the customs, *vivâ voce* evidence may be given of such fact and shall be deemed legal and sufficient evidence.

60. That if any goods shall be seized for non-payment of duties or any other cause of forfeiture, and any dispute shall arise whether the duties have been paid for the same or the same have been lawfully imported or lawfully laden or exported, the proof thereof shall be on the owner or claimer of such goods and not on the officer who shall seize or stop the same.

61. That when and as often as the collector or other principal officer of customs at the port within this colony where any vessel, boat, goods, or other things shall have been seized as forfeited under this or any future ordinance or act of the legislature of this colony relating to the customs shall have received the certain notice in writing hereinbefore in the fifty-third section of this ordinance mentioned, the said collector or other officer shall within one month cause proceedings to be commenced in the supreme court of this colony or in some competent circuit court thereof or in the vice-admiralty court thereof, for the purpose of obtaining the condemnation of the matters or things which shall have been so seized.

62. That when and as often as the said collector or other officer shall cause such proceedings to be commenced in the

supreme court of this colony or in any circuit court thereof no owner or other lawful claimant shall make any claim or be admitted to defend the said suit or in any way to dispute the legality of the said seizure unless oath to the property in the matter or thing so seized be made by the owner or by his attorney or agent by whom such action, suit, or proceeding shall be defended, to the best of his knowledge and belief; and every person making a false oath thereto shall be deemed to be guilty of the crime of perjury and shall be liable to the punishment by law provided for the said crime.

Oath by claimant as to property in supreme or circuit court.

Penalty on false oath

63. That when and as often as the said collector or other officer shall cause such proceedings to be commenced in the vice-admiralty court of this colony, according to the practice, no claim to any of the matters or things which shall have been seized as aforesaid shall be admitted unless the owner or his attorney or agent as aforesaid shall make oath in manner and form as in the last preceding section directed in regard to proceedings in the supreme or any circuit court.

Oath in vice-admiralty court.

64. That no owner or other lawful claimant shall be admitted to enter a claim in the vice-admiralty court aforesaid or to defend any action, suit, or proceeding in the supreme or any circuit court as aforesaid in regard to any thing seized in pursuance of this or any future ordinance or act of the legislature of this colony relating to the customs until sufficient security shall have been given in the court where such proceedings shall have been instituted in a penalty not exceeding one hundred pounds, to answer and pay such costs as may be awarded\* against the party giving such security.

Security for costs of suit.

65. That no writ shall be sued out against nor a copy of any process served upon any officer of the customs for anything done by him in pursuance of this or any future ordinance or act of the legislature of this colony relating to the customs until one calendar month after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained the cause of the action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent, and no evidence of the cause of such action shall be produced except of such as shall be contained in such notice, and no verdict shall be given for the plaintiff unless he shall

Notice in writing to officers one month before action.

prove on the trial that such notice was given, and in default of such proof the defendant shall receive in such action a verdict and costs.

Bar of action  
after three  
months.

66. That every such action shall be brought within three calendar months after the accruing of the cause thereof and the defendant may plead the general issue and give the special matter in evidence, and if the plaintiff shall become non-suited, or shall discontinue the action or if judgment shall be given against the plaintiff the defendant shall receive treble costs, and have such remedy for the same as any defendant can have in other cases where costs are given by law.

Costs of suit  
where probable  
cause of seizure  
is found by  
the judgment.

67. That in case any action or suit instituted by any officer of customs or by the said attorney-general shall be brought to trial on account of any seizure made under this or any future ordinance or act of the legislature of this colony relating to the customs, and judgment shall be given for the defendant, and the court before which the cause shall have been tried shall find and adjudge that there was probable cause of seizure, the defendant shall not be entitled to any costs of suit; and in case any action or suit shall be brought by any person against any officer of customs for or on account of any such seizure by such officer made, wherein judgment shall be given for the plaintiff, such plaintiff, in case the court by and before which such cause shall have been tried shall find and adjudge that there was probable cause of seizure, shall recover only the things seized or the value thereof, without costs of suit.

Tender of  
amends, and  
effect thereof.

68. That it shall be lawful for such officer within one calendar month after such notice as aforesaid to tender amends to the party complaining or his agent, and to plead such tender in bar to any action together with any other pleas, and if the court shall find the amends sufficient it shall give a judgment for the defendant, except as to the amends tendered, and in such case or in case the plaintiff shall become non-suited or shall discontinue his action then such defendant shall be entitled to full costs; but if upon the trial of any such cause the court shall find and adjudge that no amends were tendered or that the same were not sufficient, or shall find against the defendant upon such other plea or pleas, then such court shall give judgment for the plaintiff, with such damages as such court shall think proper, together with costs of suit.

69. That all penalties and forfeitures recovered in this colony under this or any future ordinance or act of the legislature of this colony relating to the customs shall be paid into the hands of the collector or principal officer of the port where such penalties or forfeitures shall be recovered, and shall be divided, paid, and applied as follows: that is to say, after deducting the charges of prosecution if any and of the costs of sale from the produce, two third parts of the net produce shall be paid into the hands of the collector or principal officer of customs at such port for the use of Her Majesty the Queen in her colonial treasury, and the other third part to the person who shall have seized the matter or things condemned: Provided that if it shall be made to appear to the Governor of the colony in any particular case that the said lastmentioned person deserves the same, such Governor may award to such person one half of such net produce, instead of one third.

Payment and disposal of fines and penalties.

70. That all actions or suits for the recovery of any of the penalties or forfeitures imposed by this or any future ordinance or act of the legislature of this colony relating to the customs may be commenced or prosecuted at any time within three years after the offence committed but not later.

Bar of suit— for penalties, &c., after three years.

71. That no appeal shall be prosecuted from any decree or sentence of the vice-admiralty court aforesaid touching any penalty or forfeiture imposed by this or any future ordinance or act of the legislature of this colony relating to the customs unless the inhibition shall be applied for and decreed within twelve months from the time when such decree or sentence was pronounced: Provided, always, that in any case in which proceedings shall have been or shall hereafter be instituted in the vice-admiralty court aforesaid against any ship, vessel, boat, goods, or effects, or for the recovery of any penalty or forfeiture under this or any future ordinance or act of the legislature of this colony relating to the customs, the execution of any sentence or decree restoring such ship, vessel, boat, goods, or effects to the claimant thereof which shall be pronounced by the said vice-admiralty court in which such proceeding shall have been had shall not be suspended by reason of any appeal which shall be prayed and allowed from such sentence: Provided that the claimant shall give sufficient security to be approved of by the court to render and deliver the ship, vessel, boat, goods, or effects concerning which such sentence or decree shall be pronounced,

Proceedings in appeal from vice-admiralty court.

Non-suspension of decree restoring ship, &c., pending appeal.

Security by claimant.

or the full value thereof to be ascertained, either by agreement between the parties, or in case the said parties cannot agree then by appraisement under the authority of the said court, to the appellant or appellants, in case the sentence or decree so appealed from shall be reversed, and such ship vessel, boat, goods, or effects be ultimately condemned.

Power of  
governor to  
restore seiz-  
ures, mitigate  
and remit  
penalties, &c.,

72. That it shall and may be lawful for the Governor to direct any vessel, boat, goods, or commodities whatever seized under this or any future ordinance or act of the legislature of this colony relating to the customs to be delivered to the proprietor or proprietors thereof, whether condemnation shall have taken place or not, and also to mitigate or remit any penalty or fine incurred under this or any future ordinance or act of the legislature of this colony or to release from confinement any person or persons committed under any such ordinance or act as aforesaid, on such terms and conditions as to him shall appear to be proper: Provided, always, that no person shall be entitled to the benefit of any order for such delivery, mitigation, remission, or release unless such terms and conditions are fully and effectually complied with; and provided that if the proprietor or proprietors of the goods seized as aforesaid shall accept the terms and conditions prescribed by the Governor, he or they shall not have or maintain any action for recompense or damage on account of such seizure or detention; and the person making such seizure shall not proceed in any manner for condemnation.

Declaration of  
shippers of  
Cape wine.

73. That it shall be lawful for the shipper of any wine the produce of the Cape of Good Hope or of its dependencies which is to be exported from thence to go before the chief officer of customs and make and sign a declaration before him that such wine was really and *bonâ fide* the produce of the Cape of Good Hope or of its dependencies, and such officer is hereby authorized and required to grant a certificate thereof, setting forth in such certificate the name of the ship in which the wine is to be exported and the destination of the same.

Falsification of  
documents, &c.

74. And it is hereby further enacted that if any person shall in the said colony counterfeit or falsify or wilfully use when counterfeited or falsified any entry, warrant, cocket, transire, or other document for the unlading, lading, entering, reporting, or clearing any ship or vessel, or for the landing, shipping, or removing of any goods, stores, baggage, or article whatever, or shall by any false statement procure any writing

or document to be made for any such purposes, or shall falsely make any oath or affirmation required by this or any future ordinance or act of the legislature of this colony relating to the customs, or shall forge or counterfeit a certificate of the said oath or affirmation, or shall publish such certificate, knowing the same to be so forged or counterfeited, every person so offending shall for every such offence forfeit the sum of two hundred pounds, and such penalty shall and may be prosecuted, sued for, and recovered in like manner and by such ways and means as any penalty may be prosecuted, sued for, and recovered under the provisions and directions of this ordinance.

False oath or affirmation.

Forgery of certificate of oath, &c.

Penalty, £200.

75. That this ordinance shall commence and take effect on and from a period of one calendar month after proclamation shall have been made by the Governor of Her Majesty's confirmation or assent having been given thereto.

Time of taking effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 14th day of October, 1853.

By command of His Excellency the Governor,

(Signed) R. SOUTHEY.  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) PERCY VIGORS,  
Acting Clerk to the Legislative Council.

No. 7.—Sd. George Cathcart.]

Ordinance for reviving the Ordinance No. 15, 1844, entitled "Ordinance to provide for the Enregisterment in the Land Registers of the Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820." \*

WHEREAS it is enacted by the Ordinance No. 15, 1844, entitled "Ordinance to provide for the Enregisterment in the Land Registers of the Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820," that no such proclamation as is in the second section of the said ordinance

Preamble.

\* Revived by Act No. 24, 1856, and Act No. 7, 1859.

mentioned should be issued after the 31st December, 1846 : And whereas by the Ordinance No. 15, 1847, bearing the same title as this present ordinance, it was enacted that it should and might be lawful for the Governor of this colony at any time before the 31st December, 1850, to issue any such proclamation as aforesaid, and that thereupon the provisions of the said Ordinance No. 15, 1844, should become applicable to such proclamation and all proceedings in reference thereto be of the like force and effect as if the 31st December, 1850, had been inserted in the said lastmentioned ordinance in place and stead of the 31st December, 1846: And whereas it is expedient to confirm, ratify, and render valid and effectual certain proclamations issued and proceedings had and taken since the 31st December, 1850, and also to provide a further period within which such proclamations as aforesaid may be issued and the provisions of the said ordinance be applied : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every proclamation purporting to be issued under or in pursuance of the provisions of the Ordinance No. 15, 1844, which has been issued by the Governor of this colony for the time being at any time since the 31st December, 1850, and every matter and thing done and transacted or which may hereafter be done and transacted in reference to any such proclamation or to any subdivision of location mentioned in any such proclamation, or to any other matter or thing in the said ordinance contained, shall respectively be held and taken to be in precisely the same plight and condition and to be to all intents and purposes as valid and effectual in the law as if the period limited by the said ordinance for the issuing of any such proclamation as is in the second section of the said ordinance mentioned had hitherto continued uninterrupted and were still unexpired.

Validity of proclamations under Ordinance No. 15, 1844, after 1850.

Issue of proclamations to 31st December, 1855.

2. And be it enacted that it shall and may be lawful for the Governor of this colony at any time before the 31st December, 1855, to issue any such proclamation as is in the second section of the said ordinance mentioned and described, and thereupon every such proclamation so issued shall be deemed and taken to be as valid and effectual, and all and singular the provisions of the said ordinance in reference thereto and to any subdivision of location mentioned therein shall be of like force and effect as if the said 31st December, 1855, had been inserted in the fourteenth section of the said



ordinance in place and in stead of the 31st December, 1846.

3. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof. Time of taking effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 14th day of October, 1853.

By command of His Excellency the Governor,

(Signed) R. SOUTHEY,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) PERCY VIGORS,  
Acting Clerk to the Legislative Council.

No. 8.—Sd. George Cathcart ]

Ordinance to indemnify certain Persons in regard to Acts done during the existence of Martial Law.

WHEREAS His Excellency Lieutenant-General Sir Henry George Wakelyn Smith, Baronet, G.C.B., the then Governor of this colony, did upon the 25th December, 1850, by his proclamation of that date place under martial law, for reasons in the said proclamation assigned, the districts of Albany, Uitenhage, Port Elizabeth, Fort Beaufort, Somerset, Cradock, Graaff-Reinet, Victoria, and Albert: And whereas His Excellency the now Governor, by his proclamation bearing date the 23rd March, 1853, after reciting amongst other things that the peaceful aspect of affairs upon the eastern frontier of the colony was then such that without detriment to the public safety or to the ends of justice martial law might be withdrawn from certain of the places aforesaid, did proclaim and declare that from and after the promulgation of his said proclamation martial law should cease to be in force in the districts or divisions of Graaff-Reinet, Cradock, Somerset, Uitenhage, and Port Elizabeth, anything contained in the proclamation aforesaid of the 25th December, 1850, to the contrary notwithstanding; and did further proclaim and declare that, for the purpose of preserving the salutary

power of trying by courts-martial such rebels as might for some time yet to come occasionally surrender or fall into the hands of justice, martial law should still be in force throughout the respective divisions of Albany, Victoria, Albert, and Fort Beaufort: And whereas during the existence of martial law as aforesaid within the districts aforesaid military operations were being carried on by Her Majesty's troops and burgher forces in British Kaffraria and in other territories adjacent to this colony, and it became and was necessary for the said Sir Henry George Wakelyn Smith and for His Excellency the Hon'ble Sir George Cathcart, K.C.B., &c., &c., and for other persons acting under them respectively to do and perform, as well within the districts aforesaid placed and being under martial law as within the territories adjacent as aforesaid, certain acts, matters, and things which were not justifiable by the strict rules and forms of law, but which were necessary for the public safety: And whereas it is just and fitting that the said Sir Henry George Wakelyn Smith and the said Sir George Cathcart and all persons acting under them respectively should be indemnified in respect of all acts, matters, and things by them respectively done or to be done *bonâ fide*, necessarily, and properly in any part or portion of this colony or in the adjacent territories aforesaid during the existence of martial law therein: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation of this ordinance the said Sir Henry George Wakelyn Smith and the said Sir George Cathcart and all parties acting under either of them shall be and they are hereby jointly and severally indemnified, freed, and discharged from and against all actions, suits, and prosecutions whatsoever which might be brought or instituted in any of the courts of this colony for or on account or in respect of any acts, matters, and things whatsoever done or to be done within any district or division of this colony placed under martial law, during the existence of martial law therein, by the said Sir Henry George Wakelyn Smith and the said Sir George Cathcart respectively, or done or to be done in any such district or division by any person or persons acting under the said Sir Henry George Wakelyn Smith and the said Sir George Cathcart respectively, or under the Governor and Commander-in-Chief for the time being, in any command or capacity, military or civil, which such person or persons may

Indemnity of  
Sir H. Smith  
and Sir G. Cath-  
cart against all  
actions for acts  
done during  
existence of  
martial law  
from 25th  
December,  
1850, to 23rd  
March, 1853.

have exercised during the existence in such district or division of such martial law as aforesaid: Provided, always, and the indemnity hereby granted is granted upon this supposition and condition, that all such acts, matters, and things shall have been done or shall be done *bonâ fide*, necessarily, and properly in furtherance and execution of the objects for which martial law was proclaimed as aforesaid: Provided, also, that every act, matter, or thing shall be presumed to have been done *bonâ fide*, necessarily, and properly until the contrary shall be made to appear by the party complaining.

Proviso that such acts shall have been done *bonâ fide*, necessarily, and properly.

2. And be it enacted that all acts, matters, and things done, ordered, or authorized, or to be done, ordered, or authorized by any of the persons aforesaid hereby indemnified in any of the adjacent territories aforesaid since the 25th December, 1850, aforesaid, in the course of any military operations carried on therein by Her Majesty's troops or others of her subjects, shall be and the same are hereby indemnified in like manner and upon the same condition precisely as if the place in which any such act shall have been done or shall be done had been at the time of the doing thereof a part of this colony placed in manner aforesaid under martial law.

Indemnity for acts done in adjacent territories.

3. And be it enacted that nothing in this ordinance contained shall be taken or construed so as to deprive any person whomsoever of any lawful defence other than this ordinance which such person may have or possess against any action or prosecution grounded upon any act done or alleged to be done by him or by his authority within any of the adjacent territories aforesaid or within this colony.

Retention of other lawful defences.

4. And be it enacted that this ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking effect.

GOD SAVE THE QUEEN!

Given at the Cape of Good Hope, this 14th day of October, 1853.

By command of His Excellency the Governor,

(Signed) R. SOUTHEY,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) PERCY VIGORS,  
Acting Clerk to the Legislative Council.

No. 9.—Sd. George Cathcart.]

Ordinance for continuing the Provisions of an Ordinance bearing date the 14th day of February, 1833, entitled “An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Register.”\*

Preamble.

WHEREAS it is enacted by an ordinance bearing date the 14th 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 shall 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 shall not be lodged with the secretary of the said committee on or before the 31st December, 1833: And whereas by certain other ordinances since successively made and passed in this colony, whereof the last bore date the 26th March, 1842, and was numbered three, 1842, and was entitled in manner and form as this present ordinance, the period within which it should be lawful for the said committee to receive and act upon such memorials as aforesaid which should be lodged with the secretary thereof was prolonged from time to time till the 31st December, 1850: And whereas certain of such memorials as aforesaid have been lodged with the said secretary and received and acted upon by the said committee since the said 31st December, 1850, and it is expedient to ratify, sanction, and declare valid the lodging, receiving, and acting upon the said certain memorials so as aforesaid lodged, received, and acted upon, and also to provide a further period within which such memorials as aforesaid may be lodged with the secretary aforesaid, in order to their being received and acted upon by the said committee: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every such memorial as aforesaid which has at any time since the said 31st December, 1850, been lodged with the secretary of the said committee in order that the same should be received and acted upon by the said com-

Validity of acts of committee under Ordinance No. 97 on memorials after 31st December, 1850.

\* Continued by Act No. 4, 1860.

mittee, and every matter and thing done and transacted or which may hereafter be done and transacted by the said committee in regard to any such memorial, shall respectively be held and taken to be in precisely the same state and condition and to be to all intents and purposes as valid and effectual in the law as if the period limited by the said ordinance of the 14th February, 1833, for the lodging of such memorials as aforesaid, in order to their being lawfully received and acted upon by the said committee, had hitherto continued uninterrupted and were still unexpired.

2. And be it enacted that it shall and may be lawful for the said committee to receive and act upon all such memorials as aforesaid which shall be lodged with the secretary thereof on or before the 31st December, 1860, anything in any former law to the contrary notwithstanding.

Lodging of  
memorials until  
31st December,  
1860.

3. And be it enacted that this ordinance shall commence from and after the promulgation thereof.

Time of taking  
effect.

GOD SAVE THE QUEEN !

Given at the Cape of Good Hope, this 14th day of October, 1853.

By command of His Excellency the Governor,

(Signed) R. SOUTHEY,  
Acting Secretary to Government.

By order of the Legislative Council,

(Signed) PERCY VIGORS,  
Acting Clerk to the Legislative Council.











## APPENDIX I.

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*Abstracts of the Contents of the Placaats, Proclamations, Advertisements, &c., having the effect of Law, now for the most part obsolete, contained in the MS. Collection of Colonial Laws in the Colonial Office and the Office of the Attorney-General; collated with the Collection made by the late D. F. Berrangé, Esq., Secretary of the Court of Justice.*

1. Proclamation, dated April 9, 1652, on board the ship *Drommedaris*, regulating the expedition about to land with regard to their own defence, and their communication, &c., with Hottentots. Barter prohibited, on pain of loss of office and pay.

Commander  
of the  
Settlement.

J. van Riebeeck.

2. September 25, 1652.—Proclamation for the apprehension of four fugitives, who had endeavoured to escape to the interior. Reward, fifty caroluses.

3. October 14, 1652.—Proclamation regarding caution to be observed as to arms. Hottentots who may have stolen arms, not to be ill-treated. Hottentots not to be bartered with, on penalty of forfeiture of what may have been got from them, and arbitrary punishment. Any one injuring the gardens to receive one hundred lashes and twelve months' hard labour. No one to be permitted to go more than half musket's shot from the fort. None to remain out at night, on pain of arbitrary punishment. No tobacco, &c., to be brought to the Corps de Garde. Absentees from service on Sundays to be punished, for the second offence, with the loss of one month's pay; for the third, one year's pay, and to be put in chains.

4. October 21, 1653.—Proclamation regarding the murder of the cattle-herd of the Company, and the theft of thirty-four head of cattle; that search had in vain been made for the actual murderers, but that the other Hottentots not proved implicated in the murder should not be troubled.

5. December 21, 1653.—Penalty for robbing the gardens fixed at two years in chains. Hottentots not to be disturbed. Barter forbidden. Sailors not to remain ashore except on account of stormy weather, in which case they are to report themselves.

B

**Commander of the Settlement.**  
**J. van Riebeeck.** 6. January 5, 1654.—Prohibition against going far from the fort with any wares which may excite the cupidity of the Hottentots, lest they should attempt violence. Hottentots not to be annoyed, even though they should annoy the Colonists.

7. January 8, 1654.—Sailors prohibited from going beyond musket-shot from the fort, and not to make any presents whatever to the natives.

8. January 19, 1654.—Appointment of Jacob Reyniersz to the chief authority on board the ship *Dortrecht*.

9. August 22, 1654.—Prohibition against injury of gardens by soldiers and sailors. Prohibition of barter by soldiers and sailors with the Hottentots. Hottentots not to be annoyed or ill-treated. The men belonging to the ships not to sell any strong drink to the people in the fort.

10. December 21, 1653.—No sailors to remain ashore without the consent of their commanders.

11. October 12, 1654.—Barter with the Hottentots, directly or indirectly, in Table or in Saldanha Bay, forbidden.

12. April 10, 1655.—Washing above the stream where the ships get their water forbidden.

13. September 18, 1656.—Prohibition against plucking of fruit, &c., in the Company's garden: penalty, three months' pay. Barter with the Hottentots forbidden. Hottentots to be kindly treated. Prohibition of the sale of liquors by men belonging to ships to the common people: penalty, three reals. Prohibition against sailors remaining ashore at night. Hottentots not to be taken on board: penalty, two reals. Men belonging to the ships not to come within musket-shot of the fort with a loaded musket: penalty, three reals. Washing forbidden above the river. The commanders of ships to furnish their people sent on shore for water with provisions, so that they may not become troublesome ashore, should it begin to blow hard.

14. January 1, 1657.—The freemen forbidden to barter with the garrison, by taking their property in payment of debts at half its value: penalty, forfeiture of the purchased property and ten reals. Prohibition against killing game.

15. April 25, 1657.—None to enter the Company's gardens except members of the Council, the principal officers, upper merchants, captains, and under merchants or ships' book-keepers: penalty, first offence, twenty-five lashes; second offence, fifty lashes, with an amend of two reals, and to be kept in custody until the fine is paid. Prohibition of barter with the Hottentots. Hottentots not to be annoyed. Provisions belonging to the Company not to be brought ashore for sale: penalty, deportation of the seller and purchaser, if Company's servants; if freemen, twenty reals. No one to go on board of any ship until the third day from its arrival: penalty, first time, five reals; second time, ten reals; third time, twenty reals of eight. None of the seafaring people

to remain ashore without consent. No Hottentots to be taken on board : penalty, two reals. Prohibition of approach to the fort with a loaded gun : penalty, three reals. Prohibition to wash, &c., so as to disturb the drink water. Captains of ships to provide their watering-parties with food. Commander  
of the  
Settlement.  
—  
J. van Riebeeck.

16. June 30, 1657.—Freemen permitted to obtain cattle by barter from the Hottentots on condition that they pay no more for it than the honourable Company, and that they purchase no wares for barter except from the honourable Company. They may not sell the cattle purchased by them except to the honourable Company. Freemen forbidden to sell any of their cattle, &c., to the ships without consent : penalty, twenty reals. Forbidden to lend any of the Company's servants more than the sum of one skilling.

17. July 10, 1657.—Tavern-keepers prohibited from selling after the night-watch ; further prohibited from selling on Sundays before or during service, or to the people of the garrison after sunset. Any one found in an inn after the night-watch fined three reals. Tavern-keepers to take away the knives of their guests to prevent accidents. If any one be wounded in a tavern, notice to be at once given to the officer ; in case of death taking place, the offender to be apprehended.

18. July 20, 1657.—Prohibition of usurious dealings with the common people, in the purchase of their clothes, &c. No more than one skilling to be lent to the Company's servants. Sailors prohibited from going ashore without consent with any firearms. None of the shore people to buy drink from sailors.

19. July 17, 1657.—Prohibition against the making of paths over cultivated lands. Fruit trees not to be injured on pain of forfeiture of personal liberty and goods (op verbeurte van lyff en goed). Any one convicted of injuring any vegetable growth in the field or in the garden, to be kept at hard labour for twelve months. Horses and cattle to be prevented from injuring hedges, &c., or straying into ploughed lands or gardens : penalty, forfeiture of the animal and compensation in damages.

20. September 26, 1657.—The freemen who have been permitted to barter cattle warned against taking sickly and useless animals.

21. October 15, 1657.—Prohibition of the sale of liquors by unlicensed persons.

22. November 28, 1657.—Prohibition against hiring the servants of others, or servants who have been turned off by their masters, except, in the latter case, with the permission of the authorities.

23. January 8, 1658.—Licence to two individuals to fish, &c., at Saldanha Bay.

24. January 25, 1658.—Prohibition against any interference with the persons privileged to fish at Saldanha Bay.

25. February 26, 1658.—Freemen forbidden to receive any of the ships' people into their houses without consent.

Commander  
of the  
Settlement.  
—  
J. van Riebeeck.

26. May 4, 1658.—Prohibition of barter with the natives. All copper, &c., which the freemen may have purchased from the Company for the purpose of barter to be returned within forty-eight hours, in which case full price would be given for it; copper, &c., not returned within that time to be forfeited. The freemen prohibited from making sale of cows, pigs, sheep, &c., to each other without prior consent being obtained; lest this order should be disobeyed, notice to be given of the actual number of their cattle and of all new calves, &c.

27. May 20, 1658.—Fishery permitted; fish, however, to be sold to the Company and not to ships; Company's price fixed at five guilders per 100 lbs., salted; two and a half guilders, fresh: penalty, confiscation of all fish offered to others for sale, in addition to a fine of ten guilders.

28. July 26, 1658.—All pigs running loose to have triangles about their necks.

29. August 6, 1658.—Warning against ill-treatment of slaves.

30. September 4, 1658.—Interdict against the sale of ivory, rhinoceros horns, and ostrich feathers to people in the ships; all such articles to be brought to the fort, under penalties.

31. September 13, 1658.—Renewed prohibition of barter for cattle with natives.

32. September 30, 1658.—Placaat respecting the breeding of pigs.

33. October 2, 1658.—Placaat against cutting wood in the Company's forests. Freemen forbidden to sell firewood to lime or brick-burners, or to foreigners without notice. Prohibition against cutting wood at the Bush River.

34. October 7, 1658.—Respecting goods stranded.

35. October 12, 1658.—Prohibition against using yellow-wood, except as planks.

36. October 24, 1658.—Renewed prohibition of barter with the natives. Hottentots are not to be permitted to come to the houses of freemen.

37. November 11, 1658.—No freemen to go on board of any vessel in the bay, except with special consent, in writing, signed by the Governor himself.

38. November 19, 1658.—Prohibition against firing grass in dry season: penalty, twenty reals.

39. December 6, 1658.—Prohibition against gambling.

40. December 13, 1658.—Regarding salt pans. No one to take salt without a licence.

41. February 7, 1659.—All the refuse of grain, &c., sold as food for fowls or pigs to be brought to the fort to be examined, lest it should contain wheat, &c., which should be brought to the company's stores.

Commander  
of the  
Settlement.

J. van Riebeeck.

42. August 19, 1659.—Publication of article 108 of the general articles regarding the duty of all officers, soldiers, and others in the company's service to work at the repairs of forts, batteries, and other defences with no other remuneration than having their food free beyond their usual pay.

43. August 27, 1659.—Prices fixed for fish, &c., sold, for butcher's meat, and other necessaries. No burgher entitled to keep pigs unless he has at least one boar and six sows. Freemen to be allowed to have European sheep, but not to slaughter any until they have at least fifty.

44. September 20, 1659.—Prohibition against making any passages through the pega-pega hedges: penalty, three years' hard labour in chains; fine of one hundred reals. The names of informers to be kept secret, and six reals to be received by them.

45. October 8, 1659.—Removal of prohibition against cutting firewood between Salt River and the fort.

46. November 2, 1659.—Fixing the prices and weight of bread.

47. November 6, 1659.—Prohibition against drawing the nets of others; and touching the heaps of salt belonging to others.

48. November 7, 1659.—All the freemen on the other side of the river Liesbeek, ordered to enclose their land with pega-pegas, and to plant them with wild almonds.

49. November 7, 1659.—Prohibition against drawing knives: penalty, six months' pay, for company's servants; twenty-five reals fine for freemen.

50. December 3, 1659.—Bread to be sold only by licensed bakers.

51. September 5, 1659 (promulgated 3rd January, 1660).—Extract of a general missive of the company's against the concealment of servants of the company on board of ships. Freemen permitted to bring their wheat to the mill, after consent obtained. Sale of ewes and rams, for breeding purposes, permitted to the freemen among themselves. All, however, not required for breeding purposes to be sold to the company. None whatever to be sold to the ships.

52. February 21, 1660.—Prohibition against making paths over cultivated lands: penalty for injuring trees, &c., twelve months' hard labour. Slaves to be kept within doors at nights, to avoid depredations in the gardens.

53. March 13, 1660.—Further prohibition against harbouring Hot-tentots. Commissioner Strethenius.

Commander  
of the  
Settlement.  
J. van Riebeeck.

54. May 22, 1660.—No Frenchmen of the stranded French ships to be kept in any houses after sunset. No divine worship, except that of the Reformed Church, to be permitted in this place. Notice to be given in case any of the French enter any of the houses armed, that the arms may be taken away, and taken care of. The freemen forbidden to purchase brandy from the French without consent and payment of duty.

55. June 23, 1660.—Warning against having too much confidence in the Hottentots, who seemed inclined to theft and hostilities.

56. October 31, 1660.—Prohibition against digging large holes, on account of their danger to cattle.

57. August 5, 1660.—Proclamation respecting a deserter from service.

58. September 12, 1660.—Notice of days of sitting of the court.

59. September 26, 1660.—Prohibition against overworking cattle in riding wood, and thus rendering them unfit for the plough.

60. November 4, 1660.—Prohibition against selling bread and butter at higher than the fixed prices.

61. January 2, 1661.—Permission to all to go out shooting as far as the Salt River, and not further.

62. January 13, 1661.—Renewed prohibition against injuring trees, plants, &c.; and order to keep slaves at home.

63. September 6, 1661.—Renewed order not to wash above the sluice.

64. February 21, 1661.—Regarding the sale of sheep, &c.

65. March 20, 1661.—Regarding the sale of cows. Prohibition against the sale of liquor. Notice of a sale on Saturday, for cash, of clothes, &c., for general convenience of all.

66. July 14, 1661.—Advertisement of articles for sale at the company's stores.

67. August 9, 1661.—Regarding money not current here.

68. August 27, 1661.—Relating to goods offered for sale by Hottentots, belonging to ships, supposed to have been stolen from the wash-places.

69. October 23, 1661.—Prohibition against giving any blubber to slaves, it being supposed that this had caused death in some instances.

70. November 24, 1661.—Prohibition against bartering any cattle, slaughtered or not slaughtered, with the Hottentots.

71. December 16, 1661.—Against firing grass in the dry season. Against damming up or leading out rivulets in Table Valley. Commander  
of the  
Settlement.
72. December 18, 1661.—Placaat relating to inns. No liquor to be furnished after the watch has been set for the evening, or before or during sermon; none of the garrison to be served after sunset; knives to be taken from all guests; the goods of soldiers of the garrison not to be taken at half-price. J. van Riebeeck.
73. January 27, 1663.—Ordinance fixing prices of wood.
74. June 15, 1662.—Prices fixed of olives, vinegar, &c. Zac. Wagenaar.
75. May 13, 1663. Fixing prices of brandy, wine, &c.
76. December 13, 1663.—Renewed prohibition of sale of cattle, &c., to ships.
77. February 8, 1664.—Prohibition of the sale of bread, &c., except by the licensed baker.
78. January 15, 1665.—Prohibition against going to the country on Sundays to drink and play there. Every one to be bound at the second bell to appear and answer to the roll, and further to be present in the congregation. No liquor to be sold on Sundays or holidays before or during the sermon.
79. February 21, 1665.—Notice of sale of horses bred in the Colony.
80. March 17, 1665.—Notice to all on board of the return fleet, who have brought any liquors from India, to sell the same to the company, not to freemen.
81. July 23, 1665.—Regulations respecting convicts on Robben Island.
82. August 23, 1665.—Ordinance respecting market prices.
83. November 5, 1665.—Proclamation against soldiers going to taverns during working hours.
84. November 24, 1665.—Sale of Van Riebeeck's property.
85. August 10, 1666.—Licence to C. Mostert to keep an inn, and sell wine and beer.
86. September 18, 1666.—Prohibition to the colonists to barter cows and sheep with each other. Prohibition of sale of grain, &c., to ships or servants of the company; all to be delivered to the company at fixed prices.

- Commander of the Settlement.**  
**Cornelis van Quaelbergen.**
87. January 15, 1667.—Regulations regarding Robben Island.
88. June 20, 1667.—Hottentots not to be struck or beaten although they may have insulted or injured colonists. Prohibition against going into the interior. Barter with Hottentots forbidden. Prohibition against purchasing brandy, &c., from ships. Against the authorities of ships receiving any people on board.
89. January 20, 1667.—Licence to C. Mostert to sell wines, &c.
90. February 11, 1667.—Respecting a theft of rice.
91. March 8, 1667.—A general privilege to purchase wines, &c., on board of ships on paying duty.
92. April 9, 1667.—Against selling rice at a higher price than that fixed by the company. Fixing price of beer.
93. June 2, 1667.—Order to the colonists to render an account of Hottentot rams and sheep in their possession, in order the better to put down private trade.
94. Oath of the burgher councillors.
95. July 30, 1667.—Against the bartering away of their goods by men of the garrison. Respecting cutting wood at Hout Bay and elsewhere.
96. Regarding deserters.
97. September 24, 1667.—Respecting wood-cutting.
98. September 24, 1667.—Against gambling: penalty, as to officers, forfeiture of a month's pay; soldiers and sailors to be well scourged by Kafirs for the first offence, to be banished to Robben Island for the second.
99. October 3, 1667.—Against going out with firearms, or shooting domestic fowls.
100. October 21, 1667.—Further prohibition of cattle barter with the Hottentots. Against going out shooting without the consent of the cavalry guard, and against slaughtering cattle.
101. October 28, 1667.—Regarding defalcations of H. Lacus.
- Jac. Borghorst.** 102. September 3, 1668.—Prohibition of barter of cattle among colonists. Prohibition against going out to the country to shoot game, without consent, and against harbouring men from the ships.
103. December 11, 1669.—Prohibition of sale of wines and spirits to slaves.
104. May 21, 1670.—Order from directors of the Company as to "illicit trade."



105. June 2, 1670.—Against sheep-stealing, and trespassing on cultivated lands. Commander  
of the  
Settlement.
106. June 23, 1670.—Prohibition of sale of wines, &c., by unlicensed persons. Pieter Hackius.
107. June 24, 1670.—Premium on slaughter of lions raised.
108. June 24, 1670.—Respecting theft of sheep; owners to give notice when there are strange sheep among theirs.
109. February 12, 1670.—Thanksgiving day for the arrival of the return fleet.
110. June 24, 1670.—Pigs not to be kept without a herd.
111. June 24, 1670.—Prohibition against allowing cattle on the cultivated land.
112. June 27, 1670.—Alteration of the prices of bread, &c.
113. June 27, 1670.—Respecting the due observance of the Sabbath.
114. September 15, 1670.—Licence to H. Everts to sell beer.
115. November 25, 1670.—Order to all the free colonists, as well about the fort as in the country, to appear personally before the fiscal for the settlement of accounts, &c.
116. December 3, 1670.—Prohibition against going out to shoot beyond the outer watch, or to bring in wood, reeds, &c.
117. December 23, 1670.—Edictal citation of Johannes Fert for not appearing when cited before the fiscal.
118. December 20, 1670.—Respecting sale of wines. Advertisement of sales.
119. March 19, 1671.—Respecting the apprehension of Bruyn Jansen, accused of homicide.
120. April 13, 1671.—Proclamation for the apprehension of fiscal de Cretser, who had killed a man in a duel.
121. April 29, 1671.—Prohibition of sale of ammunition, &c.
122. May 21, 1671.—Advertisement respecting certain spirits found in the Company's stores.
123. June 2, 1671.—Reward for loss of governor's sword.
124. June 24, 1671.—Respecting apprehension of de Cretser.

- Commander  
of the  
Settlement.** 125. July 3, 1671.—Respecting cutting wood in the Company's forests.  
**Pieter Hackius.** 126. July 4, 1671.—Regarding de Cretser.  
 127. November 23, 1671.—Advertisement.  
 128. December 22, 1671.—Respecting the sale of Boschheuvel.  
 129. December 23, 1671.—Respecting de Cretser.  
 130. January 11, 1672.—Advertisement.
- A. van Breugel.** 131. April 3, 1672.—Respecting Elberts Diemer.  
 132. April 30, 1672.—Proclamation for the apprehension of Willem Willemse, for the murder of a Hottentot.  
 133. May 16, 1672.—Proclamation for the apprehension of Willem Willemse.  
 134. May 31, 1672.—Proclamation for the apprehension of Willem Willemse.  
 135. June 28, 1672.—Proclamation for the apprehension of Willem Willemse.  
 136. August 8, 1672.—Respecting apprehension of deserters.  
 137. August 10, 1672.—Respecting apprehension of deserters.  
 138. August 13, 1672.—Respecting apprehension of deserters; edictal citation.  
 139. August 15, 1672.—Advertisement.  
 140. August 17, 1672.—Further edictal citations.  
 141. August 30, 1672.—General review on 2nd September; all freemen and all their servants to be present, without the least exception.
- Governor  
Isbrand Goeke.** 142. September 19, 1672.—Edictal citation.  
 143. November 18, 1672.—Respecting the harboring of people from the ships, and other deserters.  
 144. ————— Reward of twenty-five reals to any one who should bring Arend Roelofse, alive or dead.  
 145. December 20, 1672.—Respecting the stabbing of a burgher by a surgeon of a ship.  
 146. February 9, 1673.—Advertisement of sales of importations from Holland.

147. February 16, 1673.—Advertisement of sales of arrack, &c. Governor.
148. February 27, 1673.—Prohibition against the sale and purchase of clothes from soldiers and sailors. Isbrand Goske.
149. April 8, 1673.—Sale of the late fiscal's library, &c., (nine hundred books.)
150. April 10, 1673.—Respecting the landing of soldiers and sailors from ships.
151. November 23, 1673.—Advertisement.
152. December 1, 1673.—Licence to sell wines, &c., to four persons.
153. March 20, 1674.—Respecting passages taken by colonists in a Danish ship.
154. January 1, 1675.—Ordinance respecting the price of wheat, &c.
155. February 2, 1675.—Notice to captains of ships regarding the reception of persons from shore on board of their ships without knowledge of the authorities.
156. June 17, 1675.—Regarding the passage of wagons near the fortress.
157. August 3, 1675.—Respecting licence for brickmaking.
158. September 28, 1675.—Respecting theft in the Company's stores.
159. January 18, 1676.—Renewed proclamation respecting sales of vegetables, &c., at fixed prices; sale of tobacco.
160. June 19, 1676.—Prohibition of sale of beer, &c., by Company's servants. Johan Bax van Heerenhals.
161. July 10, 1676.—Respecting the cutting of wood.
162. August 18, 1676.—Prohibition of manufacture and sale of beer, &c.
163. December 22, 1676.—Prohibition against rendering the stream from the mountain dirty.
164. January 5, 1677.—Relating to the cultivation of the ground.
165. January 5, 1677.—Fixing price of bread, &c., for the biscuit baker.
166. September 27, 1677.—Against hippopotamus shooting.
167. December 27, 1676.—Respecting the brewing of beer, &c.

- Governor.** 168. ——— 1677.—Regarding the sales of wines, spirits, &c., to slaves.
- Johan Bax van Heerenthals.** 169. March 23, 1677.—Respecting the injury done to cultivated lands by cattle.
170. April 12, 1677.—Prohibition against having Hottentots' sheep among freemen's cattle.
171. July 29, 1677.—Notice to refrain from disturbing the Gonnema Hottentots coming to the fort for the purpose of barter.
172. July 29, 1677.—Respecting the prevention of thefts of sheep.
173. November 9, 1677.—Proclamation against barter of ivory and ostrich feathers with the natives for tobacco.
174. November 9, 1677.—Proclamation against barter of ivory and ostrich feathers with the natives for tobacco.
175. November 23, 1677.—Licence to sell wines, &c.
176. December 16, 1677.—Respecting clothing of the soldiers.
177. March 9, 1677.—Of cultivation of wheat, &c.
- Hendk. Crudop (provisional).** 178. November 30, 1678.—Prohibition of concubinage.
179. April 8, 1680.—Against hippopotamus shooting, and that of large game, and generally about licences for shooting game.
180. April 8, 1680.—Respecting cutting firewood in the bush.
- S. van der Stell (commander).** 181. April 8, 1680.—Regarding the setting fire to grass, rushes, &c., and the damage resulting therefrom.
182. April 8, 1680.—Against planting tobacco by the colonists; on the ground that tobacco is bartered with the Hottentots for ivory and cattle, to the detriment of the honourable company: first offence, the tobacco to be destroyed; second offence, fine, twenty-five reals; third offence, public scourging.
183. October 4, 1680.—Against the sale by the gardeners, &c., employed in the Company's garden, of fruit and vegetables to ships and colonists.
184. March 4, 1681.—Advertisements relating to the contracts for farming grain and tobacco.
185. March 15, 1681.—Against dealing in tobacco by any except the farmers of the contract.
186. May 13, 1681.—Respecting the cleaning of streets, ditches, &c.

187. June 16, 1681.—Regarding the cultivation of grain, in order to supply the garrison. Governor.  
S. van der Stell  
(Commander).
188. June 17, 1681.—Notices respecting the examination of ditches and watercourses.
189. November 27, 1681.—Regarding some immoral exhibitions.
190. ——— 1681.—Prohibition against any ill-treatment of Hottentots. Against drawing knives. Against any breaches of the public peace. Against any injury to cattle. Against vagabondizing up the country. Against the purchase or barter of oxen, cows, pigs, sheep, or wheat by persons on board ship from the colonists. Freemen permitted to sell butter, milk, cheese, eggs, fowls, geese, ducks, pigeons, vegetables. Those belonging to the ships prohibited from selling brandy, &c. The authorities on board not to receive any freemen or company's servants on board, without special orders, until after the third day of their arrival.
191. January 1, 1682.—Price of bread, &c.
192. February 23, 1683.—Respecting the firing of grass, &c.
193. March 18, 1683.—Resolution of Batavian government on the baptism of heathen and slave children.
194. Notice respecting certain wines.
195. Notice respecting the farming of the sale of wines, &c.
196. January 20, 1684.—Respecting the sale and delivery of wines by wine-farmers. Sale of wines without consent of the government: for first offence, liable to a penalty below two thousand guilders; for second offence, a fine of two thousand guilders; the third offence, a fine of an additional three thousand guilders, with arbitrary correction.
197. February 10, 1684.—Respecting grain; none to keep more grain in his house than required for a month for his family, the residue to be brought to the castle; monthly supplies to be given by the government.
198. June 21, 1684.—The farmers of the privilege to sell Cape wine permitted to purchase from each other.
199. July 19, 1684.—Warning against injuring harts from Ceylon allowed to run wild.
200. September 18, 1684.—Against barter of ivory, ostrich feathers, &c., with the Hottentots.
201. March 10, 1685.—Fixing the value of silver and gold coin.

**Governor.** 202. April 25, 1685.—General proclamation of the Commissioner  
 S. van der Stall van Rheede tot Drakenstein calling upon all persons to lodge complaints,  
 (Commander). if there be any.

203. May and June, 1685.—Certain notices of sale.

204. July 9, 1685.—Licence to slaughter, &c., for the garrison.

205. January 21, 1686.—Respecting the sale of lands, houses, &c., no transfer of landed property to be effected without payment of ten per cent., if sold within five years of grant; five per cent., if within ten years; and two and a half per cent. if more than ten years. Wines to be sold only to the company: penalties on sales to others: prices fixed by the commissioner.

206. April 25, 1686.—Respecting the marks of cattle. Regarding the non-cultivation of their erven by the inhabitants of Stellenbosch.

207. April 25, 1686.—Provision regarding thefts of cattle, &c., and alteration of marks. Grants of land near Tigerberg revoked, to be supplied with grants of land near Stellenbosch. Land at Stellenbosch not cultivated to be forfeited within half a year. Against injury to the watercourse between the castle and the fort.

208. July 1, 1686.—Prohibition against riding or otherwise using horses under three years old. Against cutting grapes for the purpose of making wine until they shall have been examined and declared ripe by a commissioner: penalty, fifty rixdollars.

209. July 1, 1686.—Regulation respecting the height, &c., to which houses are to be built. Order upon the inhabitants to bring in their grants for the purpose of verification and registration.

210. August 17, 1686.—Against allowing slaves to carry weapons of any kind, especially firearms: for second offence, master as well as slave to be scourged, besides the penalty.

211. October 3, 1686.—Against allowing horses, oxen, &c., to run loose in town. Against taking cattle out of the wagons in town.

212. December 28, 1686.—Notice respecting the farming out of the sale of wines and provisions.

213. January 2, 1687.—General placaat respecting the sale of wines. Penalty on sale after the night-watch. Notice to be given of any one wounded at the wine-house. Notice of any death. Prohibition against receiving sailors. Against gambling; any one who shall have gambled with a slave, in addition to the ordinary penalty, to have eight days bread and water. Against bartering property from servants of the company at less than its value. Against receiving any one of the garrison after sunset, &c. Against going out to shoot without consent. Against fishing anywhere, except in Table Bay, under heavy penalties.

Against taking the salt of others from the salt-pans. Against hippopotamus shooting. Against cutting firewood without a licence. Against taking any stranded property. Penalty of twenty rixdollars for going on board of any ship without consent. Severe penalty upon selling any cattle to ships without consent. Against bringing on shore for sale any property belonging to the company on board ships: penalty, deportation. Against plucking any fruit in the company's garden: penalty for injuring the gardens, two years in chains, &c. Against riding over cultivated lands. Horses coming into the garden, forfeited, and injury to be compensated by the owner. Against firing grass, and damming up water. Against bartering cattle, ivory, or rhinoceros horns, hides, ostrich feathers, &c.: penalty, twenty-five rixdollars for first offence; for the second offence, fifty rixdollars. Any one beating or injuring the Hottentots to receive fifty lashes. Against selling any garden fruits, cattle, &c., for any of the company's overseers. Against the inhabitants selling cattle to each other without consent. Against selling any provisions elsewhere than at the public market: penalty, forfeiture and ten rixdollars. Bread, butter, sugar, beer, &c., not to be sold beyond the fixed price: penalty, twelve rixdollars. Against selling strong drink to slaves: penalty, one hundred and sixty rixdollars. Against harbouring fugitives. Penalty for contracting with another man's servant. Having strange cattle in one's own flock to be considered theft. Penalty against sending cattle to the company's kraals. Twenty-five rixdollars penalty for keeping sheep without ears. Penalty against injuring the watercourse between the castle and Table Mountain by passing over it with wagons and cattle. Penalties against heaping filth near the houses. Penalty for using horses under three years old, and cutting grapes before the commissioner shall have found them sufficiently ripe. Height of houses, &c., to be built. Penalty against allowing cattle-herds and slaves to carry guns. Penalty against allowing cattle to run loose in the street. Penalty on baking bread of bad quality. [NOTE.—This placat renewed, December 31, 1689.]

Governor.

S. van der Stell  
(Commander).

214. February 11, 1687.—Against disturbing the water by bathing, washing, &c.

215. February 19, 1687.—Against firing grass: penalty, for first offence, severe scourging; second offence, to be punished with the cord until death do follow.

216. April 29, 1687.—Regarding impounding of cattle. Against washing, &c., in the Burgwal. Against allowing geese, ducks, &c., in the Burgwal.

217. April 19, 1687.—Notice of an intended inspection of the streets, roads, &c.; the inhabitants warned to keep the same near their houses in order. Against any cattle being allowed to run from the Lion's Rump along Table Mountain to the Windberg (Devil's Hill).

218. April 4, 1687.—All the inhabitants who have obtained their freedom from the service of the Company ordered, under penalties, to present themselves to receive their letters of freedom.

- Governor.** 219. November 3, 1687.—Amnesty to certain mutineers at Mauritius.
- S. van der Stell**  
(Commander). 220. December, 25, 1687.—Landdrosts to send in quarterly returns of names of inhabitants, changes of abode, &c. Prohibition against removal from Stellenbosch to Cape Town, or Cape Town to Stellenbosch, or Drakenstein, without a written attestation of the authorities that there are no claims against the parties. Public books to be examined every three years. No freeman to be allowed to transfer his servant to another without consent. All corpses to be buried in the churchyard only. Apprehension of fugitive slaves, &c. Prohibition against cutting yellow-wood.
221. January 14, 1688.—Order upon all persons possessing guns which they keep in places where the slaves may get at them to unscrew the cocks.
222. February 27, 1688.—Penalty against keeping cattle, sheep, &c., at distant places, and selling them. Penalty upon being found in the gardens, &c., after nine o'clock at night.
223. March 10, 1688.—Proclamation regarding some slaves who had risen, and who had gone up the country.
224. March 30, 1688.—Instructions for the fiscal.
225. Notices of sales up to March 8, 1689.
226. April 8, 1689.—Proclamation respecting thefts of goods from the ship *Oosthuysen*.
227. July 18, 1689.—Proclamation rising the price of oil, &c. Order on all proprietors of land in the country to plant one hundred young oaks on each grant.
228. July 23, 1690.—Military regulations. Freemen of the Cape district not to go a distance of more than three hours' walking from their houses under penalties. Boats, &c., to be well secured at the wharf, at the night-watch.
229. July 20, 1690.—Against shooting the hippopotamus and other game.
230. July 29, 1690.—The inhabitants to provide themselves with firearms, lead, and powder, and to join their standards at the first alarm. Notice to be given of the escape of slaves.
231. Notices, &c., till December 27, 1690.
232. January 19, 1691.—Proclamation respecting the disturbances raised by Captain Koopman and other Hottentot chiefs (the Soosequa Hottentots).
233. February 12, 1691.—Proclamation of peace with Captain Koopman.



234. February 23, 1691.—Respecting firewood.

Governor.

235. Notices respecting the assizing of weights and measures and the inspection of roads, bridges, water-leadings, &c.

S. van der Stell

236. March 28, 1691.—Proclamation of pardon to certain of the company's servants who had gone up the country.

237. Notices, &c., to July, 1691.

238. August 23, 1691.—Respecting houses in a dilapidated state.

239. January 22, 1672.—Renewed prohibition about sheep without ears. Bartering with the Hottentots. Privileged limits of pasture. The inhabitants ordered to retire within certain limits.

240. January 22, 1692.—Against adulterating wines.

241. January 10, 1692.—Proclamation for the apprehension of Christian Holtz, for murder.

242. January 18, 1692.—Proclamation for the apprehension of Christian Holtz, for murder.

243. January 22, 1692.—General placaat: generally the same as 2nd January, 1687, with slight additions.

244. January 28, 1692.—Against transfer of the contracts of servants.

245. Appendix to the general placaat. Penalties against cutting reed, &c.; against sale of wines; smuggling generally; against sale of fowls, &c., to ships; against slaughtering cattle; against making brandy of wheat, under penalty of being publicly scourged and branded, to be banished for life with confiscation of all property; against sale of brandy, under penalty of 1,000 guilders; against slaughtering without licence. Privilege in accordance with special placaat to trade under certain conditions with the Hottentots. About purchase of stolen property from slaves.

246. January 24, 1692.—Further proclamations respecting the apprehension of Holtz.

247. February 1, 1692.—Proclamation against the burgher Van Yssen, for attempt to murder.

248. February 8, 1692.—Respecting Holtz.

249. Notices of sale, &c., to 3rd September, 1692.

250. September 29, 1692.—Concerning the fulfilment of contracts of hire. Against ill-treatment by masters.

251. March 17, 1692.—Respecting firewood.

c

- Governor. 252. December 12, 1692.—Proclamation of outlawry against a man  
S. van der Stell accused of murder.
253. December 28, 1692.—Farming of revenue.
254. January 13, 1693.—Prohibition of sale of wheat except to the company.
255. February 2, 1693.—Notices.
256. May 26, 1693.—Respecting the murder of Jacob Kloeten.
257. June 16, 1693.—Inspection of streets, &c.
258. July 20, 1693.—Prohibition of barter with the Hottentots. Reference to a placaat of 17th November, 1692; mention of the Soosequas, Heesequas, Ubiquas, Grigriquas, and Namaquas.
259. September 7, 1693.—Prohibition against the pasture of cattle, &c., from Papenboom to the Schuur.
260. July 24, 1693.—Prohibition against soldiers and sailors parting with their clothes, &c.
261. October 5, 1693.—Notice of sales.
262. October 17, 1693.—Inspection of streets, bridges, &c.
263. Notices from 31st October to 24th November, 1693.
264. Notices till 20th April, 1694.
265. April 28, 1694.—Inspection of streets, &c.
266. May 26, 1694.—Enumeration of articles which may be sent or taken by the ships to Holland.
267. Notices to 8th November, 1694.
268. December 9, 1694.—Proclamation respecting a murder.
269. December 17, 1694.—Proclamation respecting a murder.
270. December 24, 1694.—Proclamation respecting a murder.
271. December 30, 1694.—Proclamation respecting a murder; edictal citation.
272. January 28, 1695.—Prohibition against making sugar-beer.
273. Notices to 16th November, 1695.
274. November 30, 1695.—Proclamation respecting the murder of a Hottentot.

275. Edictal citation.

Governor.

276. February 8, 1696.—Examination of weights and measures by the fiscal.

S. van der Stell

277. February 13, 1696.—Examination of weights and measures by the fiscal.

278. February 13, 1696.—Regarding several murders, where the persons accused have not been apprehended, supposed to be assisted and harboured by certain of the inhabitants. Respecting barter with the Hottentots. Prices offered for the apprehension of the parties named in the placat, one hundred rixdollars, alive; fifty rixdollars, dead.

279. February and March, 1696.—Edictal citations of C. Louwen.

280. June 5, 1696.—Further prohibition of sale of Cape wines by the wine growers: penalty, one thousand rixdollars; those unable to pay the penalty, to be placed on the roads until they have earned their one thousand rixdollars.

281. June 5, 1696.—Proclamation against any meeting of slaves, whether for gambling or for other purposes.

282. July 16, 1697.—Proclamation respecting homicide.

283. July and August.—Edictal citations of Silberbach.

284. Notices to the 7th July, 1697.

285. October 19, 1697.—Further prohibition of barter with the Hottentots.

286. Notices to the 15th December, 1697.

287. November 18, 1697.—Regarding thefts and housebreaking.

288. December 5 and 19, 1697.—Citations of the persons accused of the thefts.

289. December 2, 1697.—Respecting the height to which houses are to be built.

290. January 9 and 28, 1698.—Edictal citations.

291. July 30, 1698.—Respecting licences to shoot in Table Valley.

292. September 13, 1698.—Respecting unlicensed sales of brandy distilled of wheat, &c.

293. December 5, 1698.—Further prohibition of traffic with the Hottentots for cattle. Respecting the sale of cattle to strangers and ships; and sale of cattle among the colonists themselves.

294. January 19, 1699.—Proclamation respecting an assault committed on, and murder of, a slave woman.

- Governor  
 Willem Andren  
 van der Stell.
295. February 11, 1699.—Proclamation respecting certain fugitives.
296. March 18, 1699.—Renewal of placaat fixing the value of coin.
297. June 15, 1699.—Police and military regulations.
298. July 28, 1699.—Prohibition of all slaughtering and sale of cattle and sheep, except by licensed persons.
299. August 25, 1699.—Against the sale of wines.
300. February 28, 1700.—Permission by Commissioner Valckenier for the inhabitants to barter with the Hottentots.
301. Notices respecting firewood, and other notices to 15th June.
302. June 8, 1700.—Regarding servants of the company in service with burghers.
303. July 5, 1700.—Against the purchase of clothes, &c., of the company's servants.
304. Notices respecting the shearing of sheep and the delivery of wool to the company.
305. Notice respecting pasturage.
306. March 26, 1701.—Against smuggling, &c.
307. Notices respecting the cutting of wood.
308. October 5, 1701.—Certain individuals gone beyond the boundary cited.
309. August 31, 1702.—Inspection of roads, &c.
310. Notices to 31st August.
311. October 27, 1702.—Respecting ill-treatment of Hottentots in the course of barter. Regulations as to barter.
312. December 1, 1702.—Respecting the cutting of reed in the Downs.
313. Notices, &c., to 18th January, 1704.
314. Proclamation respecting homicide.
315. Edictal citations, January and February, 1704.
316. Notices from April to 20th June, 1704.
317. January, 1705.—General placaat. Respecting inn-keepers, taverns, &c., as before; gambling, &c. As to harbouring servants of

the company after sunset. Fishing in Table Bay: Drawing nets of others. Prohibition as to salt; hippopotamus shooting; cutting wood; goods of stranded vessels; proceeding on board ship without permission; injury to company's gardens; riding over cultivated lands; horses trespassing in the gardens. Alterations of land marks to be punished with death. Firing grass, &c. Washing, &c., above the fountain. Barter of ivory, &c., with the Hottentots still forbidden. Purchases from overseers. Sale of cattle among the burghers forbidden. Prohibition of sale of meat, &c., except in the market-place. Prohibition of sale of wines, &c. Slaves. Harboursing fugitives. Hiring the servant of another man. Strange cattle in the burgher's flocks. Freemen of Stellenbosch to forfeit their lands unless cultivated within three years. Injury to water-course in Table Mountain. Use of horses under three years old forbidden. No stallions to be gelded without the governor's consent. Grapes not to be cut without the governor's consent. Houses to be raised a certain height. Slaves prohibited from having guns. Respecting cattle running loose in the town. Sale of bread. Respecting the registration of letters of freedom. Notice of the absence of slaves. Shooting licences. The inhabitants of the Cape District and Drakenstein to be prepared in full uniform and armed in case of an alarm. Persons in the Cape District going more than three hours beyond the castle to be punished. Prohibition against selling wines. Tobacco discovered for sale to be confiscated. Prohibition against making beverages of unripe grapes. Respecting sheep without ears. All not resident at Stellenbosch, Drakenstein, or the Cape District to be prohibited from having any cattle. Trespass. Slaughter of lambs prohibited. Contracts of hire. Firewood to be obtained only at Hout Bay. Warning to shepherds as to pasturage. Against cutting reed. Further respecting smuggling, shooting licences, and slaughtering cattle. Making brandy of wheat. Against sale of Cape brandy. Sale of meat. Respecting barter with the Hottentots. Barter of articles of clothing, &c. Shooting game. Regarding setting of man-traps and spring guns. Against slaves smoking in the streets.

Governor.  
 Willem Adrian  
 van der Stell

318. Notices.

319. August 29, 1704.—Against spring guns and man-traps.

320. Notices to 28th September, 1705, against smuggling.

321. Notices to 2nd February, 1706.

322. March 4, 1706.—Respecting seditious proceedings and conspiracy on the part of the inhabitants.

323. Notices.

324. Edictal citations of François and W. du Toit, and others, for sedition and conspiracy up to 28th June, 1706.

325. Farming of the revenues to August, 1707.

326. October 8, 1706.—Citations.

- Governor.** 327. November 30, 1706.—Respecting certain judicial proceedings.
- Willem Adrian van der Stell.** 328. Edictal citations up to 17th February, 1707.
329. March 1, 1707.—Repeal of the *placaat* respecting the setting of spring guns.
330. Notices, among which is one of the sale of the station, near the mouth of the Eerste River, where the banished Makassar people had been kept.
331. Notices of sale of lands by the several government officers, after orders to that effect from home.
332. August 4, 1707.—Decree of divorce between two free blacks.
333. September 6, 1707.—In case of wild animals being shot, those desiring the premium to bring the entire animal to the castle.
334. Notices.
335. December 13, 1707.—Interdiction of pasture of cattle at certain places.
336. January 10, 1708.—Notice by the late governor, W. A. van der Stell, calling for claims against him in regard to certain complaints made against him to the home government.
337. Notice.
- Louis van Assenburg.** 338. February 9, 1708.—Proclamation for the apprehension of De Thiullet and Uykers, for murder.
339. Edictal citations to 1st March, 1708.
340. Notices to 19th March.
341. April 18, 1708.—Proclamation by Governor Van Assenburg, reinstating the persons who had been punished for sedition by W. van der Stell.
342. *Placaat* respecting the seamen on board the ships. Any injury to the Hottentots forbidden. Regulations generally respecting seamen.
343. Notices to the 10th November.
344. October 18, 1708.—*Placaat* respecting persons resident in Stellenbosch having property in Cape Town and doing no burgher service.
345. Notices to 11th December, 1708.
346. December 19, 1708.—*Placaat* regarding notification of produce for the purpose of the government tenth.

347. Notices.

Governor.

348. February 8, 1709.—Respecting caution to be used in sending slaves from home.

Louis van Assenburg.

349. Notices.

350. April 23, 1709.—Renewal of the *placaat* of the 5th July, 1700, respecting the purchase of slaves' clothes.

351. June 18, 1709.—Respecting delinquents beyond the boundary.

352. August 8, 1709.—Against injuring trees, &c.

353. Notices.

354. February 25, 1709.—Penalties against tearing down notices, *placaats*, &c., in the country districts.

355. Notices.

356. September 1, 1711.—Regulations in case of fire in the town.

357. October 28, 1711.—General *placaat*. Same as 15th February, 1715.

358. June 12, 1714.—Renewal of *placaat* of 1698 respecting shooting licences.

Maurits Pasques de Chavonnes.

359. June 29, 1714.—Relating to wards of Orphan Chamber and establishing Debt Registry.

360. June 26, 1714.—Stamp Ordinance.

361. July 14, 1714.—Ordinance respecting forfeiture of grants not built upon, and lands uncultivated.

362. August 21, 1714.—Regulations regarding the conduct of the seamen.

363. September 18, 1714.—Proclamation authorizing any burgher, in case of runaway slaves declining to surrender, to shoot them.

364. September 18, 1714.—Regarding registration, stamps on transfers, &c.

365. December 4, 1714.—Respecting mangy sheep.

366. February 15, 1715.—General *placaat*. Renewed 5th December, 1719. Respecting tappers. Ditto. Wounding at tappers'. Penalty on freemen drawing knives. Notice of death arising from quarrel, &c., to be given by the owner of the house. Gambling. Ditto with slaves: penalty, 8 days bread and water. Penalty on purchase of regimentals, &c. No credit to be given to the soldiery beyond one skilling. Any

Governor.  
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 Maurits  
 Pasques de  
 Chavounes.

one found at night in the slave quarters to be well lashed. Soldiery, &c., not to go beyond the range of a gun-shot from the fort. None to be allowed to fish in Table Bay without consent: twenty rixdollars for first offence, forty for second, and sixty for third. Penalty on drawing the nets of others. Penalty on scraping salt. Penalty on hippopotamus shooting. Penalty on cutting firewood without a licence. Penalty on cutting timber. Penalty on going on board ships before the third day after arrival. Penalty on plucking fruit in the gardens. Penalty on injuring the gardens. Penalty on riding over cultivated lands. Horses found in the gardens to be forfeited, besides damage paid. Corporal punishment (*lyfstraffe*) on removing beacons. Penalty on planting beyond one's own boundaries. Penalty on washing above the fountain which supplies the ships. Penalty for trading with Hottentots without consent, one hundred rixdollars and forfeiture of the property bartered. Purchasers of property belonging to the Company to be dealt with as thieves. On selling strong drink to slaves. Harbours deserters. Hiring another's servant. Mixing up strange cattle with one's own. Pasturing about Company's kraals. Crossing the water-courses between the castle and Table Mountain. Cleaning away of nuisances near houses. Houses to be built in future: walls of stone, and at least fifteen feet high. Penalty on trusting slaves with firearms. Penalty on sale of wines to slaves. Penalty on driving cattle through the streets. Penalty on riding furiously through Table Valley. Payment of pound fees. Licence to sell bread, &c. Report of absence of slaves. Licence to shoot game. Sale of brandy, arrack, &c., without licence. Sale of tobacco, &c., without licence by private individuals. Penalty against making spruce beer, &c. Penalty on keeping a coffee-house and selling beer without a licence. Any possessor of sheep without ears to be fined twenty-five rixdollars, besides forfeiture of the sheep. In the Cape Division, Stellenbosch, and Drakenstein, none except burghers allowed to keep cattle. All possessors of land to provide themselves with their titles within eight months after publication. Respecting Company's servants contracted to private individuals. Company's shepherds, cattle-herds, &c. Respecting cutting reed without licence. Respecting sale of wines without licence. Respecting sales of wines to the military. Police to have the right of entry to licensed houses. Prohibition of purchase of property, &c., from Company's slaves; penalties. Against smoking in the streets. Against going about with torches. Those who have killed wild animals and claim the premium instead of the skin, to bring, in future, the entire animal to the castle, or, in Stellenbosch, to the landdrost. Inscription as burghers. Change of residence of burghers from the Cape to Stellenbosch. Injuries to gardens, fruit-trees, or other trees planted by Government. Slaves found together in the streets to be at once handed to the fiscal. Respecting the setting on fire of corn-lands, &c., and bushes. Respecting night-soil. Notice to be given to the officer of the watch of any strangers from ships being in houses. All penalties in this placat to go one third to the Honourable Company, one third to the fiscal, and one third to the informer; excepting the penalties regarding forests, game licences, &c., which are to be divided, half to the fiscal and half to the ranger. Respecting orphans under the guardianship of the Orphan Chamber. Purchasers of erven in Table Valley to build within a year, on pain of forfeiture. Desertion of slaves; in case of resistance, the deserters to be fired upon.



367. March 12, 1715.—All wine-farmers to pay a tax of one rixdollar for each leaguer of wine produced by them.

Governor.

Maurits  
Pasques de  
Chavounes.

368. May 7, 1715.—Regulations regarding the conduct of seamen.

369. May 7, 1715.—Interdict against parting with ships' stores, &c.

370. June 9, 1715.—Regulations for goldsmiths. Two examiners of goldsmiths appointed for three years. Persons before carrying on this business to be examined. Weight, &c. Work to be tested and stamped.

371. June 18, 1715.—Resolution ordering owners of loan farms to renew the annual leases, under penalty.

372. September 15, 1715.—Further regulations regarding goldsmiths.

373. October 14, 1715.—Respecting an attempt to set on fire a house belonging to the fiscal.

374. October 9, 1715.—Respecting the purchase of clothes from the slaves of the Company.

375. August 21, 1716.—Educational arrangements. Matters to be taught: the Lord's Prayer, Ten Commandments, Articles of Christian Faith, Morning and Evening Prayer, Prayer before and after meals, besides the ordinary prayers, to obtain a knowledge of religion. Catechism. All children to be brought to church. Separation of boys from girls. No books to be used except those authorized in Holland. Schoolmasters, &c., to sign acquiescence in the articles of Dordrecht.

376. November 17, 1716.—Regulations for the visitation of the slave lodge.

377. February 2, 1717.—Regulating price of butcher's meat.

378. June 15, 1717.—On account of the disease among the sheep, prohibition of slaughter of any ewes.

379. October 19, 1717.—Respecting the cession of farming contracts to Government.

380. February 8, 1718.—Respecting infractions upon the Company's trade monopoly.

381. January 24, 1719.—Regarding the alienation of any ship's stores (ammunition), goods, &c., or private importations of tobacco contraband. None to go on board until after three days, and further regulations as to ships. All persons out at nights to use lanterns. All injury to water-leadings to be fined. Injury to hedges, &c.

382. July 2, 1720.—Notice respecting diseased cattle. Prohibition, for this reason, against supply of any English, French, or other foreign vessels.

- Governor.** 383. November 25, 1721.—Respecting smuggling generally ; licence to sell wines, &c.  
**Maurits Pasques de Chavonnes.**
384. July 7, 1722.—Respecting the taking of stranded goods.
385. June 18, 1722.—On the same subject.
386. September 29, 1722.—Regulations respecting assistance to be rendered in cases of shipwreck, &c.
387. September 29, 1722.—Respecting the transfer and emancipation of slaves.
388. October 13, 1722.—Respecting the escape of certain prisoners from Robben Island.
389. February 23, 1723.—Respecting the scarcity of cattle and sheep, in consequence of the arrival at this place of a large number of ships of foreign nations ; and further under the pretext of disease amongst the cattle. Prohibition of sale of any sheep or cattle to foreign ships, under a penalty of 1,000 guilders. Similar penalty against the sale of cabbage or other vegetables to foreign ships : these to be kept for Company's ships. No cabbage in future to be picked for the purpose of being sent to India, under the same penalty. The penalties to be divided equally between the informer, the members of council, and the officer who shall cause the fines to be inflicted.
390. April 6, 1723.—Respecting the price and the sale of sheep and cattle to the Company.
391. June 4, 1724.—Barter with the Hottentots for ivory, &c.
392. May 10, 1724.—Respecting the barter of ivory, &c., at the Rio la Goa.
393. July 18, 1724.—Respecting unyoked oxen, &c., in Table Valley.
394. July 4, 1724.—Regarding the cutting of firewood in Table Valley, &c.
- Jan de la Fontaine. (Provisional.)** 395. November 14, 1724.—Respecting the cutting of firewood.
396. January 8, 1726.—On forestalling and regrating.
397. April 17, 1726.—Respecting malicious injury to horses, &c.
398. April 17, 1726.—Private importation of tobacco.
399. January 5, 1727.—Regulations respecting the wheat, &c., on account of the scarcity.
400. February 1, 1727.—General placaat. Regulations respecting tappers, sale of wines, beer, &c. Penalty on drawing a knife.

Gambling with slaves, &c. Penalty on bartering goods supplied on account to the Company's servants. Regimentals, &c. Penalty on soldiers, &c., going beyond cannon-shot from the castle or being found in the slave quarters by day or night. On fishing elsewhere than in Table Bay. On taking up nets of others. All boats to be fastened to the jetty at night. Collecting salt. Hippopotamus-shooting. Cutting Timber. Cutting firewood. Retaining possession of goods from vessels that have been wrecked. Any persons found on the beach near the wrecks to be treated as thieves. Regulations respecting assistance to wrecks. Boarding ships left until third day. Injuring the gardens, cultivated lands, plantations, &c. Injury to gardens by horses. Horses found within fortifications, &c. Against injury to horses and cattle. Respecting the use of horses of another without leave. Removal of beacons. Penalty on sowing or planting beyond one's boundary. Pollution of the water designed for ships' use. Generally against dealing with the Hottentots. Purchasers of the Company's goods from the company's servants to be dealt with as thieves. Against harbouring fugitives. Missing slaves to be reported. Against conspiracies of slaves. Night-soil. Hiring another's servants. Against retaining strange cattle. Against pasturing near the Company's kraals. Against injury to the water-leadings between the castle and Table Mountain. Removal of nuisances. Houses to be built of stone, at least fifteen feet high. Against the sale of arms to slaves. Against allowing cattle to run loose in the streets. Against furious riding in Table Valley. Against the sale of bread without licensc. Game licence. Confiscation of tobacco privately imported. Against making doppen beer. Against making spruce beer. Burghers only entitled to keep cattle. Respecting servants of the Company contracted to private individuals. Regulations as to shepherds of the company. Cutting reed without licence. Against purchase of property from slaves. Against smoking, &c., in the streets. All persons having spring guns in their places for the purpose of destroying wild animals shall place a mark to serve as a warning. Persons claiming premium for having killed wild animals to bring the entire animal to the castle or the landdrost. Inscription as burghers. Change of burghership from one division to another. Respecting firing corn-lands, &c. Respecting the lodging of persons from foreign ships. Regarding the wards of the Orphan Chamber. Runaway slaves. Penalty for tearing down placaaats, &c. Against soldiers, sailors, and work-people being in the streets after 9 p.m. Against sale of ewes. Against dealing in ivory. All ivory to be delivered to the Company at fixed prices. Against firing guns, &c., in the streets at new year. Against the alienation of ships' stores. Against collecting shells along the sea beach, &c. All the pecuniary penalties in this placaat to go to the fiscal, excepting where expressly otherwise provided by the original placaat.

Governor.  
Jan de la  
Fontaine.  
(Provisional.)

401. February 1, 1727.—Principally regulations concerning ships, &c.

402. Respecting sale of bread, &c.

403. April 4, 1727.—Trade with the natives, and the injury suffered Pieter Gysbert Noodt. by the natives in consequence of free trade.

- Governor.** 404. July 8, 1727.—Fixing the value of coin.
- Pieter Gysbert Noodt.** 405. January 6, 1728.—Baking regulations.
406. January 22, 1728.—General placaat. The same as 1st February, 1727.
407. February 3, 1728.—Shipping regulations.
- Jan de la Fontaine.** 408. July 3, 1728.—Renewal of placaat relating to wrecking.
- (Provisional.)** 409. March 22, 1728.—Against harbouring deserters, fugitives, &c.
410. January 1, 1712.—Renewal of military regulations of 15th June, 1699.
- Jan de la Fontaine.** 411. July 10, 1731.—Against ill-treatment of slaves. Certain slaves having been supposed to have been killed by severe punishments, notice of the death of such slaves to be given before burial. Against masters compelling their slaves to work in heavy chains. No slave to be put in chains without permission of the fiscal or landdrost, in which case this is to be done by the official smith.
412. December 4, 1731.—Notice respecting sale of ivory.
413. February 12, 1732.—Shipping regulations.
414. February 18, 1732.—Respecting the granting of new lands.
415. February 28, 1732.—Amount of quitrent.
416. February 12, 1732.—General placaat. Same as 22nd January, 1728, and 1st February, 1727.
417. July 1, 1732.—Regulations as to lands.
418. September 4, 1732.—Cutting firewood.
419. May 22, 1733.—Respecting coffee-houses, &c.
420. November 5, 1733.—Renewal of notice of
421. May 30, 1716.—Respecting military uniform.
422. March 23, 1734.—Farming wines, &c.
423. September 11, 1734.—Against smuggling wine, &c.
424. November 2, 1734.—Respecting precautions to be taken in case of the appearance of an enemy,—intelligence having been received of war in Europe.
425. January 18, 1735.—Against use of firearms &c., on new year's night.

426. March 8, 1735.—Convict discipline—sentries. Governor.
427. March 25, 1735.—Respecting the taking away of clay from the place of execution near the castle. Jan de la Fontaine.
428. January 3, 1736.—Notice respecting two cases of arson.
429. March 13, 1736.—Fixing the value of certain coins.
430. May 21, 1736.—Against wreckers.
431. May 21, 1737.—Touching certain wrecked ships. Daniel van den Henghell. (Commander)
432. March 27, 1738.—Night-soil.
433. March 4, 1739.—Respecting disobedience to the landdrost, and apprehension of a deserter.
434. March 9, 1739.—Notice regarding graves, &c.
435. June 2, 1739.—Deserters. Hendrik Swellengrebel.
436. July 21, 1739.—Respecting coins in use.
437. November 3, 1739.—Burgher-raad notice—repair of streets.
438. December 8, 1739.—Barter with the Hottentots.
439. January 19, 1740.—Prohibition against selling wine in small quantities.
440. February 2, 1740.—Respecting the failure of the crops.
441. March 15, 1740.—Respecting the increase of infanticide.
442. March 29, 1740.—Respecting a failure of the grain crop. Renewal of placaat against exports of grain.
443. June 21, 1740.—Notice respecting the above.
444. July 19, 1740.—Sheep, goats, &c., in the streets.
445. October 11, 1740.—Placaat of February 12, 1742, renewed.
446. October 25, 1740.—Malicious injury to horses.
447. June 24, 1741.—Respecting cattle.
448. January 19, 1741.—Respecting arson. Against setting on fire grass, stubble, &c., without previous notice.
449. March 14, 1741.—Respecting deserters.
450. March 21, 1741.—Signals, &c., in case of hostilities.

- Governor. 451. May 30, 1741.—Respecting seed corn.
- Hendrik Swellengrebel. 452. June 27, 1741.—All Lutherans to report themselves.
453. June 27, 1741.—Against sending any articles whatever to Holland by ships.
454. 1741.—Respecting payment of quitrents.
455. September 5, 1741.—Regulations as to cutting wood.
456. August 28.—Contract regarding supply of wheat.
457. September 4, 1742.—Order regarding the burial of horses and cattle dying on the roads.
458. December 18, 1742.—Regarding killing of wild asses.
459. December 1, 1742.—Against making fires after dark.
460. December 11, 1742.—Against sailors, slaves, convicts, &c., being abroad after dark ; also respecting night-soil.
461. February 22, 1743.—Deserters from Company's service.
462. March 5, 1743.—Impost on wines.
463. April 9, 1743.—Renewal of placaat of 11th September, 1734.
464. May 28, 1743.—Against cutting wood.
465. August 7, 1743.—Vagrant slaves in Stellenbosch.
466. October 8, 1743.—Against burning old reed.
467. January 10, 1744.—Prices of Cape wheat fixed.
468. May 19, 1744.—Wagonmakers' and other charges fixed.
469. June 7, 1744.—Attempt at arson by a slave.
470. June 30, 1744.—Sundry notices. Notice renewing placaat respecting sick in hospital.
471. November 24, 1744.—Regulations for the burgher force and night-watch in Cape Town.
472. February 9, 1745.—Respecting ivory, &c.
473. July 20, 1745.—Renewal of placaat of November 3, 1739.
474. July 20 to November 7, 1745.—Certain notices.
475. October 19, 1745.—Deserters.

476. October 19, 1745.—Deserters. Governor.  
Hendrik Swellengrebel.
477. November 16, 1745.—Church regulations.
478. Cape, Stellenbosch, Drakenstein, Waveren, and Swartland.
479. December 7, 1745.—Reward for slaughtering wild animals.
480. January 26, 1746.—Public houses kept without licence.
481. August 10, 1746.—Goats, &c., running loose.
482. October 25, 1746.—Cutting firewood.
483. December 29, 1746.—Notice from India respecting search after a particular individual.
484. February 1, 1747.—Appointment of a day of fasting and prayer.
485. May 2, 1747.—Supply of wheat.
486. June 26, 1747.—Thefts of plants in Company's gardens.
487. September 12, 1747.—Regulations of punt at Berg River.
488. Notices from September to April, 1748.
489. May 4, 1748.—Biscuits, &c., to be sold at same, price notwithstanding presence of English fleet.
490. June 25, 1748.—Payment of quitrent.
491. September 17, 1748.—Against trespass while travelling through the country.
492. January 28, 1749.—Against desecration of the Sabbath.
493. March 20, 1749.—Notices to August, 1750.
494. April 27, 1751.—Preservation of game. Ryk Tulbagh.
495. September 14, 1751.—Farming of wine.
496. February 1, 1752.—Against sending wine to Holland.
497. June 6, 1752.—Free loan required for the East India Company.
498. January 9, 1753.—Injury done to gardens.
499. March 20, 1753.—Renewal of placaat respecting ivory.
500. March 20, 1753.—Notice respecting prayers of burghers to be relieved from annual exercise of their weapons.

- Governor. 501. April 24, 1753.—Infanticide, exposure of children, &c.
- Ryk Tulbagh. 502. December 24, 1753.—Sale of rum, &c., and of butter.
503. February 26, 1754.—Deserters.
504. September 3, 1754.—Slaves.
505. January 7, 1755.—Exports of butter to India.
506. January 21, 1755.—Small-pox.
507. June 26, 1755.—Anonymous libels.
508. July 15, 1755.—Sumptuary law.
509. October 21, 1755.—Sanitary regulations.
510. March 11, 1756.—Appointment of a fast and thanksgiving day.
511. March 11, 1756.—Quitrents no longer to be paid in cattle.
512. April 12, 1757.—Regulations respecting goods of passengers from India.
513. April 26, 1757.—Duty on wines, &c.
514. September 6, 1757.—Firewood, charcoal, &c.
515. September 20, 1757.—Retailing wines.
516. October 7, 1758.—Mode of tender for salt provisions.
517. January 8, 1759.—Exports of salt meat.
518. February 27, 1759.—Regarding presence of the French fleet and the scarcity of wheat caused thereby. No more wheat to be sold to the French.
519. August 14, 1759.—Communication signals for the purpose of giving early notice of any hostile fleet, &c.
520. March 4, 1760.—Against sale of young wine to the French fleet.
521. March 11, 1760.—Supply of biscuit to the French fleet.
522. June 10, 1760.—Proclamation for the apprehension of a slave who had attempted to murder his master.
523. July 15, 1760.—Proclamation regarding attempt at murder by some fugitive slave.



524. August 7, 1770.—Proclamation regarding attempt at murder by some fugitive slave. Governor.  
Ryk Tulbagh.
525. January 15, 1761.—Supply of butter to India.
526. December 15, 1761.—Regulation for the supply of water in the gardens.
527. February 11, 1762.—Invalids on board English fleet permitted to land.
528. August 10, 1762.—Supply of wine.
529. August 31, 1762.—Supply of wine.
530. September 28, 1762.—Supply of wine.
531. October 28, 1762.—Against grazing horses, &c., on the parade.
532. November 16, 1762.—Regulations for the prevention of fires, &c.
533. December 28, 1762.—Respecting sale of wines.
534. January 6, 1763.—Butter for India.
535. January 11, 1763.—Against driving wagons with eight horses.
536. March 11, 1763.—French deserters.
537. April 26, 1763.—Butter for Batavia.
538. February 28, 1764.—Scarcity of corn.
539. October 16, 1764.—Supply of barley.
540. November 13, 1764.—Trespass in the church-yards.
541. December 18, 1764.—Regarding the mode of payment of quitrents.
542. December 29, 1764.—Grain.
543. March 5, 1765.—Deserters, fugitives, slaves, &c.
544. June 28, 1765.—Renewing placaat of
545. January 28, 1749.—For the due observance of Sundays.
546. September 3, 1765.—Retailing wine.
547. November 12, 1765.—Ditto to private individuals.
548. November 12, 1765.—Regarding the dress of emancipated slaves.

- Governor.** 549. December 10, 1765.—Destruction of ownerless dogs.
- Eyk Tulbagh.** 550. April 29, 1766.—Slave discipline.
551. September 3, 1766.—Farming of wines.
552. May 5, 1767.—Small-pox Regulations.
553. February 20, 1768.—Wheat for Batavia.
554. May 2, 1769.—Wheat, flour, &c.
555. September 5, 1769.—Farming of wines.
556. November 14, 1769.—Delivery of wheat to the Company.
557. November 14, 1769.—Regulations for the prevention of death by drowning.
558. April 26, 1770.—Regulations fixing limits of Drakenstein, Stellenbosch, and Swellendam.
559. May 18, 1770, to March 5, 1771.—Notices.
560. June 19, 1771.—Purchase of clothes from Company's servants.
561. June 19, 1771.—Renewal of prohibition of 4th September, 1742, respecting animals dying on the road.
- Baron Joachim van Plettenberg** 562. September 3, 1771.—Game regulations.
563. April 11, 1772, to August 4, 1772.—Notices.
564. September 1, 1772.—Supply of wine to the Company.
565. May 21, 1773.—Two notices.
566. June 1, 1773.—Renewal of placats in consequence of several wrecks.
567. September 21, 1773.—Respecting a ship supposed to be wrecked near Agulhas.
568. December 15, 1773 —Firewood.
569. March 1, 1774.—Water regulations for the gardens, &c., in Table Valley.
570. May 25, 1774.—Game licences.
571. April 5, 1774.—Prohibition of barter with the Kafirs, &c.
572. July 30, 1774.—Notices respecting bad coin in circulation.

573. April, 1774.—Regulations for prevention of diseases and mortality in Company's ships. Governor.  
Baron Joachim  
van Plettenberg
574. October 11, 1774.—Respecting false returns of produce, &c., from the farms. (Opgaaf).
575. November 6, 1776.—Regarding the mode of signaling on arrival of hostile fleet.
576. December 27, 1776.—Defining boundaries between the Stellenbosch and Swellendam districts.
577. June 2, 1778.—Batavian placaat; prohibiting entrance into service of foreign powers.
578. April 28, 1778.—Respecting the preservation of the wax-berry bushes.
579. July 7, 1778.—Respecting the consent of the Governor to the marriage of persons in the civil service.
580. April 12, 1779.—Penalties (by Council of Directors) against captains of ships harbouring deserters.
581. April 20, 1779.—Chinese, Malay, and other convicts from India not to be employed in boats.
582. May 4, 1779.—Prohibition of loans of money to soldiers, sailors, &c.
583. April 23, 1779.—Placaat of the States-General of 10th August, 1778, abrogating the confiscation of goods of delinquents, even in case of high treason, promulgated in the colony, 23rd April, 1779.
584. July 6, 1779.—Regulations relating to butchers, bakers, &c.
585. September 6, 1779.—Permission to butchers and bakers to sell meat and bread to foreign ships.
586. October 11, 1779.—Government notice regarding the furnishing of lime, &c.
587. November 25, 1779.—Notice regarding some English sick left here by Admiral Hughes.
588. July 22, 1779.—Notice respecting pasturage in the kloof.
589. August 27, 1780.—Regulations respecting the discipline of the soldiery.
590. September 5, 1780.—Notice respecting tents at Rogge Bay.
591. October 3, 1780.—Regarding the right to sell refreshments at the annual review at Stellenbosch.

- Governor.** 502. January 23, 1781.—Respecting provisions of tallow for Batavia.
- Baron  
Joachim van  
Flettenberg.** 503. March 10, 1781.—Prohibition against horses, cattle, &c., being allowed to run loose on the squares.
504. April 2, 1781.—Order to persons in the country districts to send to Cape Town such Hottentots in their service as are capable of bearing arms.
505. April 2, 1781.—Order respecting the provision of biscuit on account of the war with England.
506. April 7, 1781.—Respecting the inscription of burghers.
507. April 10, 1781.—Prohibition of gambling, &c. Penalties: first offence, twenty-five rixdollars; second, fifty rixdollars; and third, one hundred rixdollars.
508. April 19, 1781.—Respecting the delivery of brandy to the Company.
509. June 29, 1781.—Publication forbidding credit to be given to the newly-arrived French soldiers beyond one skilling.
600. July 3, 1781.—Regulations respecting the assembly of the burghers in case of the enemy's arrival.
601. July 11, 1781.—Prices of provisions fixed during the continuance of the war: ten muids of wheat, thirty rixdollars; fine wheaten flour, four rixdollars per hundred pounds; barley, one and a half rixdollar per muid; wine, forty-five rixdollars per leaguer (including the excise of five rixdollars) to the shipping,—to the inhabitants, five rixdollars per half-aum; brandy, sixty-five rixdollars per leaguer (including excise of five rixdollars); mutton, one stiver per pound; beef, two stivers per pound; tallow, eight rixdollars per one hundred pounds; sheep-tail fat, six stivers per pound; ordinary butter, nine stivers per pound; Cape soup, eight stivers per pound.
602. August 27, 1781.—Prohibition against allowing horses, cattle, &c., to run on the squares and lands between the castle and the town.
603. August 31, 1781.—Prohibition against purchasing accoutrements, &c., from the French soldiers.
604. October 9, 1781.—Prohibition against the sale of provisions to shipping, &c., without special leave of the fiscal.
605. October 9, 1781.—War-tax payable by persons in the country districts for pickets, &c.
606. October 12, 1781.—Prohibition in reference to placat of 11th July, of sale of butter, soap, tallow, &c., to any ships, whether Dutch or foreign, without special leave of the fiscal.

607. November 6, 1781.—On the subject of the tax payable in the country districts, fixing the amounts in some instances.

Governor.  
Baron  
Joachim van  
Plettenberg.

608. December 18, 1781.—Regulations regarding night-soil.

609. January 18, 1782.—Regulations respecting detachments of burghers from the country districts. A hundred men from Stellenbosch and a hundred from Swellendam to repair to Cape Town periodically for its defence during the war.

610. February 12, 1782.—Requisitions of Hottentots, &c., from the country districts capable of bearing arms.

611. February 13, 1782.—Further regulations respecting detachments from the country.

612. March 26, 1782.—Notice calling for loans to the Company at six per cent. per annum.

613. April 9, 1782.—Issue of assignats.

614. April 30, 1782.—Issue of paper money and value of coin fixed.

615. May 14, 1782.—Regulations respecting slaughter sheep. Butchers to purchase at nine skillings.

616. May 21, 1782.—Prohibition against the carrying on wine from the 1st February to the last of August, in order to prevent exportation of new wine. Prohibition against taking such wine direct to Simon's Bay.

617. May 25, 1782.—Public notice of the introduction of paper money.

618. May 29, 1782.—Orders relating to provisions, &c., in case of the enemy's arrival. Stock to be removed on a landing being effected by the enemy. Fustage to be destroyed.

619. June 10, 1782.—Further orders respecting the sale of provisions, &c.

620. June 8, 1782.—Renewing the proclamation prohibiting gambling.

621. June 10, 1782.—Relating to land rent.

622. June 25, 1782.—Notice respecting paper money.

623. July 9, 1782.—Notice respecting wine and brandy for the company.

624. July 9, 1782.—Prohibition against the purchase of clothing from the military.

625. August 27, 1782.—Renewal of prohibition against allowing horses, &c., to trespass on the squares.

Governor.  
 —  
 Baron  
 Joachim van  
 Plettenberg.

626. August 27, 1782.—Prohibition against the sale and export of wines, &c., except to the Company.
627. September 3, 1782.—Public notice respecting forged paper money.
628. September 27, 1782.—Inspection of streets by the fiscal.
629. September 28, 1782.—Prohibition against the export of brandy.
630. October 3, 1782.—Respecting the signing of paper money.
631. November 26, 1782.—Respecting the signing of paper money.
632. December 31, 1782.—Against gambling.
633. February 4, 1783.—Regarding the sale of brandy.
634. April 8, 1783.—Prohibition against the making of biscuit, except by bakers.
635. April 8, 1783.—Prohibition against taking wine to Simon's Bay.
636. April 22, 1783.—Inspection of streets, &c.
637. April 22, 1783.—Respecting the leaving of carcases of dead cattle on the road, &c.
638. July 8, 1783.—Regarding the signing of paper money.
639. July 29, 1783.—Fixing the price of butchers' meat.
640. August 12, 1783.—The delivery of wheat, &c., to the Company.
641. August 31, 1783.—The delivery of wine, &c., to the Company.
642. September 16, 1783.—Declaration of the equal value of paper money and coin. Prohibition of export of coin. Declaration of paper money a legal tender under penalties.
643. December 16, 1783.—Regarding the quantity of wheat, &c., to be delivered to the Company. Statement of produce of the harvest to be made on the 15th January of each year.
644. January 13, 1784.—Prohibition against the sale of flour.
645. March 20, 1784.—Fixing the weight of bread.
646. April 27, 1784.—Regarding the exchange of paper for coin, which had been received from Holland.
647. May 18, 1784.—Prohibition of the baking of cakes, &c., on account of scarcity.

648. May 18, 1784.—Diminution of price of wine by the Company : price to be twenty-seven rixdollars for wine, fifty rixdollars for brandy, per leaguer.

Governor.  
Baron  
Jochim van  
Plettenberg.

649. July 27, 1784.—Permitting bakers to use flour on hand for the baking of sweet cakes, notwithstanding the proclamation of 18th May.

650. August 24, 1784.—Paper money called in, specie having been received from Holland.

651. December 17, 1784.—Respecting billiard tables, &c.

652. December 21, 1784.—Regulating tap-houses, and the sale of wine in small quantities.

653. January 18, 1785.—Against the sale of wines, &c., in billiard rooms.

654. January 18, 1785.—Respecting the grinding of flour at the mills. Private hand or horse mills forbidden : penalty, one thousand fls.

655. January 18, 1785.—Against export of flour, biscuits, wheat, &c.

656. March 29, 1785.—Regarding the transmission of private letters to Holland.

657. August 5, 1785.—Against strangers remaining in the colony without leave.

C. J. van de  
Graaff.

658. August 5, 1785.—Against forging paper money. Reward, one thousand rixdollars to informers.

659. August 5, 1785.—Renewal of placaat of 10th June, 1782, respecting arrear land rents of loan places.

660. October 11, 1785.—Inspection of streets.

661. October 12, 1785.—Respecting the building of a hospital.

662. December 30, 1785.—Against the export of wheat.

663. December 30, 1785.—Raising the price of wheat. Bakers to purchase at forty rixdollars per muid.

664. December 30, 1785.—Prices of bread and flour.

665. January 17, 1786.—Respecting the purchase of slaughter cattle. Wethers to be bought by butchers at twelve skillings.

666. January 26, 1786.—Prohibiting all persons, except the privileged butchers, from purchasing slaughter wethers from farmers in the interior.

Governor.  
C. J. van de  
Graaff.

667. April 19, 1786.—Against the change of the names of applicants for loan places, or obtaining loan places in the names of others.
668. April 19, 1786.—Against traffic, &c., by soldiers and sailors.
669. April 19, 1786.—Arrear land rents.
670. May 12, 1786.—Against the export of wheat, &c.
671. April 19, 1786.—Fixing the rank of different officers, &c., of the Government.
672. May 15, 1786.—Penalties on non-payment of rents for loan farms.
673. May 18, 1786.—Regulations for baking and selling bread.
674. May 15, 1786.—Soldiers and sailors prohibited from exercising trades.
675. July 19, 1786.—Respecting the baking of bread by private persons during the scarcity.
676. July 19, 1786.—The boundaries of the division of Graaff-Reinet fixed.
677. October 9, 1786.—Against export of provisions, &c.
678. September 26, 1786.—Reward for apprehension of a Malay, who had run a muck and wounded several persons. Slaves prohibited from being abroad after dark.
679. December 27, 1786.—Respecting the delivery of grain, &c., at Mossel Bay to the Company's agents. Against sale to foreigners.
680. December 27, 1786.—Against the delivery of wood at Plettenberg's Bay. Against sale to foreigners.
681. December 27, 1786.—Lowering the prices of bread. Restriction of placaat of 15th May, 1756, withdrawn by reason of the abundant harvest.
682. January 26, 1787.—Against boats boarding vessels having sickness on board.
683. January 17, 1787.—Respecting the delivery of wine, grain, &c., to the Company.
684. February 9, 1787.—Respecting remittances to Holland.
685. February 14, 1787.—Respecting remittances to Holland.
686. April 3, 1787.—Distribution of water in the gardens. Amendment of regulations of 1774.



687. June 29, 1787.—Respecting the inscription of the Hottentots residing with the inhabitants. Prohibition of vagrancy.

Governor.  
C. J. van de  
Graaff.

688. June 29, 1787.—Respecting squatting and depasturing cattle on the Downs.

689. November 30, 1787.—Respecting the lighting of fires, &c., between the castle and the Kalkbrandery.

690. December 11, 1787.—Respecting the profanation of the Sabbath.

691. January 24, 1788.—Relating to small-pox.

692. January 22, 1788.—Wood at Plettenberg's Bay.

693. March 4, 1788.—Prohibiting sales of wines to the prejudice of the pachter.

694. April 4, 1788.—Respecting forgeries of paper money.

695. June 25, 1788.—Reward for the apprehension of the author of a libel which had been affixed in various parts of the town.

696. January 20, 1789.—Remittances to Holland.

697. January 27, 1789.—Respecting wheat as export, &c.

698. May 19, 1789.—Prohibition of lotteries, &c.

699. October 6, 1789.—Prices of wood fixed.

700. October 13, 1787.—Requisition of wheat, rye, &c.

701. October 19, 1789.—Regulations respecting the inspection of streets, &c.

702. November 17, 1789.—Export of wine permitted.

703. December 11, 1789.—Report of the arrival of strangers.

704. December 1, 1789.—Prohibition against trades, &c., by the military.

705. December 11, 1789.—Remittances to Holland.

706. December 11, 1789.—Days fixed for the passing of deeds, transfers, &c.

707. December 22, 1789.—Proclamation prohibiting strangers from travelling through the country without written permits.

708. April 13, 1790.—Reward for the discovery of a murder.

709. April 20, 1790.—Wheat at St. Helena Bay.

- Governor.* 710. April 21, 1790.—Imposing a fine of one thousand rixdollars on persons who would not accept the Government paper money, except at a discount of eight or ten per cent.
- C. J. van de Graaf.*
711. May 4, 1790.—Sale and export of wines without permission, forbidden.
712. March 2, 1790.—Warning to the inhabitants to deliver their grain to the Company.
713. May 4, 1790.—Prohibition against boarding ships before they have been three days in the bay.
714. May 4, 1790.—Prohibition against allowing pigs to run about without a herd in the streets or near houses.
715. May 7, 1790.—Renewal of placat against taking wines to Simon's Bay.
716. June 1, 1790.—Respecting marriages taking place in the country. Certificates of publication of banns to be produced to minister in Cape Town.
717. June 15, 1790.—Names given to the streets, &c. Boards to be affixed to the houses at the corners.
718. February 9, 1790.—Further warning to the inhabitants to bring in their grain.
719. March 12, 1790.—Respecting paper money.
720. March 16, 1790.—Respecting outspan-places.
721. July 20, 1790.—Mode of collecting the Company's tenths of all produce coming to Cape Town.
722. July 9, 1790.—Required report of slaves, &c.
723. July 20, 1790.—Respecting loan places.
724. July 20, 1790.—Freight fixed for wines.
725. July 20, 1790.—Calculation of the tenths.
726. September 15, 1790.—Price of wood.
727. October 12, 1790.—Respecting the tenths.
728. November 19, 1790.—Reward for the discovery of thefts and burglaries.
729. November 23, 1790.—Paper money.

730. December 22, 1790.—Regulation respecting butchers. Governor  
C. J. van de Graaff.
731. January 19, 1791.—Order of European goods.
732. February 2, 1791.—Export and sale of wheat permitted, and departure of Wurtemberg regiment.
733. February 10, 1791.—Paper money. Johannes Isaacs Rhenius.
734. May 24, 1791.—Wood-cutting at Camp's Bay.
735. July 8, 1791.—Paper money.
736. July 8, 1791.—Farming of the salt-pans on the Cape Flats, Groenekloof and Saldanha Bay. Penalties on injury to salt-pans.
737. July 8, 1791.—Carriage of goods, &c., for the Company.
738. July 8, 1791.—Delivery of firewood.
739. July 18, 1791.—Court of justice permitted to admit certain attorneys.
740. July 20, 1791.—Duty to be paid on the importation of slaves.
741. July 22, 1791.—Cartoon paper money.
742. August 16, 1791.—Price of salt.
743. August 19, 1791.—Change of regulations for brewers, dealers in wine, &c., on departure of the foreign regiments.
744. August 19, 1791.—Contract for repair of hospital.
745. September 22, 1791.—Export of grain and wheat forbidden, without special permit from the governor.
746. September 16, 1791.—Respecting cutting down wood, &c.
747. August 31, 1791.—Butchers' regulations.
748. October 11, 1791.—Boundaries of forest land fixed, and the destruction of trees forbidden.
749. October 11, 1791.—Salt-pans.
750. October 25, 1791.—Batavian placaat, enacting a voluntary tax of twenty-five per cent. on salaries of public servants.
751. November 8, 1791.—Assizing of weights and measures.
752. November 8, 1791.—Respecting demolition of houses.
753. November 8, 1791.—Prohibition of purchase of clothes from persons in the hospital.

Governor.  
 Johannes Isaac  
 Koenig.

754. November 8, 1791.—Against smuggling of wine and brandy. All persons carrying wine or brandy in the streets to be required to prove that they have purchased from the “pachter” or farmer of the sale of wines.

755. November 15, 1791.—Prohibition against cattle grazing near the fortifications,—“between the castle and the new hospital.”

756. November 15, 1791.—Use of lanterns by slaves at night ordered.

757. November 15, 1791.—Muster of persons appearing upon the sick list.

758. December 6, 1791.—Respecting wheat.

759. December 9, 1791.—Reward for the discovery of the author of a libel.

760. December 2, 1791.—Respecting the use of the pasturage near Muizenberg, &c.

761. December 23, 1791.—Post office regulations.

762. December 20, 1791.—Regulations as to loan places.

763. December 23, 1791.—Farming of the salt-pans.

764. January 13, 1792.—Respecting certain goods on board of ships.

765. January 31, 1792.—Regulations respecting wood-cutting. Prohibition against cutting timber in the forests at River Zonder End, Grootvader's Bosch, and Outeniqualand.

766. February 3, 1792.—Property of private persons on board ship.

767. February 3, 1792.—Importation of slaves from the east.

768. February 7, 1792.—Duty fixed on property acquired by succession, five per cent. for ascendants and descendants, ten per cent. for collaterals. (Indian regulation.)

769. February 17, 1792.—Remittances.

770. February 24, 1792.—Prohibition against supplying foreign vessels at St. Helena Bay.

771. March 1, 1792.—Orders to captains of ships respecting treasure on board.

772. March 13, 1792.—Customs duties. Prohibition of importation of European manufactures without the governor's consent.

773. March 13, 1792.—Prohibition of importation of coffee. Governor.
774. March 13, 1792.—Execution of placaat respecting legacy duties, &c., suspended. Johannes Isaac Rhenius.
775. March, 1792.—Proclamation notifying the establishment of packets between the Cape and India, and postal communication.
776. March 14, 1792.—Prohibition against cutting timber in the Government forests at River Zonder End, Grootvader's Bosch, and Outeniqualand.
777. March 27, 1792.—Income-tax. Voluntary recognition of one year's salary.
778. March 27, 1792.—Tenth of produce payable in kind or money.
779. March 30, 1792.—Prohibition of clandestine importation of slaves from India.
780. March 30, 1792.—Import duties.
781. April 17, 1792.—Salt-pans; regulations.
782. May 8, 1792.—Ditto.
783. May 13, 1792.—Returns of slaves, horses, and oxen, belonging to the Company's servants, to be made.
784. May 30, 1792.—Respecting certain goods imported in the ship *Gouda*.
785. June 4, 1792.—Regarding the purchase and sale, hiring and letting, of loan places.
786. June 4, 1792.—Prohibition of supply of cattle or wheat to English or American ships in Berg River.
787. June 8, 1792.—Recal of servants of the Company from the country districts.
788. June 19, 1792.—Proclamation respecting persons who had left the hospital, and were living in service in the country districts.
789. June 23, 1792.—Notification of the appointments of the Commissaries-General Nederburg and Frykenius. Commissaries-General Nederburg and Frykenius.
790. July 13, 1792.—Prohibition of the sale of gunpowder and lead to the Hottentots.
791. August 7, 1792.—Appointment of van Balen as Landdrost of Graaff-Reinet, in the place of Woeke.
792. August 28, 1792.—Freight of goods, per ship *Gouda*.
793. September 1, 1792.—Hippopotamus shooting prohibited, under penalties.

*Governor.*  
*Johannes Isaac*  
*Kirsten.*

794. September 1, 1792.—Publication of the Commissioners Naderburg and Frykenius, respecting improper expressions in memorials.
795. September 7, 1792.—Arrear ferry-tax in Swellendam to be paid before December ensuing.
796. September 18, 1792.—Summons of Company's servants throughout the colony.
797. September 18, 1792.—Enactment of game laws.
798. September 20, 1792.—Fishing regulations; whale fishery established.
799. September 18, 1792.—Delivery of peas and beans to the Company.
800. October 1, 1792.—Prohibition of sales of gunpowder and fire-arms to Hottentots.
801. October 9, 1792.—Respecting cutting firewood.
802. October 12, 1792.—Regarding remittances to Holland.
803. October 16, 1792.—Cargo on board of certain ships.
804. October 25, 1792.—Prohibition against sale and export of flour from Simon's Bay.
805. October 30, 1792.—Boating regulations.
806. October 30, 1792.—Further regulations respecting the whale fishery.
807. October 30, 1792.—Public schools. Subscription for such purpose, to be payable in promissory notes, by reason of the scarcity of cash.
808. November 9, 1792.—Issue of new paper money in lieu of old and defaced.
809. November 21, 1792.—Prohibition of export of Indian produce from hence.
810. November 21, 1792.—Export and import duties regulated.
811. November 21, 1792.—Prohibition of all traffic with persons on board of the East India Company's ships.
812. November 23, 1792.—Discharge of goods from on board ship. Duty to be at once paid.
813. November 26, 1792.—Trade permitted from Mossel Bay and Plettenberg's Bay and Table Bay to India.

814. December 1, 1792.—Extending the right of whale fishing in the bays within False Bay. Governor.  
Johannes Isaac  
Rhenius.
815. December 1, 1792.—Prohibition against any wheat being ground in Simon's Bay, except by the government miller.
816. December 17, 1792.—Proclamation by the commissioners, warning the inhabitants not to live beyond their means; not to keep costly equipages and establishments, but to cultivate silk, oil, wool, cotton, wax, and indigo.
817. December 24, 1792.—Supply of peas, beans, &c.
818. January 7, 1793.—Exportation of goods to Holland.
819. January 9, 1793.—Penalty against fraud in delivering tenths pounds of produce.
820. January 14, 1793.—Export regulations.
821. January 22, 1793.—Regarding goods for export.
822. January 26, 1793.—Small-pox anticipated; regulations.
823. February 12, 1793.—Supply of wheat.
824. March 19, 1793.—Paper money.
825. March 19, 1793.—Remittances, &c.
826. April 16, 1793.—Regulations regarding the arrival and departure of passengers.
827. April 22, 1793.—Debt registry; regulations for the prevention of abuse.
828. April 30, 1793.—Defence of the place in case of hostilities with France.
829. April 30, 1793.—Hottentots summoned for the defence of the town.
830. April 30, 1793.—Preparation for the defence of the colony.
831. April 30, 1793.—Ditto ditto
832. May 6, 1793.—Returns of wagons, carts, &c.
833. May 10, 1793.—Paper money.
834. June 11, 1793.—Tolls, Simon's Bay.
835. June 25, 1793.—General review.

- Governor.** 836. July 11, 1793.—General review, and preparations for defence.
- Abraham J. Wynne.** 837. September 10, 1793.—Paper money.
838. September 19, 1793.—Fishing forbidden at Zwart Vley, near Muizenberg.
839. May 23, 1794.—Regulations respecting servants of the Company.
840. May 23, 1794.—Summons of persons out on service.
841. November 8, 1793.—Division of the town into wards; regulations for wardmasters, &c.
842. December 10, 1793.—Appointment of political commissioner.
843. December 27, 1793.—Burial of slaves.
844. January 9, 1794.—Remittances.
845. February 17, 1794.—Prohibition of export of tallow and candles.
846. February 17, 1794.—Instruction of wardmasters.
847. February 17, 1794.—Regulations for roads.
848. February 28, 1794.—Regulations respecting wheat magazines.
849. March 5, 1794.—Marriage regulations.
850. April 21, 1794.—Scarcity of salt.
851. April 22, 1794.—Reward for the apprehension of incendiaries.
852. May 9, 1794.—Prohibition against the inhabitants of the colony proceeding beyond the Great Fish River.
853. May 11, 1794.—General review.
854. May 16, 1794.—Regulations as to butchers.
855. May 30, 1794.—Trade to Botany Bay.
856. June 6, 1794.—Regulations against the purchase of clothes from persons in the Company's service.
857. June 6, 1794.—Scarcity of salt.
858. June 20, 1794.—Ditto
859. July 21, 1794.—Reward for the discovery of theft of gunpowder.



860. July 29, 1794.—Prohibition of the use of firearms in the streets. Governor.  
Josias Sluysken  
Commissioner.
861. August 11, 1794.—Withdrawal of the prohibition against the export of tallow, &c.
862. August 20, 1794.—Regulations as to slaves.
863. September 17, 1794.—Supply of wheat to the Company.
864. September 20, 1794.—Regulations respecting the Loan Bank.
865. October 27, 1794.—Prohibition against wagons outspanning at Tiger Valley.
866. November 24, 1794.—Summons of Company's servants, and regulations respecting them.
867. November 24, 1794.—Mode of furnishing returns of cattle.
868. November 24, 1794.—Apprehension of fugitive slaves.
869. February 17, 1795.—General review.
870. March 6, 1795.—Special commission to Graaff-Reinet, on account of disturbances there.
871. March 6, 1795.—Detachments from the country.
872. January 1, 1795.—Discharge of goods from the ships.
873. December 12, 1794.—Wood-cutting.
874. January 1, 1795.—Remittances.
875. November 24, 1794.—Outspan places.
876. March 20, 1795.—Remittances.
877. April 24, 1795.—Paper money.
878. March 25, 1795.—Appointment of de Wet as commissioner at Graaff-Reinet.
879. August 19, 1795.—Paper money. Genl. Clarke,  
Admiral
880. October 1, 1795.—Proclamation respecting the value of coins. Elphinstone,  
Major-General  
Craig,  
(British Commanders)
881. September 18, 1795.—Letter of General Clarke, Admiral Elphinstone, and General Craig, to the inhabitants of Swellendam.
882. September 17, 1795.—Proclamation by the same respecting the slaves employed by His Majesty's commanders.

- Governor. 883. September 30, 1795.—Appointment of General Craig as com-  
Major-General mandant of the town and settlement.  
Craig).
884. October 7, 1795.—Proclamation by General Clarke, Admiral Elphinstone and General Craig, regarding the oath of allegiance to be taken, and relating to restrictions on trade, &c.
885. October 7, 1795.—Oath of allegiance in the country districts.
886. October 10, 1795.—Appointment of collector of land revenues and treasurer.
887. October 11, 1795.—Re-establishment of the court of justice.
888. October 15, 1795.—Respecting arrear land-rents.
889. October 15, 1795.—Re-appointment of landrost, &c.
890. October 15, 1795.—(By General Craig) Regulations for licensing wine-houses.
891. October 16, 1795.—Forbidding the purchase or receiving in pawn of arms, ammunition, &c.
892. October 20, 1795.—Respecting stamped paper.
893. October 20, 1795.—Respecting depredations on wood lands.
894. October 30, 1795.—Auctioneers' licences, stamp duty on bills of sale.
895. November 10, 1795.—Respecting distinction of rank and title of officers of the Dutch East India Company.
896. January, 1796.—Proclamation respecting the use of damaged wheat by bakers.
897. January 31, 1796.—Dissolution of the Board of Commissioners of the Court of Justice and Instructions for Burgher Senate.
898. January 31, 1796.—Oath of the burgher senators.
899. January 31, 1796.—The same in Dutch.
900. February 17, 1796.—Respecting the seduction of soldiers to desert.
901. March 23, 1796.—Respecting sale of wine by retail.
902. May 19, 1796.—Re-establishment of board of commissioners for petty, civil, and matrimonial matters.
903. May 18, 1796.—Notices to be given in case of fire.

904. June 17, 1796.—Respecting the residence of foreigners in Cape Town. Governor.  
Major-General  
Craig.
905. June 20, 1796.—Further on the same subject.
906. August 7, 1796.—Respecting a fleet of the enemy's ships seen in Saldanha Bay.
907. August 9, 1796.—Requisition of riding horses.
908. August 13, 1796.—Requisition of wagons, &c., for the service.
909. August 7, 1796.—Regarding French ships of war in Saldanha Bay.
910. August 20, 1796.—Respecting paper money.
911. August 31, 1796.—Regarding claims for wagon-hire, &c.
912. September 12, 1796.—Regarding the late disturbances in Graaff-Reinet. Reward for the apprehension of Van Rooyen.
913. September 12, 1796.—Appointment of Gerotz as provisional Landdrost at Graaff-Reinet.
914. September 14, 1796.—Regulations for bakers.
915. October 22, 1796.—Respecting prisoners of war captured in Saldanha Bay.
916. October 7, 1796.—Return of horses.
917. November 5, 1796.—Destruction of old paper money.
918. December 2, 1796.—Further on the same subject.
919. December 2, 1796.—Fixing the price of barley, &c., for the cavalry at sixteen skillings per muid.
920. December 28, 1796.—Respecting the quantity of wheat, barley, and other grain, reaped in Stellenbosch and Drakenstein.
921. January 24, 1797.—Destruction of paper money.
922. January 30, 1797.—Proclamation for the prevention of the scarcity of wheat.
923. February 11, 1797.—Prohibition of purchase of wheat for resale.
924. February 13, 1797.—Proclamation respecting the embankment of Eerste River, at Stellenbosch.
925. February 15, 1797.—Respecting the alleged failure of the harvest.

- Governor.** 926. February 27, 1797.—Respecting the smuggling of meal, without payment of tithe duty.
- Major-General Craig.** 927. March 7, 1797.—Prohibition of funerals in church at night time.
928. April 3, 1797.—Regulations respecting public ordinaries for soldiers and sailors, &c.
929. April 10, 1797.—Confirmation of regulations of Burgher Senate respecting the baking of bread.
930. April 21, 1797.—Public recommendation to agriculturists to exert themselves to increase the quantity of corn next year for the supply of the troops.
931. April 24, 1797.—Enforcing the contracts made by the Dutch East India Company with the owners of Great and Little Constantia.
932. May 21, 1797.—Permission to Dirk van Reenen to brew beer till the malt in his possession be consumed.
- Earl of Macartney.** 933. May 5, 1797.—Publication of Order in Council of December 28, 1796, proclaiming the ports of the colony open to all ships, except that no goods of countries eastward of the Cape shall be imported, save by the East India Company.
934. May 13, 1797.—Respecting passengers. Prohibition of foreigners settling without licence.
935. May 16, 1797.—Caution to merchants and other inhabitants against giving any account of the circumstances of the colony in their letters.
936. May 20, 1797.—Prohibition of British subject or foreigners in the colony without special permission from the Commander-in-Chief.
937. May 20, 1797.—Authorization of landdrost and magistrates, in their districts, to arm, assemble, and take the field against wild Bushmen, whenever it shall appear right and proper.
938. May 28, 1797.—Renewal of oath of allegiance.
939. June 6, 1797.—Appointment of collector of customs.
940. June 6, 1797.—Confirmation of former regulations respecting the baking of coarse bread, on account of the failure of the harvest.
941. June 31, 1797.—Proclamation by Lord Macartney, ordering all young men who have attained their sixteenth year to be enrolled, under penalties.
942. June 27, 1797.—Extension of period for pardon for deserters surrendering.

943. June 21, 1797.—Annual assessment of lion and tiger money. Governor.
944. June 26, 1797.—Respecting the rank of functionaries in the country districts: the landdrost to be first in rank, the clergyman second. Earl of Maccartney.
945. June 27, 1797.—Kafirs prohibited to pass and repass the limits of their territory without passports, &c.
946. June 27, 1797.—Renewed prohibition of purchase of ammunition, clothes, &c., from soldiers and sailors.
947. June 27, 1797.—Calling on deserters to surrender within a prescribed time.
948. June 27, 1797.—Prohibition of importation of gunpowder.
949. June 28, 1797.—Summons of certain heads of families within thirty days to take the oath of allegiance.
950. July 4, 1797.—Remission of arrears of loan land revenues and quitrents.
951. July 11, 1797.—Requisition of the inhabitants to appear at the various drostdys, to state the number of their families, the extent of their produce, &c.
952. July 15, 1797.—Prohibition of any communication by boats between Simon's Bay and Hottentots' Holland.
953. July 17, 1797.—Rules of procedure in revenue and petty cases.
954. July 31, 1797.—Respecting the scarcity of wheat.
955. July 24, 1797.—Respecting the constitution of the courts of justice and appeal court.
956. August 3, 1797.—Market regulations. Prohibition of purchase of articles before the arrival of wagons at the market.
957. August 25, 1797.—Repeal of proclamation of April 10, prohibiting baking of white bread.
958. August 26, 1797.—Extension of time to farmers to bring in their wheat.
959. August 26, 1797.—Destruction of worn-out paper money.
960. September 2, 1797.—Instruction for Veldtwachtmeesters.
961. September 5, 1797.—Admission of certain goods per ship *Bombay*.
962. September 27, 1797.—Respecting sale of bread by bakers, &c.

Governor  
Earl of  
Macartney.

963. October 4, 1797.—Respecting the courts of appeal.
964. October 9, 1797.—Regulations for licensing sale of wine, brandy, &c.
965. October 16, 1797.—Communication with a vessel forbidden on account of the small-pox.
966. October 19, 1797.—Respecting the harbouring of deserters.
967. October 19, 1797.—Further on the same subject.
968. November 7, 1797.—Regarding the repair of roads near the castle.
969. November 8, 1797.—Regulating the duties of Veldtwachtmeesters
970. November 30, 1797.—Proclamation for the completion of the stock of forage necessary for the cavalry.
971. December 4, 1797.—Proclamation respecting smuggling.
972. January 8, 1798.—Republication of the order in council respecting the trade of the colony.
973. January 22, 1798.—Permission to the inhabitants to purchase all kinds of grain without restriction. Repeal of proclamation of April 10, by reason of the plentiful harvest.
974. January 22, 1798.—Penalty on taking down proclamations, advertisements, &c.
975. January 14, 1798.—Prohibition of change of residence from one district to another without proper attestations.
976. February 14, 1798.—Proclamation respecting the neglect of the inhabitants of Graaff-Reinet in giving an account of their property.
977. February 14, 1798.—Proclamation respecting the assistance to be given by the inhabitants to Government expresses.
978. February 15, 1798.—Penalty for the sale of wine and brandy without a licence.
979. February 26, 1798.—Prices to be charged by farmers for the supply of provisions to detachments.
980. March 5, 1798.—Regarding the state of the streets, &c.
981. March 6, 1798.—Establishment of a post-office.
982. March 12, 1798.—Reward for the apprehension of a person who had exposed a new-born child.

983. March 12, 1798.—Reward for the apprehension of a person who had exposed a new-born child.

Governor.  
Earl of  
Macartney.

984. March 17, 1798.—Respecting the calculation of the poll and chimney money.

985. April 7, 1798.—Assessment for road purposes.

986. April 11, 1798.—Proclamation regarding smuggling.

987. April 17, 1798.—Regulations for affixing the names of owners on carts, &c.

988. April 30, 1798.—Ditto.

989. May 26, 1798.—Requiring all strangers to have written permits to remain in the colony.

990. July 14, 1798.—Proclamation fixing the limits of the colony,—the boundary between Graaff-Reinet and the Kafirs, and between Stellenbosch and Drakenstein and the Bosjesmen.

991. July 20, 1798.—Relating to transfer of fixed property. Penalties on non-payment of transfer duties within a certain period after sale.

992. July 24, 1798.—Regulations respecting Bosjesmen in the Roggeveld, &c.

993. July 27, 1798.—Adulteration of wine. Licence for wine merchants.

994. August 29, 1798.—Toll at Hottentots' Holland Kloof.

995. September 4, 1798.—Tariff of stamps upon transfers, bonds, vendue notes, &c.

996. September 22, 1798.—Proclamation establishing the oaths of purchaser and seller, on the sale of landed property, and payment and collection of transfer dues, &c.

997. September 26, 1798.—Destruction of worn-out and defaced paper money.

998. September 29, 1798.—Butchers to give information respecting the cattle and sheep in their possession.

999. October 2, 1798.—Regulations as to Slagters' Knechts.

1000. October 2, 1798.—Proclamation against combination of butchers with regard to monopoly of provisions. Regulations for the supply of cattle, &c.

1001. October 9, 1798.—Regulations respecting wood-cutting.

Governor.  
 Earl of  
 Macartney.

1002. October 19, 1798.—Respecting receipt and purchase from soldiers and sailors of stolen goods.

1003. November 3, 1798.—Destruction of paper money.

1004. November 3, 1798.—Regulations for bakers.

1005. November 3, 1798.—Assessment of the Cape District. In-  
 scription of burghers.

1006. November 10, 1793.—Assessment of country districts for  
 public roads.

1007. November 10, 1798.—Against distilling any spirits from  
 wheat, barley, oats, or any other grain.

Major-General  
 Dundas.  
 (Lieut.-Gov.)

1008. November 19, 1798.—Proclamation of Lord Macartney,  
 announcing his departure and the appointment of Major-General Dundas.

1009. December 21, 1798.—Proclamation of General Dundas re-  
 specting an attempt to set fire to the barracks in the town.

1010. January 5, 1799.—Regulations in case of fire.

1011. January 1, 1799.—Regulations in consequence of a late fire  
 with reference to the hours at which certain persons must not be out in  
 the streets.

1012. January 8, 1799.—Division of Cape Town into wards. Ap-  
 pointment of aldermen to each ward.

1013. January 31, 1799.—Regulations for the wardmasters.

1014. February 17, 1799.—Proclamation respecting a seditious  
 attempt at Graaff-Reinet to rescue Adrian van Jaarsveld from the officers  
 of justice.

1015. February 26, 1799.—Regarding the surrender of deserters.

1016. March 13, 1799.—Prohibiting the use of wheat for feeding  
 horses.

1017. April 7, 1799.—Proclamation of martial law in certain parts  
 of the district of Graaff-Reinet.

1018. April 22, 1799.—Order on farmers for supply of barley to the  
 cavalry.

1019. May 27, 1799.—Appointment of wardmaster for Simon's Town.

1020. June 20, 1799.—Proclamation by General Dundas notifying  
 that he had summarily removed certain seditious persons from the  
 colony, and enjoining order on the inhabitants.



1021. July 10, 1793.—All sales and transfers of buildings in Cape Town liable to assessment to be reported to the Burgher Senate in writing.

Governor.  
Major-General  
Dundas,  
(Lieut.-Gov.)

1022. October 29, 1799.—Respecting the repair of roads between the Castle and Three Cups.

1023. December 18, 1799.—Proclamation by Sir George Yonge of his appointment as governor. The oath of allegiance to be taken by persons in office.

Sir George  
Yonge, Bart.

1024. January 14, 1800.—Fixing the value of coins.

1025. January 3, 1800.—Disposal of cargoes of ships detained as prizes.

1026. February 14, 1800.—Repairs of the public piers of Cape Town and Simon's Town. Harbour dues, &c.

1026. February 19, 1800.—Relating to clubs. All clubs to render an exact account of their origin and the nature of their institution. Billiard tables forbidden without special permission from the fiscal.

1028. February 19, 1800.—Coolies to have their names enrolled in the fiscal office, and to receive a ticket.

1029. February 28, 1800.—Order of Opgaaf or return of the inhabitants and the stock or property in their possession.

1030. March 3, 1800.—Defaced and worn-out paper money.

1031. March 21, 1800.—Repair of roads in the colony.

1032. March 22, 1800.—Respecting a return of all shipping, coasting vessels, &c., belonging to the colony.

1033. April 2, 1800.—Appointment of Andrew Barnard, the colonial secretary, to inquire into the cause of the refusal by the Heemraden of Stellenbosch to acknowledge a field-cornet appointed by government.

1034. January 23, 1800.—Regulations for butchers. Price of beef and mutton fixed.

1035. July 15, 1800.—Notice that Messrs. Walker and Robinson have permission to set up a printing press, and publish a newspaper weekly.

1036. July 15, 1800.—Renewal of game law of 25th May, 1794.

1037. July 23, 1800.—Further regulations respecting stolen goods.

1038. August 14, 1800.—Appointment of Richard Blake, Esq., as examiner or taster of wines, brandies, and other liquors.

Governor.  
Sir George  
Yonge.

1039. August 18, 1800.—Farming out of licence for retailing wine, &c.

1040. August 18, 1800.—Regulations for bidding for wine licences.

1041. August 25, 1800.—Penalties on wines and brandies of improper quality. Transfer of the Royal York African Lodge to Colonel Cockburn.

1042. October 31, 1800.—Ordering all corn farmers to bring in their wheat to market, reserving only three months' consumption for themselves.

1043. November 1, 1800.—Cancellation of worn and defaced paper money.

1044. November 6, 1800.—Notification of game law. Permission to farmers in Roggeveld and Boschesveld to kill spring bucks and other deer for this year only.

1045. December 4, 1800.—Supply of wheat in Cape Town and Simon's Town.

1046. December 22, 1800.— Further on the same subject.

1047. January 24, 1801.—Further regulations as to bakers.

1048. January 26, 1801.—Government forests.

1049. February 11, 1801.—Baking of bread.

1050. February 13, 1801.—Respecting anticipated scarcity of wheat.

1051.—February 26, 1801.—Appointment of a commission for the purpose of establishing measures of precaution against scarcity.

1052. March 4, 1801.—Fixing the price of wheat at 60 rds. per load of ten muids.

1053. March 28, 1801.—Renewal of licences for clubs, billiard tables, &c.

1054. April 2, 1801.—Prohibition of the purchase of wheat in different parts of the country.

Major-General  
Dundas,  
(Actg. Govnr.)

1055. April 20, 1801.—Proclamation of General Young of the appointment of Lord Glenburvie to succeed him. General Dundas to act till the arrival of the latter.

1056. April 3, 1801.—Liberty to all persons beyond thirty miles from Cape Town to kill game at all seasons without licence or prohibition.

1057. May 7, 1801.—Relating to payment of transfer dues.

1058. May 21, 1801.—Butchers to render an account of the cattle in their possession from time to time. Governor.  
Major-General  
Dundas,  
(Actg.-Govnr.)
1059. June 11, 1801.—Reiteration of regulations respecting cutting of wood.
1060. June 11, 1801.—Fixing the period within which transfer dues, &c., were to be paid.
1061. June 23, 1801.—Respecting payment of vendue bills to the messenger of the Orphan Chamber.
1062. June 24, 1801.—Order to proprietors in Cape Town to keep the portions of the streets before their doors in good order.
1063. June 27, 1801.—Proclamation respecting the purchase by butchers of cattle in the country.
1064. July 30, 1801.—Regarding disturbances at Graaff-Reinet.
1065. July 31, 1801.—Pardoning certain rebels at Graaff-Reinet.
1066. August 25, 1801.—Government advertisement regarding the searching for and taking up of anchors in the bay.
1067. August 27, 1801.—Respecting the repeal of the additional duty on wine entering the town.
1068. September 8, 1801.—Restriction on the price of barley withdrawn.
1069. September 22, 1801.—British subjects and foreigners settling in the colony.
1070. October, 1801.—Appointment of John Barrow, Esq., as Secretary to the Board of Appeal.
1071. October 9, 1801.—Destruction of paper money.
1072. October 22, 1801.—Commission appointed to examine into abuses in the administration of government.
1073. October 31, 1801.—Repair of the road between the castle and Three Cups.
1074. December 3, 1801.—Customs duties fixed at five per cent. for British goods, ten per cent. foreign.
1075. December 7, 1801.—Respecting certain murders committed at Graaff-Reinet.
1076. December 15, 1801.—Notifying that preliminary articles of peace had been signed between England and France.

- Governor.** 1077. January 1, 1802.—Relating to public granaries, corn, &c. Fixing the price of wheat at forty-three rds. per load. Creating 100,000 rds. of paper money.
- Major-General Dundas, (Actg.-Gvnr.)**
1078. March 3, 1802. — Advertisement respecting supply of barley, &c.
1079. March 5, 1802.—Relating to a loan issued through the Lombard bank.
1080. March 11, 1802.—Exportation of East Indian goods from this colony.
1081. April 13, 1802.—Reward for the apprehension of a person who had exposed a new-born child.
1082. April 19, 1802.—Respecting an alarm that had arisen regarding a corps of Hottentots in His Majesty's service.
1083. April 27, 1802.—Government advertisement as to corn.
1084. May 7, 1802 — Authorizing a commando to co-operate with the troops to restrain plundering Hottentots and Kafirs.
1085. July 1, 1802.—Barley and chaff for the troops.
1086. August 13, 1802.—Proclamation of the peace of Amiens.
1087. August 26, 1802.—Proclamation regarding the supply of grain, &c., for the troops, as well as for those of the Batavian republic expected.
1088. October 4, 1802.—Destruction of paper money.
1089. October 22, 1802.—Ditto ditto
1090. December 3, 1802.—Ditto ditto
1091. December 8, 1802.—Ditto ditto
1092. December 31, 1802.—Deferring the surrender of the colony to the Batavian Government, January, 1803. As to conduct of troops.
1093. January 28, 1803.—Reward for the discovery of a person who had tampered with the signal balls.
1094. February 20, 1803.—Absolving all persons not being British subjects from the oath of allegiance to His Majesty George III.
- J. A. de Mist. (Com.-Gen.)** 1095. March 1, 1803.—Assumption of the Government by the Batavian republic.
- General J. W. Janssens.** 1096. March 14, 1803.—Proclamation of General Janssens against firing off fire-arms, &c., in the streets.

1097. March 21, 1803.—Respecting the certificates to be obtained by persons about to leave the colony. Three months notice of intended departure to be given. The Secretary of the Court of Justice to certify that no civil or criminal suit is pending against the applicant. Governor.  
General  
J. W. Janssens.

1098. March 21, 1803.—Licence to sell wine, brandy, &c.

1099. April 2, 1803.—Substitution of Dutch copper coin for the English copper coin in circulation.

1100. March 30, 1803.—Appointment by General Janssens of certain officers in the country.

1101. March 30, 1803.—Publication of an order of Commissary-General de Mist.

1102. March 28, 1803.—Tax on salaries, stamps, &c.

1103. April 1, 1803.—Regulations for commander of ships.

1104. April 8, 1803.—Notice respecting stamps.

1105. April 11, 1803.—Government notice prohibiting the landing or importation of any slaves.

1106. April 18, 1803.—Service contracts with Hottentots to take place before certain public officers.

1107. May 5, 1803.—Against injuries to the Government gardens, and trespass in the gardens.

1108. General orders to masters of ships.

1109. April 29, 1803.—Notice with respect to the theft of certain goods from Craig's Tower.

1110. May 5, 1803.—Against driving cattle loose in the streets. Penalty, besides forfeiture of the cattle, a fine.

1111. May 9, 1803.—Notice of burial to be given to the Government.

1112. May 12, 1803.—Appointment of an inspector of Government Gardens.

1113. May 12, 1803.—Regarding the whale fishery.

1114. May 13, 1803.—Notice in French respecting the whale fishery as above.

1115. May 20, 1803.—Publication by Commissary de Mist respecting the financial state of Cape Town.

- Governor. 1116. May 23, 1803.—Respecting rents of loan places. Payment  
 General of transfer dues.  
 J. W. Janssens.
1117. June 3, 1803.—Respecting certain proceedings against two Mullers who had opposed an execution of a judgment of court.
1118. June 3, 1803.—Respecting cattle belonging to wagons from the country.
1119. June 13, 1803.—Tithes to be paid upon oats.
1120. June 13, 1803.—Establishment of a monthly post between Cape Town and Algoa Bay.
1121. June 16, 1803.—Framing of licences to sell wines, &c.
1122. June 20, 1803.—Trespass on salt-pans.
1123. June 24, 1803.—Issue of bills of exchange drawn on the Council of Asiatic Possessions, to be issued at a premium of twenty-five per cent.
1124. June 24, 1803.—Establishment of a post between Cape Town and Simon's Bay.
1125. June 24, 1803.—Wine-dealers' and butchers' licences.
1126. June 24, 1803.—Petitions, &c., to be properly stamped.
1127. June 8, 1803.—Publication of Commissary-General de Mist, respecting the conduct of the inhabitants to the aborigines, regarding education, support of churches, &c.
1128. June 27, 1803.—Duties of the Accountant-General's office.
1129. June 30, 1803.—Respecting certain emigrants introduced into the colony by van Hogendorp, fixing period of contract, &c.
1130. July 7, 1803.—Regarding outspan places on the Cape Downs.
1131. July 4, 1803.—Regulations as to customs, export and import duties.
1132. July 14, 1803.—Forbidding clubs, billiard rooms, &c., without licence. Penalties.
1133. July 21, 1803.—Publication of the plan and conditions on which the Governor proposed to raise a company of light cavalry.
1134. July 28, 1803.—Petitions to be stamped.
1135. August 6, 1803.—Further as to petitions.

1136. August 8, 1803.—Summons to the inhabitants of the towns and districts to appear before the proper officers, to state the number of their families, the produce of their farms, &c.

Governor.  
General  
J. W. Janssens.

1137. August 11, 1803.—Appointment of postal messengers.

1138. August 11, 1803.—Appointment of H. Cloete as Inspector of Forests between Table and Simon's Bays.

1139. August 22, 1803.—Conditions of sale of wine and spirit licences. Renewal of former placats on the subject.

1140. August 30, 1803.—Respecting petitions to government, &c.

1141. August 31, 1803.—Regarding letters to Holland.

1142. September 5, 1803.—Ditto.

1143. September 8, 1803.—Bills of exchange to be drawn on Holland.

1144. September 22, 1803.—Respecting tenders for these bills.

1145. September 26, 1803.—Granting of special licences.

1146. September 29, 1803.—Proclamation of renewal of war between France and England. All commerce with British ships forbidden.

1147. September 29, 1803.—Cutting of firewood on Cape Downs.

1148. September 29, 1803.—Regulations as to grazing on Government land in Cape Downs, &c.

1149. October 4, 1803.—Further proclamation with regard to the war.

1150. October 4, 1803.—Notice respecting transfer of fixed property.

1151. Extract from Government Notice of Lord Macartney of March 3, 1799, respecting letters.

1152. November 10, 1803.—All persons in the colony from British territories required to take the oath of allegiance to the Dutch Government.

1153. November 19, 1803.—As to preparation for the defence of the colony.

1154. November 21, 1803.—Regulations for bakers.

1155. December 5, 1803.—Regulations for butchers.

1156. December 14, 1803.—Instructions for the inspection of Government Gardens.

- Governor.**      1157. December 12, 1803.—Small-pox. Vaccine regulations.
- General**  
**J.W. Janssens.**      1158. December 7, 1803.—Regulations respecting disease among the military.
1159. December 14, 1803.—Inhabitants to appear before the proper authorities, that a census of the colony, and returns of produce may be made.
1160. December 28, 1803.—Respecting sale of East Indian produce.
1161. December 30, 1803.—Against fireworks on new year's day.
1162. December 14, 1803.—Conditions on which Paarden Island had been sold to van Reenen.
1163. January 7, 1802.—Requisition of certain property belonging to private individuals for the public use.
1164. January 11, 1804.—Regarding the transmission of official documents from the country.
1165. January 11, 1804.—Fixing price of wheat.
1166. January 11, 1804.—Sale of East India produce.
1167. January 20, 1804.—Respecting the fire by which Stellenbosch had been nearly destroyed.
1168. January 23, 1804.—Renewal of placaat of September 3, 1706, respecting the sale of liquors.
1169. January 25, 1804.—French invalids and prisoners of war.
- 1170.—January 27, 1804.—New paper money to be issued.
1171. January 18, 1804.—Sale of East India produce.
1172. January 28, 1804.—Proclamation containing instructions for wardmasters.
1173. February 5, 1804.—As to British subjects leaving the colony.
1174. February 7, 1804.—Further on                    ditto
1175. February 7, 1804.—Proclamation fixing the division of Uitenhage.
1176. February 15, 1804.—Prices of barley and chaff.
1177. February 15, 1804.—Respecting hire of salt-pans.



1178. February 29, 1804.—Extract from resolution relating to loan places. Governor.  
General  
J. W. Janssens.
1179. April 25, 1804.—Establishment of Division of Uitenhage defined.
1180. March 21, 1804.—Respecting the abolition of the Dwangmolens. Licences for mills at Stellenbosch.
1181. May 9, 1804.—Establishing a commission for the improvement of agriculture, especially sheep-farming.
1182. May 22, 1804.—General rules of court, &c.
1183. May 24, 1804.—Establishment of chamber of commerce.
1184. June 1, 1804.—All persons not burghers to have an act of residence from the Government.
1185. June 6, 1804.—Penalties on cattle, &c., trespassing on the squares.
1186. June 7, 1804.—Observance of the Sabbath.
1187. June 7, 1804.—Renewal of proclamation of June 7, 1796, and May 20, 1797, as to harbouring deserters and foreigners in the country districts.
1188. July 5, 1804.—Against the erection of signal posts.
1189. July 6, 1804.—Fire regulations.
1190. July 11, 1804.—Division of the district of Stellenbosch into two parts. Tulbagh created.
1191. July 20, 1804.—Notice of the intended sale of wine licences.
1192. Extract of a letter from Holland, February 17, 1803, regarding the African fishery.
1193. July 25, 1804.—Provisional general church regulations.
1194. July 27, 1804.—Relating to petitions for land in the neighbourhood of Cape Town.
1195. July 27, 1804.—Notification respecting the sale of certain government lands.
1196. August 15, 1804.—As to brewery licences, &c.
1197. August 24, 1804.—Paper money.
1198. August 29, 1804.—Conditions of sale of wine licences.

Governor.  
 —  
 General  
 J. W. Janssens.

1199. September 7, 1804.—Disputed boundaries near Saldanha and St. Helena Bays.

1200. September 14, 1804.—Order as to petitions.

1201. September 5, 1804.—Supply of barley.

1202. September 19, 1804.—Cultivation of wheat, rice, &c. Instructions for bakers.

1203. September 26, 1804.—Bills of exchange to be drawn on Holland for payment of troops.

1204. Notification respecting stamped paper.

1205. September 25, 1804.—Further respecting disputed boundaries near Saldanna Bay, &c.

1206. September 27, 1804.—Wheat.

1207. September 26, 1804.—Against export of the necessaries of life.

1208. October 3, 1804.—Wheat.

1209. September 26, 1804.—Renewal of placats of February 12, 1732, October 11, 1740, and July 10, 1799, respecting damage to any public works.

1210. September 30, 1804.—Paper money.

1211. October 6, 1804.—Requisition of slaves for the public service.

1212. October 8, 1804.—Guide-posts on the roads.

1213. October 12, 1804.—Bills on Holland.

1214. October 17, 1804. — Non-appearance of witnesses when summoned to attend the court.

1215. October 24, 1804.—Grain commission.

1216. October 31, 1804.—Quantity of barley and chaff to be delivered to the Government.

1217. November 1, 1804.—Against any stranger settling beyond Cape Town.

1218. November 7, 1804.—Regulations respecting boats in the harbour.

1219. November 7, 1804.—Regulations for bakers.

1220. October 31, 1804.—Proclamation of De Mist's marriage ordinance, by General Janssens.

Governor.  
General  
J. W. Janssens.

1221. November 21, 1804.—Bills on Holland.
1222. November 3, 1804.—Further bills on Holland.
1223. December 20, 1804.—Publication respecting certain recommendations by the grain commission.
1224. December 21, 1804.—Sale of certain Government property.
1225. December 26, 1804.—Regulations for economising grain.
1226. December 27, 1804.—On the spread of false and alarming intelligence by the butchers' servants in the country.
1227. January 3, 1805.—Census of the inhabitants.
1228. January 9, 1805.—Price of barley raised.
1229. January 16, 1805.—Extension of time for the wine farmers to bring up their wines.
1230. January 16, 1805.—Appointment of the Councillor de Salis to the head of the Government during the Governor's absence.
1231. January, 1805.—Instructions respecting customs duties.
1232. January 24, 1805.—Bills on Holland.
1233. February 7, 1804.—Certain Government appointments.
1234. February 6, 1805.—Repeal of articles nineteen and twenty of placaat of August 22, 1794; and further regulations respecting pedlars' licences.
1235. February 20, 1805.—Regulations respecting missionaries.
1236. February 21, 1805.—State of the harvest.
1237. February 27, 1805.—Barley and oats.
1238. March 20, 1805.—Forgery of paper money.
1239. March 29, 1805.—Ditto.
1240. April 3, 1805.—State of the harvest, &c. Prohibition of baking fine bread.
1241. May 15, 1805.—Regulation regarding the registry of deeds, of marriage contracts, &c.
1242. May 25, 1805.—Publishing resolutions of March 4, 1805, respecting appeals relating to foreigners.
1243. June 1, 1805.—Notice respecting certain appointments.

- Governor. 1244. **June 5, 1805.**—Respecting the harvest.
- General  
J. W. Janssens. 1245. **June 12, 1805.**—Bills upon Holland.
1246. **June 19, 1805.**—Notice on ditto.
1247. **August 1, 1805.**—Sale of licence to sell wines, &c.
1248. **August 10, 1805.**—Disputed boundaries at **St. Helena Bay, &c.**
1249. **Aug. 14, 1805.**—Further notice respecting the registry of debts.
1250. **July 24, 1805.**—Fraudulent alienations.
1251. **September 11, 1805.**—Grain commission. Grain magazines and harvest.
1252. **September 18, 1805.**—Bills upon Holland.
1253. **September 27, 1805.**—Notice on ditto.
1254. **November 6, 1805.**—Wheat at **Mossel Bay.**
1255. **November 6, 1805.**—Barley and chaff.
1256. **November 20, 1805.**—Wheat.
1257. **November 25, 1805.**—Respecting bidding at public sales by auctioneers, vendue masters, &c.
1258. **December 4, 1805.**—Granting of lands.
1259. **December 6, 1805.**—Supply of grain at **Saldanha Bay.**
1260. **December 4, 1805.**—Regarding the price of grain, &c.
1261. **December 18, 1805.**—Bills upon Holland.
1262. **December 18, 1805.**—Respecting the harvest of wheat and rye.
1263. **December 27, 1805.**—Notice regarding bills of exchange.
1264. **December 31, 1805.**—Regarding the transmission of letters.
1265. Appointment of **De Salis** as acting governor, **General Janssens** having proceeded to oppose the advance of the **English army.**

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[N.B. It will be observed that the chronological order has not, in all instances, been followed \* where it has been departed from, this has been done in order to retain the arrangement in the MS. collection.]

## APPENDIX II.

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*Resolutions of the Court of Policy regarding the Rights of Proprietors of Gardens in Table Valley, &c., to Water flowing from Table Mountain.*

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[ 1 ]

Tuesday, December 15, 1761.  
In the forenoon, all present.

Whereas, for some time continual complaints have been made, that the proprietors or possessors of the gardens situate above the Honourable Company's mill have been in the habit, by laying dams and otherwise, of obstructing and leading into their gardens the water intended to drive the said mill, notwithstanding that, in order to afford the said gardens a sufficient use of the said water, the said owners have been allowed to use the same during four hours every day,—that is to say, from five till seven in the forenoon, and in the afternoon during the same time and hours;—it has been resolved, in order to guard against such mal-practices, to interdict and prohibit, by affixture of notices, the owners and possessors of the said gardens situate above the mill to obstruct the water running to the said mill, to dam it up, or lead it to their gardens, or to use it in any other wise excepting only in the morning and evening from five to seven o'clock, during which time the use thereof will still be allowed them by special favour, on pain that those who shall be found to have transgressed herein, or to have obstructed, dammed up, or led out the said water beyond the stipulated time, shall incur a penalty of fifty rixdollars *pro fisco*; and the masters shall in this case be responsible for their slaves. Further, &c.

Thus done and resolved in the Castle Good Hope, day and date as above.

(Signed) R. TULBAGH,  
J. R. VAN OUDTSHOORN,  
J. MEINERTSHAGEN,  
C. J. ALLEMAN,  
C. BRAND,  
D. D'AILLY,  
O. M. BERGH,  
Councillor and Secretary.

[ 2 ]

On Tuesday, March 22, 1763, in the forenoon. All present, with the exception of the Honourable Christoffel Brand and Wilhelm Vrugt.

Subsequently the following paper was submitted by the Burgher Senate of this town :

To the Honourable Ryk Tulbagh, Councillor Extraordinary of Netherlands India and Governor of the Cape of Good Hope and Dependencies thereof, &c.

HONOURABLE SIR,—The undersigned, members of the Burgher Council (*Burgerraden*) of this town, having been required by your Honour to make a proper arrangement for the proper use of the water coming down from the Table Mountain by the proprietors of the gardens lying along its course, we have now the honour to state that, subject to your Honour's approbation, we have permitted the persons undermentioned to lead out the water which runs first through the gardens of the burgher cornet Michiel van Breda, through their gardens on the days hereunder specified :

Wednesday, the 16th instant, through the garden of Michiel de Kock.

Thursday, 17th instant, that of Marthinus Schoester.

Friday, 18th, that of Michiel Smuts, the elder.

Saturday, 19th, that of Petrus van der Poel.

Sunday, 20th, that of Barend Meyer ; while the owners of the further mentioned gardens may also be benefited by the use of the water coming through the garden of Johannes Carnspek, by allowing it to flow through their gardens,—namely :

On Monday, the 4th April next, through the gardens of Jan Jacobs.

Tuesday, the 5th April, through that of Tobias van Neck.

Wednesday, the 6th, that of the Honourable the Second, Pieter van Reede van Oudshoorn.

Proceeding by turns in this manner, each of the proprietors of the five gardens first mentioned would enjoy the use of the water every fifth day, and those of the three last mentioned every third day.

Trusting that we have thus properly complied with your Honour's order, we humbly submit this as our report, and remain, with the highest esteem,

Honourable sir, your most humble and obedient servants,

(Signed) J. F. W. BOTTIGER,  
J. M. CRUYWAGEN,  
E. VAN SCHOOR.

Cape of Good Hope, 21st March, 1763.

And after reading the said report, it was resolved to approve the regulations made by Burgerraden regarding the time and manner in

which the use of water descending from Table Mountain may be allowed to the proprietors of the gardens lying at the foot of the same. subsequently, &c.

Resolved and decreed in the Castle Good Hope, day and year above mentioned.

(Signed) R. TULBAGH,  
 J. W. CLOPPENBURGH,  
 J. MEINERTSHAGEN,  
 D. D'AILLY,  
 O. M. BERGH, Councillor and Sec.  
 J. W. VAN REEDE VAN OUDTSHOORN.

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[ 3 ]

Tuesday, 24th November, 1772, in the forenoon. All present, except Messrs. Pieter Hacker, Jacob Ryzibe, Jacobus Johannes le Sueur, absent from indisposition. Seen, &c.

The said Christian Joel Ackerman presented the following petition :  
 To the Right Honourable Joachim van Plettenberg, Director of this Government and the Honourable Council of Policy.

HONOURABLE SIR AND WORSHIPFUL GENTLEMEN,—Representing with due respect your Honours' humble and obedient servant, the burgher Christman Joel Ackerman, that when, on the 21st March, 1763, the Burgher Senate (Burgerraden) made, and your honour and worships approved, a regulation according to which the water descending from Table Mountain, and running first through the garden of the Burgher Lieutenant Michiel van Breda was allowed to be used by the proprietors of the gardens lying along the water, the petitioner has received no share thereof, notwithstanding that his garden is situated immediately between the gardens of Joseph Coel, at that time the property of the late Marthinus Schoester, late commissary of civil and marriage affairs, and that of the Burgher Ensign Michiel Smuts, which petitioner supposes to have been, because the former proprietor of his (petitioner's) garden the late fire-warden, Jan Henrik Gintsenberg, was allowed, by the late Honourable Governor Tulbagh, to draw the necessary water from the wooden water-leadings of the Honourable Company, which at that time ran in part through petitioner's garden; but these water-leadings afterwards having been altered in such a manner that the petitioner could no longer make any use of the same, he has tried to supply this deficiency by baling (scheppen) the necessary water from the river, which petitioner was, however, compelled to discontinue on the representation of the proprietors of the gardens situated lower down, complaining that they were thereby injured; and the consequence of this to the petitioner has been, that, being deprived of the use of the water, he cannot draw from his garden the necessary support for himself and family, particularly during the summer season: he therefore takes the liberty humbly to address himself to your Honour, requesting that your Honour will take his case into favourable consideration; and, also,

that, his garden not only being likewise situated along the said water-course but between two other gardens that have the use of the water, it is excessively hard and injurious for petitioner to be deprived thereof; requesting, further, you will have the goodness, with regard to the regulations respecting the use of the said water, to make such altered arrangement, by which the use thereof may be allowed to petitioner in the same manner as to the proprietors of the gardens situate lower down.

And your memorialist, &c.

Whereupon it was resolved, to direct the Burgerraden, in regard to the arrangement made on the 21st March, 1763, regulating the manner in which the water coming from the mountain is to be used for the purposes of the gardens therein mentioned, now to make new arrangements according to which the said Ackerman may also participate therein.

Lastly, &c.

Castle of Good Hope, day and date as above.

(Signed) J. VAN PLETTENBERG,  
G. VAN PREHN,  
O. M. BERGH,  
A. VAN SCHOOR,  
D. WESTERHOFF,  
O. L. HEMMY.

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[ 4 ]

Cape of Good Hope, January 26, 1773.

Signed: O. M. Bergh, L. C. Warnich, F. C. Ronnenkamp, (lower) in my presence, C. L. Neethling, &c.

And whereas from the above it fully appeared, &c.

The following report was then submitted by the Burgerraden of this place:

To the Honourable Joachim van Plettenberg, Governor, and the Honourable Council of Policy of this Government.

HONOURABLE SIR AND WORSHIPFUL GENTLEMEN,—The undersigned, Burgerraden, having been directed by your Honours, by extract of your resolution dated November 24 of the last year, to make such new arrangements, in regard to the leadings and the use of the water coming from the aforesaid mountain, and first flowing through the garden of the ex-Burgomaster Michiel van Breda, Sen., by the proprietors of the gardens along the Table Mountain, that the burgher Christman Joel Ackerman, who possesses also a garden lying along the aforesaid watercourse may, in likewise, have the necessary use of the above water, have now, as in duty bound, the honour to report that they have made that new or altered arrangement or regulation, and have allowed both to the proprietors of the said gardens and to the said Ackerman,



subject to further approbation of your Honours, the use of the said water, which, according to the regulations of November 21, 1763, was allowed them every fifth day, in such a manner that the said water shall be allowed to be led off by turns at the times and in manner as follows :

Wednesday, through the garden of the widow Michiel de Kock.

Thursday, through that of the late Marthinus Schoester, now occupied by Joseph Coel.

Friday, through that of the said Christman Joel Ackerman.

Saturday, through that of Michiel Smuts, sen., now belonging to his son, Johannes Smuts.

Sunday, through that of Petrus van der Poel, now belonging to Willem de Kruger.

Monday, through that of Barend Meyer, now occupied by Adrian Smuts.

Believing that they have thus complied with your orders, the undersigned humbly submit this as their report.

Cape of Good Hope, January 7, 1773.

(Signed) J. M. CRUYWAGEN,  
H. O. MULLER,  
J. VAN DE SPUY.

The above report being read, it was resolved to approve the arrangement respecting the use of the water coming down from Table Mountain, as made by Burgerraden.

But whereas the burgher Jan Roode has represented by memorial, that, notwithstanding that his garden is situated immediately contiguous to the gardens of the Burghers Barend de Vries and of Christman Joel Ackerman, he had obtained no share of the above water, supposing the cause thereof to be that he formerly had the use of the water which came down through the watercourse (sloot) running through his garden, which sloot or course having been washed away, and the water having taken another course distant from his said garden, whereby he has thus been deprived of the necessary water and his garden has been so parched up, particularly during the summer season, that it can no longer yield the necessary sustenance for himself and family ; humbly requesting that to him, the petitioner, and others, proprietors of neighbouring gardens, may be allowed the use of the indispensable water : it was resolved, after due deliberation, to place the said petition in the hands of the Burgerraden, for the purpose of inquiring, and to report thereon to this board.

Castle of Good Hope, day and year as above.

(Signed) J. VAN PLETTENBERG,  
G. VAN PREHN,  
P. HACKER,  
O. M. BERGH, Councillor  
and Secretary,  
J. J. LE SUEUR,  
O. L. HEMMY.

[ 5 ]

Tuesday, December 7, 1773.

This day being brought forward, &c.

Whereas it has been found that the last arrangement, made on the 26th of January of this year, regulating the times at which the proprietors of the gardens situated along the water-course coming down from Table Mountain may and shall be allowed to make use of the water thereof, does not answer the purpose intended by that arrangement, namely, that every person who shall enjoy or use the said water in his turn shall not thereby encroach on the water required for the mill of the Honourable Company; and as still, notwithstanding the said regulations, the miller of the said Company's mill constantly complains of the detention of the aforesaid water; and whereas, since the late arrangement, the burgher Jan Roode has applied by petition, as the proprietor of one of the gardens lying along that water-course, to have equally a share thereof; and as it has not been found possible to make, for the present, any proper disposition on that subject; and more lately the burgher Marthinus Smuts has complained that the burgher Lieutenant Michiel van Breda has prevented him from taking his drink-water from the ditch (sloot), in which the waste water from the pumps of the Company's water-leadings empties itself; it has been resolved, on the motion of the Governor, that the members of this council, Messrs. Adriaan van Schoor and Otto Luder Hemmy, shall be requested and appointed to make new arrangements by which the said inconveniences, if possible, may be removed at once and for ever, and also to investigate in what manner the above dispute between the aforesaid Smuts and Breda may be finally settled; the distribution of the above-named mill water to be regulated, however, in such a manner as to leave always one fixed day in the week in which it shall in no wise be detained or used for the said gardens, in order to refresh or sweep the canals of this town, which, particularly during summer, by considerable stench, in consequence of the want of this necessary refreshment, occasion great inconvenience to the occupiers of houses situated in the neighbourhood.

Castle of Good Hope.

(Signed) J. VAN PLETTENBERG,  
G. VAN PREHN,  
P. HACKER,  
O. M. BERGH,  
A. VAN SCHOOR,  
J. J. LE SUEUR,  
D. WESTERHOF,  
O. L. HEMMY.

[ 6 ]

Tuesday, 1st March, 1774, in the forenoon. All present, except the garrison bookkeeper, Dirk Westerhoff, on duty.

\* \* \* \* \*

After this, the following report was delivered in by Messrs. Adriaan van Schoor and Otto Luder Hemmy, in pursuance of and in compliance with a resolution passed on the 7th of December last :

To the Right Worshipful Joachim van Plettenberg, LL.D.,  
Director of this Government, and the Worshipful the Councillors of Policy.

In order to provide as much as possible, by an arrangement to be hereafter made, that the Company's water-mill, as well as the garden of the Honourable Company, shall not be deprived of the necessary water by the possessors of the private gardens situated above the same, the undersigned members of this commission have the honour, in compliance with the resolution adopted by your Worships on the 7th December last, to submit—that they conceive (under correction) that this could be most conveniently effected by enjoining, under fixed penalties (even by forfeiture of the privilege granted) that none of the possessors of the above gardens shall ever lead the water out of its course, except in the following stipulated manner, to wit :

The water coming down from the so-called Platteklip, for the gardens of Marthinus Smuts and Albert van der Poel, but never otherwise, nor more than in the morning and evening, from four to seven o'clock, instead of five to seven o'clock, as it was before.

The water running down along the gardens of the member of the Burger Senate, Mr. Michiel van Breda, also in the morning and evening, at the same time; for the gardens of Jan Roode, Jan Tesler, Barend de Vries, Johannes Smuts, Joel Ackerman, Willem de Kruger, and Adriaan Smuts, namely :

For that of Roode, on Sunday evening, from  
four to seven o'clock.

Monday—Tesler and De Vries.

Tuesday—Johannes Smuts and Ackerman.

Wednesday—De Kruger and Adriaan Smuts.

Thursday—Tesler and De Vries.

Friday—Johannes Smuts and Ackerman.

Saturday—In the morning, from four to seven  
o'clock, De Kruger and Adriaan Smuts.

The water issuing from the Table mountain, and running down through the land granted in freehold to the said Mr. Breda, in 1769, for the garden of Breda himself, but also never otherwise than in the morning and evening, from four to seven o'clock; provided he (Breda) shall be obliged to let the said river water run during the summer season along his garden, and then downwards, with an angle through his garden, in the common ditch to the mill.

The water coming down from Table Mountain by the side above the garden of Bresler, for the garden of the said Bresler alone; and

The water from the spring situated below the garden-ground of Bresler, and which was cleared out some years ago on behalf of the Company, for the purpose of procuring more water for the Company's mill and garden, for the gardens of J. H. Hofmeyr, Jan Jacobse, Arend van Wiclinge, and the dispenser Van Schoor, likewise in the morning and evening, from four to seven o'clock, to wit: The two first-named the one day, and the two last-named the other day; to be so continued, only with this difference, that the person who has had the use of the

water at one time in the morning shall, in the next turn, have it in the evening, and thus turn about.

However, to remove various pretexts, and to take better care that no one shall lead the water off otherwise than at the periods before stipulated, the undersigned conceive that every one who would wish to profit from the above-mentioned privilege should be obliged immediately, or within a certain prescribed time, to erect sluices at those places where the leading out is to be made; in such a manner that all persons whose turn it is not to make use of the water shall keep their sluices closely locked during that time, that the water may thus have its uninterrupted course, agreeably to the before-mentioned partition.

While the undersigned, for the further removal of the stench frequently caused by the long-continued standing of the water in the canals, are of opinion that it would be of great utility if strict orders were given that weekly, from Saturday morning at seven o'clock to Sunday afternoon at four o'clock, no person, without exception (the gardeners in the Company's garden, as well as all the adjacent private gardens and the Company's brickburners, included), shall lead the least quantity of water out of its course, in order that the flood-gates of the canals being opened on Saturday at eleven o'clock in the forenoon, the water may run down, and thereupon the lower sluices at the Company's wood-shed, as well as before the house of Mr. Johannes Faasen, as also, after a lapse of one or two hours, the other sluices commencing from below, being again closed, the canals may thus be constantly supplied with fresh water.

In order, finally, to comply with the latter part of the commission intrusted to the undersigned, namely to inquire into the best manner of determining the dispute or difference existing between the Burgher Marthinus Smuts and the member of the Burgher Senate Mr. Michiel van Breda, in that the former was prevented by the latter, for a considerable time past, from procuring drink-water which, by means of a wooden pipe lying in the Company's water-trough, discharges its superfluous water and runs down into the ditch or canal between their gardens to the Company's mill and garden, under pretence that it caused inconvenience in his orchard and garden, and also that, exclusively thereof, the said Smuts might make use of the water coming from the Platteklip as drink-water; the undersigned, after having proceeded thither, and made proper inspection, have found that in the Company's ditch, towards the side of Breda's garden, from around the wooden pipe to above the ditch at the side of Smuts' garden, there was a fence of poles, fastened together in such manner that access to this pipe could only be had through Breda's garden, whilst, on the contrary, the garden of the said Breda along that ditch is partly open, and consequently exposed, although the same could, without much trouble, be sufficiently protected and enclosed; and whereas this water discharges itself by the said pipe in the Company's ditch, outside of the garden and land of the said Breda, and it being also affirmed that the former possessor of the garden of Smuts (being the late burgher Jacob Schreuder) heretofore continually, even before the wooden pipes were laid there, had the uninterrupted use of this drink-water, the undersigned, therefore (subject to better judgment), conceive that the said Breda has no right to impede or prevent the procuring of drink-water outside of his garden and land, particularly to those who, to their damage and inconvenience, must suffer the wooden pipes of the watercourses through their garden ground, even though it be true that now and then, and even often, drink-water

may be obtained elsewhere;—and, therefore, are of opinion that the said Breda should remove the said poles towards the side of his neighbour's garden, and suffer the procuring of drink-water without any hindrance.

Trusting to have complied with your intentions, the undersigned beg leave to submit this as their respectful report.

(Signed) A. VAN SCHOOR,  
OTTO L. HEMMY.

In the Castle of Good Hope, 1st March, 1774.

After the reading of which report, it was resolved to approve of the arrangements made by the said Messrs. van Schoor and Hemmy, with respect to the time and manner for the use of the water coming from the mountain by the proprietors or possessors of the gardens situate as well above the corn-mill as the garden of the Honourable Company; wherefore the said proprietors of the before-mentioned private gardens shall not be allowed to lead out of its course, or otherwise impede, the water coming from the mountain, otherwise than in the following manner, to wit:

The water coming from the so-called Plattcklip, for the gardens of Marthinus Smuts and Albert van der Poel; however, never otherwise nor more than in the morning and evening, from four to seven o'clock.

The water running down along the garden of the member of the Burgher Senate, Michiel van Breda, also in the morning and evening, from four to seven o'clock; for the use of the gardens of Johannes Roode, Jan Tesselaar, Barend de Vries, Johannes Smuts, Christman Joel Ackerman, Willem de Kruger, and Adriaan Smuts, and such for each on the following days, to wit:

For that of Johannes Roode, on Sunday evenings,  
from four to seven o'clock.

Mondays—For Tesselaar and De Vries.

Tuesdays—For Johannes Smuts and Ackerman.

Wednesdays—For De Kruger and Adriaan Smuts.

Thursdays—For Tesselaar and De Vries.

Fridays—For Johannes Smuts and Ackerman.

Saturdays—In the mornings from four to seven o'clock,  
for De Kruger and Adriaan Smuts.

The water issuing from Table Mountain, and running down through the land granted in freehold to the said Breda in 1769, for the garden of the said Breda himself; but also never otherwise than in the morning and evening, from four to seven o'clock, and that he (Breda) shall be obliged, during the summer season, to let the said river water run first along, and then downwards with an angle through his garden, into the common ditch to the mill.

The water coming down from Table Mountain by the side above the garden of Bresler, for the garden of the said Bresler alone; and

The water from the spring situate below the garden ground of said Bresler, for the gardens of the burghers Jan Hendrik Hofmeyr, Jan Jacobs, Arend van Wielligh, and the merchant and dispenser, Adriaan van Schoor, likewise in the morning and evening, from four to seven o'clock, to wit: For the two first-mentioned, the one, and for the two last-mentioned, the other day, and to be so continued, only with this

difference, that the person who shall have used the water at one time in the morning shall have the same the next time in the evening, and so on, alternately in his turn.

And every person who shall make use of the water as aforesaid shall, moreover, be obliged immediately to erect sluices at the places where the leading out is to be made, in such manner that the individual whose turn it is not to use the water shall keep the sluices closely locked during that time, in order that the water may have its uninterrupted course, agreeably to the foregoing partition; whilst the burghers Johannes Roode and Barend de Vries shall arrange with each other in what manner the water shall be most conveniently led down through the garden of the latter for the use of the former.

And, moreover, no person, without exception (the gardeners of the Company's garden, as well as the possessors of the adjacent private gardens and the Company's brickburners, included), shall be allowed to lead out of its course the water coming from the mountain from Saturday morning, at seven o'clock, to Sunday afternoon, at four o'clock, in order that the same may then be used for refreshing the water in the canals at this place: all on pain that any person acting contrary to this regulation, over and above incurring a penalty of fifty rixdollars (*pro fisco*), shall also be and remain deprived of the privilege granted to use the water as above mentioned.

It was, moreover, thought proper to leave it to the Burgher Senate to cause the sluices to be kept closed over and above the beforementioned fixed periods, on such other particular occasions as may be required for the public good.

While, lastly, with reference to the question or dispute existing between the said member of the Burgher Senate van Breda and the Burgher Marthinus Smuts, as to the use of the drink-water discharging itself from the wooden pipes into the ditch between their gardens,—on the report submitted by the commissioners on that behalf, it was ordered that the fencing on the opposite side of the ditch, made by Breda, and by which the said Smuts is prevented from procuring the necessary drink-water out of the ditch, must be immediately removed, in order that the said Smuts and the subsequent possessors of his garden may in future be enabled to procure the necessary drink-water out of the said ditch without any hindrance, at the very place where the water issues from the wooden pipes; however, neither the said Smuts nor the future possessors of his garden shall suffer any sort of washing at the same place; and the necessary drink-water for his household shall only be fetched during the summer season at five o'clock in the morning and at seven o'clock in the evening, and in the winter at seven o'clock in the morning and five o'clock in the afternoon.

Thus resolved and decreed in the Castle of Good Hope, on the day of the year above mentioned.

(Signed) J. VAN PLETTENBERG,  
G. VAN PREHN,  
P. J. HACKER,  
O. M. BERGH, Coun. and Sec.  
A. VAN SCHOOR,  
J. J. LE SUEUR,  
O. L. HEMMY.

[ 7 ]

Tuesday, the 3rd April, 1787; in the forenoon. All present.

Having resumed the further consideration of the report submitted at a meeting held on the 7th March last past, upon the subject referred by the members of this Council, Messrs. Jacobus Johannes le Sueur and Tobias Christiaan Ronnenkamp, and the commissioned member of the Court of Justice, to the undersigned, by resolution of the 26th January last—which report is of the following tenor:

To the Honourable Adriaan Boeses, Councillor Extraordinary of Netherlands India, Admiral-in-Chief of the Return Fleet, as also Commissioner of this Government; and the Honourable Cornelis Jacob van de Graaff, Governor and Director of the Cape of Good Hope and its Dependencies, &c., together with the Council of Policy.

HONOURABLE SIRS,—In consequence of a representation and request made by the Commissioners of the Court of Justice, it had pleased your Honours, by a resolution of the 26th January last, to depute the undersigned members of this Council, Messrs. Jacobus Johannes le Sueur and Tobias Christiaan Ronnenkamp, together with the commissioners aforesaid, in order to inspect, *de novo*, all the waterleadings of the gardens in this Table Valley, and with respect thereto, and, subject to your approbation, to make such further arrangements as shall be found useful and necessary; with power likewise to inquire into the means which would be best calculated to forego and prevent the abuse, made by those persons whose gardens are situate near to the wooden pipes of the waterleadings, of the privilege of only drawing the drink-water for their use from the said wooden pipes in that neighbourhood; and also to make such arrangements therein as shall be found proper.

Of which commission and qualification notice having been given to the aforesaid Board of Commissioners at a meeting convened for the purpose, it was previously thought fit that, assisted by two members of that board, ocular inspection should be made by the undersigned of all the waterleadings, as well of the private gardens as of the Company's mills and garden, and such other places in addition for which those waterleadings are to serve, in order thereby the better to judge whether and what further and better arrangements should and can be made in that respect.

The said inspection of the waterleadings of the gardens having been made, it was found that the arrangements made in that behalf in the year 1774 were in such order and sufficient for the purpose that it would not be deemed necessary to make any new alterations and arrangements therein.

However, as it had been intimated that some of the proprietors of the private gardens would gladly have an alteration in the arrangement of the hours fixed for the use of the water for their gardens by resolution of the 1st March, 1774, the undersigned have, at a second meeting, with the commissioners of the Court of Justice, caused all the proprietors of the gardens in this Table Valley to appear before them, and demanded of those whose gardens were situate above the mills what alterations they were desirous should be made in the hours.

Whereupon it was proposed by them, jointly, that if they were allowed—instead of twice a day, to wit: in the morning and evening, from four to seven o'clock, as was formerly arranged—to have the use of the water only once a day, for eight successive hours, the water being then only led off once a day, there would be less wasted, and it would prove more beneficial for general use.

Which proposal having appeared well grounded and acceptable, the undersigned, after consideration with the Board of Commissioners, and subject to your approbation, have regulated and made a further arrangement in the times for using the water, in the following manner, to wit:

The water coming down from the so-called Platteklip, for the gardens of William Versfeld and Petrus Johannes Hiebner, each every other day from four o'clock in the morning to twelve o'clock at noon; under this proviso, that from Saturday at noon to the following Monday morning at four o'clock they shall not make use of that water, but leave the same uninterrupted in its course.

The water running down along the gardens of the burgher lieutenant Pieter van Breda, also in the morning from four to twelve o'clock at noon, for the use of the gardens of Arend Josias van Breda, Jacobus Johannes Tesselaar, the member of the Burgher Senate, Johannes Smuts, the senior merchant, Johannes van Echten, Johan Adolph Knuhl, Johannes van Sittert, and Adriaan Smuts, and such for each of them on the following days, to wit:

For the garden of the member of the Burgher Senate, Johannes Smuts, on Sunday afternoon, from three to seven o'clock.

**Mondays**—For Arend Josias van Breda and Jacobus Johannes Tesselaar, each four hours, from four o'clock in the morning to twelve o'clock at noon.

**Tuesdays**—At the same time and in the same manner, for the senior merchant, Johannes van Echten, and Johan Adolph Knuhl.

**Wednesdays**—For Johannes van Sittert and Adriaan Smuts.

**Thursdays**—For Breda and Tesselaar.

**Fridays**—For Johannes van Echten and Knuhl; and

**Saturdays**—In the morning from four to seven o'clock, and no longer, for Van Sittert and Smuts.

The water issuing out of the Table Mountain, and flowing down through the land of the said Pieter van Breda, granted in freehold in the year 1769 for the gardens of the said Breda himself; however, not otherwise than at the appointed time, from four in the morning to twelve at noon, and also that he (Breda) shall be obliged, as heretofore, to let the said river water run during the dry season, first along and then downwards, with an angle through his garden into the common ditch to the mill.

The water out of the Table Mountain, on the side above the garden of Johan Christiaan Brasler, for the garden of him (Brasler) above, as formerly.

The water of the gardens on the lower side of the said Brasler, being at present the garden ground of the member of the Burgher Senate, Hendrik Justinus de Wet, for the gardens of the burghers Jan Hendrik Hofmeyr, Jan Jacobse, Pieter de Hooge, and the burgher captain, Gerhardus Munnik, likewise from four in the morning to twelve o'clock at noon; alternately, the one day for Hofmeyr and Jacobse, each four hours, and the other day for De Hooge and Munnik, likewise each four hours.



And whereas it has been noticed that, with respect to the use of the water for the gardens situate below the Company's old mill, namely, those of the old commissary François van Nierop, and the firewarden, Jan Hendrik Frank, and the burghers Abraham A. de Haan and Jan Jacob Schreuder, on the one, and that of the burgher Laurens Biel, on the other side of the Company's garden, no fixed arrangement has ever before been made, or any order established, but the water has been arbitrarily used by those whose gardens are situate above and nearest to the water, it was deemed necessary that the proprietors of those gardens, like all others, should also be subjected to a certain regular arrangement and order as to the use of the water: wherefore, after having consulted with the said Van Nierop, Frank, De Haan, Schreuder, and Biel, the following arrangement was made with respect to the use of the water for their gardens, to wit:

That the four gardens of Van Nierop, Frank, De Haan, and Schreuder shall have a stream of the water below the mill, in order—

On Monday—to serve for the use of the gardens of Van Nierop and Abraham A. de Haan, to wit: the former from one to five in the afternoon, and the latter from five to eight o'clock in the evening.

Tuesdays—for the gardens of Frank and Schreuder; the former from one to five o'clock in the afternoon, and the latter from five to eight o'clock in the evening, and so on alternately every other day, excepting on Saturdays, to Sunday afternoon, at four o'clock.

Furthermore, that of the water which shall hereafter be led off along the brickery of the Company, and of which mention will subsequently be made, the burgher Laurens Biel shall have the use for his garden from three o'clock in the afternoon to seven o'clock in the evening, except on Saturdays and Sundays, when he shall not dam up nor lead off that water.

The disposal of the water for the private gardens having thus been regulated as before stated, we proceeded to ascertain and frame means whereby every one could be kept within the limits of the order, to guard against any trespass thereof, and prevent the abuse which may otherwise again be made (as has been experienced) in respect of the use of the water.

And whereupon it was observed, in the first place, that the sluices by which the water is conveyed into the gardens situate above the mills ought to have been placed within those gardens, and so secured that each proprietor of the garden can alone be held responsible, and thus, in case of any detection of trespass or abuse, no exceptions, as heretofore, could be adduced or maintained.

Further, that the sluices by which the lower situated gardens of Van Nierop, Frank, De Haan, and Schreuder must obtain the water should likewise be provided with a substantial lock, and the key thereof left in charge of the miller at the old mill, so as to let the water flow and be stopped at its proper time, and such on the responsibility of the said miller, in the event of its being discovered that any water was let off for the gardens beyond the appointed time.

That thus none of the beforementioned proprietors of the private gardens shall lead off the water except during the hours allotted to them, but suffer the same, during the remaining part of the day, and particularly at night, to run free and uninterrupted to the canals at this place; and for which purpose every one shall be obliged to keep the sluice in

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his garden always closed during the intervening time, under a penalty of fifty rixdollars.

That the order made in the former arrangement should be particularly renewed, namely, that no one without exception,—the owners of the private gardens, the Company's brickmakers and potters, the overseers and the tanners at the Company's stables, the private tanners, none excepted,—and in particular those persons who are now busy in building upon the erven opposite the garden of Laurens Biel, shall not be allowed in the least to lead out of its course, or to dam up, the water coming from the mountain, from Saturday morning at seven o'clock to Sunday afternoon at four o'clock, in order that that water may be used during the whole of this time to refresh the water in the canals at this place, under a penalty of one hundred rixdollars for the first offence; and for the second offence, over and above the fine of one hundred rixdollars, to be for ever deprived of the privilege and indulgence to use the water at the appointed time.

And as, on this same occasion, an object of the greatest importance has been considered to be the necessity and general utility that the canals all over this place should, principally during the summer season, remain full of water, it was suggested that, in order to obtain the same in all the canals, particularly on Saturdays, the watercourse below the old mill should be divided into three parts, to wit: one part running direct through the Company's garden into the canals alongside of the slave lodge; one part above, by the garden behind the milk-shed, the Company's brickery, and the garden of Laurens Biel, to be there further led off by the small new canal into the large canals in front of the Company's garden.

The remaining third part of the water, as it now has its course through and along the garden of Jan Jacob Schreuder, and so on to pass along that garden into the canal beside the house and premises of the burgher Matthiam Hoffman, and from there further into the lower canals.

That, also, the water which is daily led off for the use of the Company's stables, instead of letting the same run down through the lower situated erven of William Hoppe, and further on down the street along the Company's garden, should be led off direct into the canal beside the house of Jan Adam Hartman, in order also to serve for the lower canals; but that Jonas van Bergen, as being now the only tanner residing in that division (blok), might be allowed to make use of that water for his tannery once a week, except Saturdays and Sundays; without, however, suffering the same to run further than on his premises.

Whilst it might likewise be allowed to the burgher tanners, Hoffman, Hartman, and Henning, residing beside and below the canal, to use the water out of the canals for their tanneries; provided that a well-secured sluice, with a good lock, be placed at the place where the water is led out for that purpose, in order to be opened and closed at its proper time; provided, also, that the water is not led off further than the premises of the said Henning, being the lowest, and which, also, shall not be done on Saturdays and Sundays, under the penalties aforesaid.

That, finally, in order actually to reap the benefit of the water in the canals, every person residing along the canals, in consideration of the conveniences enjoyed of that water in preference to others, should be placed under the obligation (subject to the approbation of your Honours)

to keep the canal clean and clear as far as his property extends, and that a heavy penalty and severe punishment be imposed upon the slaves and others who shall throw rubbish in the said canal.

And now, with reference to the waterleadings running along the gardens of the burghers Simon van Blerck and Jean Martin, it having appeared, at the inspection made thereof, that there is not only an abuse made of the indulgence to draw drink-water from one of the pumps lying there, but much leakage is also occasioned to the wooden pipes where these are exposed, it might with great propriety have been recommended to your Honours (in consequence of the unpleasantness which may eventually be expected) that for the future no privilege should be given to draw drink-water from those pumps.

However, for reasons, it has been thought fit to leave this to the disposal of your Honours, with a request, nevertheless, if your Honours should be of opinion that this permission may be continued to Van Blerck and Martin, and others residing in the neighbourhood, to draw their drink-water, as heretofore, from the wooden pipes lying opposite the garden of Martin, that then the tapoon in the pump at that place should be provided with an iron staple and good lock, the keys of which shall remain in the charge of the said Van Blerck and Martin, who will therefore, at all times, be held responsible for any ill use that may be made thereof.

And that then it may be permitted to every person, at an appointed time of the day, namely, from eleven in the forenoon to one o'clock in the afternoon, to procure his drink-water from the pump; but that, as well before as after that time, the said pump shall be kept locked, without leading off the water therefrom at any other time or hour of the day.

And if it shall be discovered that any ill use is made of this concession, the offenders shall not only be liable to a fine of fifty rixdollars, but, moreover, be for ever deprived of the privilege.

In addition to which, we beg leave to propose to your Honours that, as the superintendence and management of these waterleadings always belonged to the adjutant of the Company's militia and the pumpmaker thereto appointed, they should be instructed to take care that the pumps are daily attended to, and the leakages stopped from time to time.

Or otherwise, if your Honours think fit, that the superintendence over the waterleadings in general be intrusted to commissioners of the Court of Justice, and that board be thus empowered to employ the pumpmaker thereto whenever it may be required.

And as the said Board of Commissioners have taken upon themselves, when these arrangements shall be approved by your Honours, or any other regulations be made in that respect, that then, on the one side, every one, for himself, shall use every endeavour that these orders and regulations, framed for the public good, be strictly observed, without any trespass; but, on the other side, it having also been deemed necessary that some one should be appointed, who could at all times, when required, be employed to see whether the orders and arrangements with respect to the waterleadings are duly observed, the commissioners, therefore, beg to submit to your Honours that authority should be given to the burgher messenger, as being duly sworn, so that whenever any one shall be discovered by him to have transgressed these orders and arrangements, the information given thereof by the messenger shall be considered sufficient to warrant the imposition of the fixed fines and

other penalties on the offenders, and cause the same to be executed : with a humble request, likewise, that, with reference to the appropriation of the fines, your Honours may be pleased to make such arrangements therein as shall be consistent with the nature of the case.

And finally, the undersigned cannot refrain from bringing to the notice of your Honours that it has appeared to them, at the aforesaid inspection of the watercourses, to their indignation, that the burgher Jan Herman Redelinghuys, so much contrary to the intentions of your Honours, and the conditions upon which he so graciously obtained a piece of garden ground from your Honours, has made use of the water coming from the Company's mill, by leading it off out of the common watercourse : wherefore they take the liberty to submit, for your consideration, in order to prevent the further use and the unpleasant complaints which may arise therefrom, to insert in the title-deed to be given to the said Redelinghuys, that he shall never, under any pretence whatever, make use of the water running along that erf.

Trusting to have complied with the honoured intentions of your Honours, the undersigned beg leave to submit this as their report.

Cape of Good Hope, 17th January, 1787.

(Signed) J. J. LE SUEUR,  
T. C. RONNENKAMP.

*In Margine :*

J. VAN ECHTEN,  
J. SMUTS,  
J. M. HORAK,  
C. L. NEETHLING,  
G. MEYER,  
C. MATTHIESSEN,  
H. J. DE WET,  
J. M. BLETTERMAN.

So be it therefore resolved, to withdraw the order of the 1st March, 1774, in respect of the regulated use of the water for the gardens situate in this Table Valley, and, on the contrary, to approve of the further arrangements in that behalf in the said report contained ; in consequence of which, the water issuing on this side the Table Mountain, for irrigating the said gardens, shall in future be used according to the situation of each in the following manner, to wit :

The water coming from the so-called Platteklip for the use of the gardens of the widow Willem Versfeld and Petrus Johannes Hiebner, and such for each of them every other day, from four o'clock in the morning to twelve o'clock at noon ; with this exception, however, that from Saturday, at twelve at noon, until the following Monday morning, at four o'clock, they shall make no sort of use of the water, but allow the same to have its free and uninterrupted course.

The water running down along the gardens of the burgher lieutenant Pieter van Breda for the garden of Arend Josias van Breda, Jacobus Johannes Tesselaar, the member of the Burgher Senate Johannes Smuts, the senior merchant Johannes van Echten, Johan Adolph Knuhl, Johannes van Sittert, and Adriaan Smuts, to be led by each of them respectively into their gardens on the aftermentioned days and hours, to wit :

On Sunday afternoon, from three to seven o'clock, to the garden of the said member of the Burgher Senate, Johannes Smuts.

Monday morning, from four to twelve o'clock at noon, to the gardens of Arend Josias van Breda and Jacobus Tesselaaar, to be used during that time for four hours by each of them.

Tuesday, for the aforesaid hours and in the same manner, to the gardens of the said merchant Van Echten, and Johan Adolph Knuhl.

Wednesday, on the same footing and like hours, to the gardens of Johannes van Sittert and Adriaan Smuts.

And furthermore, once a week, with the same stipulations and like hours, to the last-mentioned six gardens, namely :

Thursday—those of the said Arend Josias van Breda and Tesselaaar.

Friday—those of the said merchant Van Echten, and Knuhl ; and

Saturday—those of the said Van Sittert and Smuts ; both these last-mentioned no longer than from four to seven o'clock in the morning.

The water coming down through the land granted to Pieter van Breda in the year 1769, for the garden of the said Breda, to be made use of daily, but for not longer than from four o'clock in the morning until twelve o'clock at noon ; whilst the said Breda shall be obliged, as heretofore, to let the river-water run during the dry season, first along and then downwards with an angle, through his garden to the mill.

The water coming down by the side above the garden of Johan Christiaan Brasler, for the use of the garden of the said Brasler alone, as before.

The water of the spring issuing in the garden of the member of the Burgher Senate, Hendrik Justinus de Wet, for the gardens of the burghers Jan Hendrik Hofmeyr, Jan Jacobse, Pieter de Hooge, and the burgher captain Gerhardus Munnik, likewise from four o'clock in the morning until twelve o'clock at noon, and such by turns, the one day for the said Hofmeyr and Jacobse, each four hours, and the other day for the said De Hooge and Munnik, also each four hours, excepting Saturdays and Sundays, when that water shall be allowed to have its uninterrupted course, without being used in the least for those gardens ; all which proprietors of the gardens situate above the old mill shall be obliged, in order to prevent the one or the other from acting contrary to the arrangements made for the public good in respect of the use of the water, to cause to be placed within their gardens, and to be kept in constant good repair, such sluices as shall be required for the purpose of leading out, which shall be kept closed during the remaining time, in order that the proprietors of the said gardens, in case of any abuse being made, may alone be held responsible, and, in the event of any trespass, no exceptions or pretences may in future be adduced.

And, further, for irrigating the gardens at present possessed by the late commissary Van Nierop, the firewarden Jan Hendrik Frank, and the burghers Abraham A. de Haan and Jan Jacob Schreuder, all situate on one side of the Company's garden, there shall be allowed one stream of the water below the mill, at the undermentioned time and in the order appointed for each, to wit :

Monday—for the gardens of the said Van Nierop and De Haan ; the former from one to five o'clock in the afternoon, and the latter from five to eight o'clock in the evening.

Tuesday—for the gardens of the said Frank, from one to five o'clock in the afternoon, and of the said Schreuder, from five to eight o'clock in the evening.

And such likewise by turns, every other day, except Saturdays and Sunday afternoons, at four o'clock.

While the sluice by which the water below the mill is conveyed to the four last-mentioned gardens shall be provided with a good lock, and the key left in charge of the miller at the said old mill, who shall be bound to let the said stream of water flow to the said four gardens at the appointed time, and thereafter again to stop it; he being held responsible if this order is contravened, or if it shall be discovered that any water has been led off to the gardens before the fixed time.

And furthermore, as to the water which shall in future be led off along the Company's brickery, the burgher Laurens Biel shall be allowed to make use of it for his land lying on the other side of the Company's garden, from three o'clock in the afternoon to seven o'clock in the evening, except also on Saturdays and Sundays, when the water shall in no manner be dammed up or led off.

Whereupon, and for the better prevention of abuse in the enjoyment of the water, it was resolved to impose a fine of fifty rixdollars on those proprietors of the said gardens who shall act contrary to the foregoing order and arrangements, and thus during the months of the dry season have made any use or leading off of the water otherwise than during the said hours, or caused any interruption in its free course; the half of which fine shall go to the prosecutor, and the other half into the colonial treasury.

And in order that no person may plead ignorance of this resolution with respect to the waterleadings of the gardens, it has been thought proper to give to each of the proprietors who reside near the water an extract, for his information and guidance, which extract shall go over into the hands of whoever may hereafter become the proprietor of the garden to which it relates.

And it has further been deemed proper to approve of the proposed partition of the water which shall be collected on Saturdays and Sundays below the old mill, to be divided into three parts, for refreshing the canals in and about this place; and of which an extract shall be placed in the hands of the miller of the Company's old mill, with a recommendation to execute that partition on the said days, and to conform himself strictly thereto.

As we have also approved of the proposal to allow the tanners here, with the least possible inconvenience, the use of the water running to the canals for their tanneries, it was thought fit likewise to hand to each of them, as far as they are concerned, an extract from the aforesaid report, in order that they may strictly adhere to the arrangements therein made.

While it was likewise ordained,—in order to prevent the wrong application of the water from the leadings or wooden pipes along the gardens of Simon Petrus van Blerk and Jean Martin, and to avoid as yet the extreme measure by which the privilege of obtaining water with more convenience from the wooden pipes by the inhabitants residing in that neighbourhood would be discontinued,—that the tapoon in the wooden pipes opposite the garden of Jean Martin shall be provided with an iron staple and good lock, and the keys thereof left with the said Van Blerk and Martin, who shall open the said tap only from eleven

o'clock in the morning to one o'clock in the afternoon, so that every person thereabouts may obtain the required drink-water; provided they both remain responsible for the abuse that might be made thereof. Before and after which time the said tap shall be kept closed by them, and no use or leading off made of the water during any other hours of the day, on pain that, if any trespass takes place, this privilege will not only be for ever withdrawn, but the offenders, moreover, incur a fine of fifty rixdollars, to be divided as before stated.

Though it has likewise been deemed expedient to leave the keeping in repair of the pumps or wooden pipes on the present footing to the Company's pumpmaker, under the direction of the adjutant of the Company's militia, it has nevertheless been thought proper to intrust to commissioners of the Court of Justice as well the superintendence thereof, so that all these particulars may be duly performed, as the general care that the aforesaid arrangements with respect to the water-leading be observed and fulfilled in all their several parts.

And whereas it has appeared, from the said report, that the burgher Johannes Hermanus Redelinghuys has, contrary to the conditions upon which, amongst others, a piece of ground alongside of the Company's garden has been lately granted to him in freehold, assumed to himself to make a leading from the regular course of the water to the said ground, it was resolved, not only expressly to insert in the title-deed about to be issued to him the condition against the use of that water, but also to reserve such measures as shall be necessary to be adopted on a further breach of this condition, and of which he (Redelinghuys) shall be informed, by extract hereof, in order for the future, by the due fulfilment of the said condition, to guard against loss or damage.

And in order, by the above arrangements with respect to the water for the two appointed days, to secure the actual benefit thereof for the necessary replenishing and refreshing of the canals, it is hereby peremptorily prohibited and interdicted, not only to the proprietors of the said gardens and private tanners, but also to the overseers in the Company's gardens, the Company's brickery and pottery, the overseer and tanners in the Company's stable, and also those persons who are now building on the erven opposite the garden of Laurens Biel, and every other individual whomsoever, to lead off or in the least manner to impede the course of the water that shall be collected on Saturdays and Sundays below the old mill, for the purpose aforesaid; but, on the contrary, those persons who shall dam up the same for the waterleadings granted to them shall be obliged, immediately after the hours appointed for their use, to open the said dams, so that the water may have its free and uninterrupted course, on pain that those persons who contravene this order shall incur a penalty of one hundred rixdollars, to be divided as above, which fine shall be doubled in respect of any person who, in case of fire at this place, shall have led off the water into his garden (should such occur during the time that he is permitted the use thereof), and shall not have turned off the same and allowed its free course.

While every person residing along the said canals shall be obliged, as heretofore and as far as his premises extend, to keep the canals always clean and clear, and in the event of neglect herein the party shall be warned once for all by the commissioners of the Court of Justice, and when it shall appear that the party remains in default the cleaning and clearing of the canal shall be effected at his expense.

And whereas it has been experienced that, in spite of the orders

enacted on that head, all sorts of rubbish, and even the privy tubs, have often been thrown and emptied in the canals, or in the squares and other places, which not only causes much stench and annoyance, but also tends to pollute the air and bring on contagion and unhealthiness, it has been deemed expedient, by the renewal and ampliation of the placats already published on that head, to interdict and prohibit the carrying away of privy tubs at any other time than early in the morning, at break of day, and to empty the same, as well as any other description of filth or rubbish, anywhere else than on the beach into the sea; on pain that those persons who employ their slaves and others for that purpose, and who shall not have cautioned them against acting contrary to this order, shall each time incur a penalty of twenty rix-dollars, and the slaves who shall be convicted of having acted contrary to the commands of their masters and mistresses shall be severely scourged.

Nor shall any slaves or others be permitted to go into the canals, or elsewhere in the streets or common thoroughfares of this place, to void or go to stool, on pain of arbitrary correction. And in renewing the prohibition against leaving on the public roads any beasts of burden which may drop down or perish there, it is not only further enjoined and enacted that whenever any beast of burden shall die upon the main roads, the owner, or the Company's overseers at the outposts, or any other person concerned, shall be obliged to take care that such dead animal be interred, on pain of forfeiting fifty rixdollars for neglecting so to do;—but it is likewise interdicted and forbidden to all persons to leave or cast in the public streets and squares, or into the canals, any carcases or dead domestic animals, and the person who shall have owned any such dead animal shall be obliged to convey it outside of the town, and have it placed in a hole, and covered with earth, in such a manner that no corrupt air or offensive smell remains thereof, on pain of forfeiting the sum of twenty rix-dollars, payable by the person contravening this order; and the masters and mistresses of offending slaves shall be held responsible for them.

Thereupon, &c.

Thus resolved and decreed, in the Castle of Good Hope, on the day and year above written.

(Signed) C. J. VAN DE GRAAFF.  
P. J. HACKER.  
J. J. RHENIUS.  
R. J. GORDON.  
J. J. LE SUEUR.  
O. G. DE WET.  
T. C. RONNENKAMP.

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The following petition of the burgher Pieter van Breda being read and resumed, namely:

To the Honourable Cornelis Jacob van de Graaff, Governor and Director of the Cape of Good Hope and the Dependencies thereof, &c., and the Honourable Council of Policy,

Showeth, with due respect, the petition of your humble and obedient servant, the burgher lieutenant P. van Breda.



That an extract of your Honours' resolution of the 3rd April of this year having been forwarded to memorialist, containing an altered arrangement and regulation with regard to the use which may and shall be allowed to be made of the water coming down from Table Mountain, for the service of the gardens lying along the same; that petitioner has seen therein that with regard to the water arising within and flowing down over the land which, in the year 1769, was granted in freehold to his father, the ex-burgherraad Michiel van Breda, and of which the petitioner is now the proprietor, a partial and limited use only of the same was allowed to memorialist, to wit, from four o'clock in the morning till twelve o'clock at noon, with the addition that he (the memorialist) should be bound to allow the river-water to flow during the dry season, as before, first along and then with a bend through his garden to the mill.

That this regulation left undisturbed the arrangements made in the year 1774 regarding the said river-water, an arrangement against which memorialist's father at that time already complained to the then governor of this colony, the Honourable Joachim van Plettenberg, as greatly tending to open for private and general use a benefit to the use of which memorialist's father, at that time, and now the memorialist, considered himself alone legally entitled, as long as that water does not flow beyond the land in which it rises, as in the grant of that land no condition or exception whatever respecting the use of that water has been made as prescribed, memorialist's father having already allowed at that time, without conditioning any private advantage, that the water of another and very abundant spring, rising in the old ground of his garden, should be led out for the purpose of supplying the inhabitants of Cape Town with drink-water, and also for the Company's and other ships arriving here, but that also, by reason of the repairs which this watercourse from time to time requires, memorialist has suffered considerable damage in his crops and plantations, and loss of freedom in his garden from the labourers and the wagons carrying the materials.

That the complaints which memorialist's father lodged with the said Governor van Plettenberg having been found well-founded and just, the consequence was that memorialist's father, and memorialist afterwards, have remained in the free and undisputed enjoyment of the said river water, without any person ever preventing or obstructing it, by virtue of the said resolution of 1774; while, on the contrary, ever since, when the said water was necessarily required during the dry season either for the town canals or for the Company's mill, and he (petitioner) being applied to, when he could spare it without great detriment to himself he has allowed it to run freely for the above services.

That petitioner, from the now altered arrangements of 3rd April of this year, which leave those of 1774 in full force, on the one side, is persuaded that your Honours were unacquainted with, or, at least, had not sufficient information of memorialist's complaints against the same, and considering, on the other hand, that, should he now silently acquiesce in the said rules, the consequence for him might be the very injurious result that the garden from which he and his numerous family must derive their support would be deprived for ever of a privilege which has always been annexed to it, and by virtue of which alone the garden can continue to yield the means of support for himself and family.

That memorialist feels himself thus compelled to bring his grievances again under the consideration of your Honour and Worships, in the full confidence that you will, as memorialist humbly requests, pay a favourable regard to the same, and, acquiescing in the justice of the complaint, release him from the obligation of complying with that part of the regulation of 3rd April last, which deprives him of the free use of the river-water arising in his own freehold.

That memorialist, on the other hand, having no desire or intention to avoid the obligation of every member of society to contribute his part towards the prosperity of his fellow-men and citizens, but, on the contrary, convinced that the above river-water, after having been used by him, should necessarily answer other purposes besides his private ones, is fully ready and prepared to comply therewith, in such a manner as may be done without detriment to his lawful rights, and he hereby offers to allow the said river-water, during the dry season, to flow without obstruction freely through his garden to the main ditch, not only from the Saturday afternoon till the Sunday afternoon, for the refreshment of the canals of Cape Town, but also to allow the same during every night, that it may be disposed of for general use, *except* when the petitioner shall be compelled, in particular cases, in order to prevent considerable loss, to make use thereof for himself.

The memorialist, trusting that this offer will be considered sufficient to allow a proper use of the said river-water to others, remains in the certain expectation that it will meet the approbation of your Honour and Worships, and that the said offer, saving his own lawful right, may be a means by which the petitioner may be properly released from the altered regulations respecting the water made by the aforesaid resolution of 3rd April of this year.

And petitioner, &c.,

(Signed) P. VAN BREDA.

Whereupon it was taken in consideration that the arrangements enacted by the resolution of 3rd April of this year, regarding the use of the water for the gardens in this Table Valley, and in particular that by which the regulation for the garden of the said Breda is made, as merely founded on the former arrangements of 1774, apparently without considering at that time that the river-water, in regard to which the said regulation for the garden of Lieutenant Breda was then made, had its source in a piece of land which was granted in freehold, in the year 1769, to the former proprietor of that garden, late ex-Burgherraad Michiel van Breda, and which grant was made principally as a compensation for the service which the said Burgherraad Breda had done shortly before to the Company and the colony, by allowing that a very abundant and pure spring of water arising in his old land should be built on and led out for the purposes of public use, in such manner as takes place at the present time, and as it is still maintained and kept in repair: so that, because the said Breda had thereby been deprived of the use of the said fountain-water, the use of which he might have retained to himself, as formerly, it must also be supposed that, in the grant of the new land in 1769, it was purposely that no condition or exception was made regarding the water rising in that new land, in order that the water might supply the loss suffered by the proprietor of that garden by the leading out of the water of the other fountain.

And whereas, it would be contrary to fairness that the aforesaid Breda should be deprived of the lawful use of the abovementioned river-water arising in his new ground, which belongs to him in the first place, it has been resolved unanimously to release him from the obligation to obey the regulations respecting that water, made on 3rd April of this year, and, on the contrary, considered that the offer made by him in the latter part of his petition may be accepted, trusting that, considering the inconvenience which otherwise might arise in the dry season from the absence of that water, he will carefully comply with his above offers.

Resolved, consequently, to place an extract hereof in the hands of commissioners of the Court of Justice, in order to guide in the observance of the arrangement about the aforesaid water.

A true copy :

J. HORAK, Sworn Clerk.



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AND

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AND STILL WHOLLY OR IN PART IN FORCE.

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