

Public Works Act 1882

Public Act 1882 No 37
Date of assent 13 September 1882

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Acts Repealed

88

An Act to consolidate and amend the Laws relating to Public Works.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1 Short Title.

The Short Title of this Act is “The Public Works Act, 1882.”

This Act is divided into the several Parts as follows:—

PART I.—Preliminary.

PART II.—Taking Lands for Public Works.

PART III.—Compensation.

PART IV.—Surveys.

PART V.—Roads and Rivers.

PART VI.—Railways.

PART VII.—Railways Regulation and Inspection.

PART VIII.—Drainage.

PART IX.—Water Supply for Gold Fields.

PART X.—General Provisions.

Part I
PRELIMINARY

2 Interpretation of terms.

In this Act, if not inconsistent with the context,—

“Borough Council” means any Municipal Council constituted under any Act or Provincial Ordinance, and includes any Town Board, Board, Commissioners, or Trustees having the control and management of a city, town, town district, or borough:

“Borough” means any city or borough constituted under any Act or Provincial Ordinance constituting Municipal Corporations:

“Certificated surveyor” means a surveyor holding a certificate of competency from the Surveyor-General:

“County” and “County Council” have the meanings which those words bear in “The Counties Act, 1876:”

“Government work” means a work constructed or intended to be constructed by or under the control of the Government of the colony:

“Judge” and “Registrar” of the Supreme Court mean respectively the Judge and Registrar or Deputy Registrar of the Supreme Court acting in or for the judicial district in which any matter arises, and “Supreme Court” means the Supreme Court in such judicial district:

“Local authority” means and includes any Borough Council, County Council, Town Board, Road Board, Harbour Board, and other Board, Commissioners, Trustees, or other persons or body however designated, having authority, under any Act of the General Assembly or Provincial Ordinance, to undertake the construction of any public work:

“Local work” means a work constructed or intended to be constructed by or under the control of a local authority:

“Minister” means the Minister for Public Works appointed under this Act:

“Outlying district” means any part of a county which is not included in a road district:

“Public notice,” “publicly notified,” means a notice published in some newspaper circulating in the district in which the matter of the notice arises, or to which it relates; and if there be no such newspaper, then by a printed or written placard posted in some conspicuous place on the land or works affected by such notice:

“Public work” and “work” means and includes any survey, railway, tramway, road, street, bridge, drain, harbour, dock, canal, waterwork and mining work, electric telegraph, lighthouse, building, and every undertaking of what kind soever which the Government of the colony or any local authority is authorized to undertake under this or any other Act of the General Assembly or Provincial Ordinance:

“Road Board,” or “Board,” means any Road Board constituted by any Act or Provincial Ordinance, and includes any Board of Commissioners or Trustees having the control and management of highways:

“Road district,” or “district,” means the district over which the authority of any such Road Board, or Trustees, or Commissioners extends:

“Special Act” means any Act of the General Assembly with which this Act or any part of this Act is incorporated, authorizing the construction of a public work:

“Surveyor” means any Surveyor appointed by the Minister for Public Works, or the Minister of Lands, or by any local authority, and authorized to make any survey.

3 Of notices.

A notice required by this Act to be sent to any person may be sent to the last known place of abode or business of such person by messenger or by post.

- (1.) If such person is absent from the colony, the notice may be sent to his agent.

- (2.) If such person is not known, or has no known agent in the colony, and the notice relates to any land or buildings, the notice shall be deemed to be sent if it is affixed in a conspicuous place on or to such land or building.
- (3.) A notice required to be sent to the Minister must be sent to the Office of Public Works, or to the office of such person as the Minister authorizes by public notice to receive notices on his behalf.
- (4.) A notice required to be sent to a local authority must be sent to the office of such authority.
- (5.) Where a notice is sent by post it must be sent so as to arrive in the due course of post on or before the last day on which such notice is required to be served.

4 Governor may make regulations for conduct of officers, to be laid before Parliament.

The Governor in Council may from time to time make regulations for the conduct of all persons employed by the Government under this Act, or in or about any works which may be constructed by the Government under the authority thereof.

A copy of all regulations made under the authority of this Act shall be laid before Parliament within ten days after its first sitting after the issue thereof.

5 Minister for Public Works.

The Governor shall appoint some member of the Executive Council to be the Minister for Public Works, who shall be charged with the administration of this Act, and with the execution of all Government works.

The Minister for Public Works holding office at the commencement of this Act shall be deemed to be appointed under this Act.

Interest in contracts, &c., of Minister to devolve on his successor.

Where the Minister is authorized to enter into any contract, or agreement, or make any lease under this or any other Act, all the rights and liabilities in respect thereof and all benefit and advantage thereunder, or interest therein, shall vest in his successor or successors in office, without the necessity of any transfer or assignment whatsoever.

6 Appointment of engineers and other officers.

The Governor may from time to time create such offices, and appoint such engineers, managers, clerks, and other officers and persons, as may be necessary for the administration of this Act, and for the execution of all Government works; and may from time to time assign such functions as he shall think fit to such persons respectively, all of whom shall hold office at the Governor's pleasure, and shall receive such salaries as the General Assembly determines.

7 Annual estimates.

The Minister shall, as soon as conveniently may be after the opening of each session, lay before Parliament full and detailed estimates of the expenditure proposed to be made upon all Government works during the financial year; and no such works shall be undertaken unless Parliament appropriates money for the execution thereof.

When moneys voted for railways, Appropriation Act to contain Schedule of same. First Schedule.

When moneys are proposed to be voted in any session for the construction of railways, the Minister shall insert in the Immigration and Public Works Appropriation Bill of such session a Schedule in the form of the First Schedule hereto.

8 Annual accounts and expenditure to be certified by Auditor-General.

On or before the first day of June in each year the Minister—

- (1.) Shall cause to be prepared a full and correct statement of the expenditure during the preceding financial year upon all Government works, together with a full report upon the state and progress of such works; and he shall lay the same before Parliament within ten days after its first sitting after the said first day of June:
- (2.) Shall send a copy of such statement to the Controller and Auditor-General, who shall certify to the correctness of the same; and his certificate, together with any remarks by him appended thereto, shall be laid before Parliament by the Minister.

9 Contracts for Government works to be in the name of the Queen.

Every contract for the execution of Government works shall be entered into in the name of Her Majesty the Queen, and may be executed by the Governor on her behalf.

Of contracts for local works.

Every contract for the execution of local works shall be made in such manner as the local authority making the same is authorized by law to make and execute its contracts,

All such contracts may be varied and discharged in the same manner respectively.

Part II

TAKING LANDS FOR PUBLIC WORKS

10 Procedure for taking lands.

Whenever lands are required to be taken for any public work, the Minister in the case of Government works, and the local authority in the case of local works,

Surveys and plans to be deposited in road district.

- (1.) Shall cause a survey to be made and a plan to be prepared, showing generally the nature of the works proposed to be executed, and the lands required to be taken for the same (if any), together with the names of the owners and occupiers of such lands, so far as they can be ascertained;

Shall cause a copy of such plan to be deposited in some place in the road district in which such lands are, or, if such lands are not within a road district, in such other convenient place as the Minister or local authority respectively may direct:

Such plan shall be open to inspection by all persons at all reasonable hours. Any person having custody thereof, and refusing or obstructing such inspection, shall, for every such offence, be liable to a penalty of not more than five pounds:

Notice that objections to proposed works will be heard.

- (2.) Shall cause a notice to be gazetted, and to be twice publicly notified, stating the place where such plan is open for inspection, with a general description of the works proposed to be executed, and of the lands required to be taken;

And in such notice shall call upon all persons affected to set forth in writing any well-grounded objections to the execution of such works or to the taking of such lands, and to send such writing within forty days from the first publication of such notice to the Minister, or to the local authority, as the case may be:

Notice to be served on owners and occupiers.

- (3.) Shall also cause a copy of such notice and description to be served upon the said owners and occupiers so far as they can be ascertained:

How objections to be heard.

- (4.) Shall, upon receiving any objection, appoint a time and place within the colony at which the objector may appear before the Minister or some person appointed by him in the case of Government works, or before the local authority in the case of local works, and may support the objection by such evidence as the objector thinks fit.

11 Upon memorial, lands to be taken by Proclamation.

If within the said forty days no objection is made, or if, after due consideration of all objections, the Minister or the local authority, as the case may be, is

of opinion that it is expedient that the proposed works should be executed, and that no private injury will be done thereby for which due compensation is not provided by this Act, the land proposed to be taken shall be taken in the following manner:—

- (1.) The Minister or the local authority shall lay before the Governor a memorial containing an accurate description of the lands proposed to be taken, together with a map thereof:
- (2.) Such map shall be signed by the Surveyor-General, or some certificated surveyor authorized by him to certify plans for the purpose of any Act relating to the conveyance or transfer of land, as evidence of the accuracy thereof:
- (3.) Every memorial laid before the Governor by a local authority shall be signed by two members thereof, and need not be under seal:

Declaration by local authority to be accepted as sufficient that public work is authorized.

- (4.) A statutory declaration by the Chairman, Mayor, or other chief executive officer of any local authority, that such local authority is authorized by law to undertake the work for which the land described in the memorial is required, that all the provisions of this Act as to taking such land have been complied with, and that the local authority is of opinion that the proposed works should be executed, and that no private injury will be done for which due compensation is not provided by this Act, may be accepted by the Governor as sufficient without making further inquiry:
- (5.) The Governor may thereupon, if he thinks fit, by Proclamation publicly notified, declare that the said lands, a correct description whereof shall be contained in or annexed to the Proclamation, are taken for the public work therein mentioned:

And, from and after a day to be named in the said Proclamation, the lands therein specified shall, unless otherwise specially provided in this Act or in any special Act, become absolutely vested in fee-simple in Her Majesty, or in the local authority, or the corporate body represented by it, as the case may require, discharged from all mortgages, charges, claims, estates, or interests of what kind soever, for the public use named in the said Proclamation.

Not to apply to railways made by the Governor.

The provisions of this and the last foregoing section respectively shall not apply to railways constructed or to be constructed by the Governor under this Act, or any Proclamation issued thereunder, or under a special Act, respectively.

12 Map and Proclamation to be registered.

The Minister shall cause a copy of every such Proclamation and map to be deposited without fee in the District Land Registry Office for the district in which such land is.

If land not under Land Transfer Act.

- (1.) If such land was not theretofore subject to the provisions of “The Land Transfer Act, 1870”—
 - (a.) The District Land Registrar shall cause an entry of such Proclamation and map to be made under the proper head or title in the index-book of the Deeds Registry Office:
 - (b.) Upon such deposit such land shall thereupon become subject to the provisions of “The Land Transfer Act, 1870.”

If land under Land Transfer Act.

- (2.) If the said land was theretofore subject to the provisions of “The Land Transfer Act, 1870”—
 - (a.) The District Land Registrar shall register such Proclamation and map against such land:
 - (b.) Any person in possession of the Crown grant, certificate of title, or other instrument evidencing the title to such land, shall, upon receiving notice from the District Land Registrar in that behalf, deliver up to him such grant, certificate of title, or other instrument, to be wholly or partially cancelled as the case may require; and any person refusing or neglecting so to deliver up any such instrument shall be liable to a penalty of not more than fifty pounds:
 - (c.) The District Land Registrar shall retain every such instrument, and shall, when required by the registered proprietor of the land not taken, issue to him free of charge a certificate of title for such land unless no Crown grant has been issued for the same.

Compensation not payable until certificate of title delivered up.

- (3.) No person having in his possession such Crown grant, certificate of title, or other instrument, shall be entitled to claim or receive any compensation under this Act, until such certificate is delivered up to the District Land Registrar.

13 Owner may require small parcel of land severed to be taken.

If any land, not situate in a town or built upon, is so divided by the land taken for any work as to leave on either side thereof a less quantity of land than half a statute acre, the Minister or local authority, as the case may be, shall, if so required by the owners of such small parcel of land, and except as hereafter provided, take such parcel together with the other land taken for such work.

But, if such owner has other land adjoining into which such small parcel may be conveniently thrown, the Minister or local authority, as the case may be, may, instead of taking such small parcel of land, throw the same into such adjoining land, by removing the fences and levelling and soiling the sites in a sufficient and workmanlike manner.

14 Land not wanted may be sold, &c.

If it is found that any land held, taken, purchased; or acquired at any time under this or any other Act or Provincial Ordinance, or otherwise however, for public works, is not required for public use, the Governor may, by an Order in Council, publicly notified and gazetted, cause the same to be sold under the following conditions:—

- (1.) A memorial, as provided by the eleventh section, shall be laid before the Governor by the Minister or local authority at whose instance the land was taken, describing so much of the said lands as are not required for public use, accompanied by a map thereof, certified by the Surveyor-General or a certificated surveyor appointed by him in that behalf, and setting forth the reasons for disposing of the same:
- (2.) The Minister or local authority, as the case may be, shall cause the land proposed to be sold to be valued by one or more competent valuers, and shall offer such land at the price fixed by such valuation, first to the person then entitled to the land from which such land was originally severed; and, if he refuse it, or cannot after due inquiry be found, then to the owner of the adjacent lands, or, if there be more than one such owner, then to each of such owners, in such order as the Minister or local authority thinks fit; and, if no such owner accepts such offer, may cause the land to be sold by public auction:

Governor may sell to Education Board or public bodies by private contract.

Provided, however, that the Governor may, without complying with any of the last foregoing provisions, sell by private contract to any Education Board any lands taken for Government works, and may execute such grants, conveyances, and assurances as may be necessary to give effect to such sale:

15 Application of purchase-money.

The purchase-money of land so sold shall be paid into the Public Account, or the ordinary fund of the local authority, as the case may be, and shall form part of the fund appropriated to the execution of the works in respect of which the said lands were taken under this Act.

16 Order in Council to constitute transfer of title.

Upon the payment of the purchase-money, the Minister or local authority, as the case may be, shall file in the District Land Registry Office for the district in which such land is a copy of the Order in Council directing the sale of the said lands, together with the certified map thereof, and shall indorse thereon a certificate of the payment of the purchase-money, with the name and address of the purchaser.

Such Order in Council and certificate shall be deemed to be a memorandum of transfer of such land to such purchaser within the meaning of "The Land Transfer Act, 1870," and the Registrar shall register the same and deal therewith in the manner in the said Act provided.

17 Lands not wanted for immediate use may be let.

If any land at any time taken for public works under this or any other Act or Provincial Ordinance is not required for immediate use, the Minister or local authority by whom the land was taken may let the same upon such terms as he or they respectively think fit for any period not exceeding twenty-one years, and the rents and profits thereof shall be paid into the Public Account, or the ordinary fund of the local authority, as the case may require.

18 Mines and minerals excluded from land taken for public works.

When any land is or has been taken at any time by the Governor or by any local authority under the authority of any Act or Provincial Ordinance for the construction of any public works, the Governor or such local authority shall not thereby be deemed to have acquired or to acquire any right to any mines of coal or other minerals whatsoever under any land so taken, except only such parts thereof as shall be necessary for the proper and effectual construction, support, and maintenance of such works.

And all such mines and minerals (excepting as aforesaid) shall be deemed to be and to have been excepted out of the Proclamation or other instrument under the authority whereof the land is, or has been, or may be, taken.

19 Land may be taken for any public work after such public work has been completed.

If any public work shall have been or is executed, and after the execution thereof it is found that any person has any estate or interest in any land occupied by such work, or that any land required therefor has not been taken in the manner required by law, or that the provisions relating to the taking of such land have not been fulfilled; or

If it is found desirable for the use, convenience, or enjoyment of any public work executed or in course of execution, to take, purchase, or acquire other land;

Such land, or the estate or interest of any person therein, may be taken, purchased, or acquired in the manner provided by this Act.

All the provisions of this Act relating to the taking, purchasing, or acquiring of land, and to payment of compensation or purchase-money therefor, shall apply, except that in such cases

Section ten shall be read as if the words "generally the nature of the works proposed to be executed and," the words "of the works proposed to be executed and," and the words "to the execution of such works or," were omitted therefrom:

Provided that, if any person shall have received payment or been awarded compensation for such land, or by reason of his being injuriously affected by

such public works, such person, and all persons claiming by, through, under, or in trust for him, shall not be entitled to any further payment or compensation.

20 Certain lands not to be entered on without consent.

Nothing in this Act contained shall authorize the entry upon or taking, except for the purpose of a railway or other work to be made under the authority of a special Act, of any land occupied by any building, yard, garden, orchard, vineyard, plantation, or ornamental park or pleasure-ground, or the cutting or injuring of any ornamental tree or shrub, or the taking of any stone or other material from any quarry, brick-field, or like place commonly used for the taking material therefrom for sale, without the consent in writing of the owner first obtained.

21 Protective fences to be made before entry on lands.

Nothing in this Act shall authorize the commencement of any work, or the removal of any fencing upon any lands, until fences have been first made, so that all lands adjacent to land taken or works executed under this Act shall be as effectually protected against damage by trespass as before the commencement of such works.

22 Contracts to purchase land required for public works may be made, and conveyances taken.

Notwithstanding anything contained in this Act, the Minister or local authority may enter into agreements to purchase the estate and interest of any person in any land required for public works, upon such terms and conditions as he or it shall think fit.

In any such case the purchase-money shall be paid,—

- (1.) If payable by the Minister, out of moneys appropriated by Parliament for the works in respect of which the land is purchased;
- (2.) If payable by a local authority, out of the ordinary funds of such authority available for such purposes:

But neither the Minister nor any member of a local authority shall be personally liable for any purchase-money which may become payable under this Act.

The estate and interest so purchased shall be conveyed or surrendered to Her Majesty, or the body corporate represented by such local authority, or, if not incorporated, to some person on behalf of such local authority, as the case may be.

The land so acquired shall be deemed land taken under the authority of this Act; but the provisions of this Act respecting compensation shall not be applicable in any such case.

Power to take Native Lands

23 Power to take roads through Native lands held under certificate or memorial.

The power conferred upon the Governor by “The Native Land Act, 1873,” of taking land held by Natives under Crown grant for roads, shall extend to land owned by Natives under certificate of title or memorial of ownership, but subject to the same limitations.

24 Governor may order works to be undertaken on Native lands.

Whenever it may be necessary to take, any land for any Government work which may be held or occupied by Native owners, under any tenure or for any estate or interest whatsoever, the Governor in Council may order that such work shall be constructed on or through any such land, to be defined in general terms in such Order in Council, without complying with any of the provisions hereinbefore contained.

25 After publication of Order in Council, Governor may take lands.

Upon the gazetting for two months of any such Order in Council, the Governor may take and hold all such lands as may be necessary for the construction of such work, and may enter upon any lands for the purpose of taking surveys or levels, without giving any notice or making any application to any person owning or occupying such lands other than such as may be prescribed by the Order in Council:

Provided that no person shall be entitled by virtue hereof to enter upon any cultivated land so as to damage any crops growing thereon, or on which dwellings of any kind may be erected, without the consent of the person occupying the same.

26 Compensation to be made. Penalty for obstructing or injuring works.

For the purpose of completing the title to lands taken under the powers hereinbefore contained, and carrying out the enactments relating thereto, the following provisions shall have effect:—

- (1.) Compensation shall be made to persons owning or occupying lands so taken, or which may be injuriously affected by the exercise of the powers herein contained, to be ascertained as follows:—
 - (a.) Where the Native title has not been extinguished, the Minister may cause application to be made to the Native Land Court to ascertain what amount of compensation ought to be paid to the persons interested in such land, and who are the persons entitled to be paid such compensation, and what land is affected by the Order in Council issued under the powers herein contained: And after hearing such evidence as may be

- produced before it or may be thought necessary, the Court may make such order or orders as to it shall seem fit.
- (b.) All lands declared in such order to have been taken for such Government work shall, as from the date of the Order in Council, be deemed to have vested absolutely in Her Majesty.
 - (c.) The Court shall have all such authority and jurisdiction in respect of any such application as it would have in any matter within its ordinary jurisdiction, and in addition thereto shall have all the powers and authority of a Compensation Court under Part III. of this Act.
 - (d.) The compensation decided by the Court to be payable to the owners or occupiers of the land taken shall be paid to them as soon as practicable after the making of the order of Court, and interest shall be payable on the sum awarded at a rate not exceeding seven per centum from the date of such order.
 - (e.) Compensation payable under this enactment shall be paid out of moneys appropriated by Parliament for that purpose.
- (2.) Where the title to such land is derived from the Crown, then compensation shall be payable in the manner provided by Part III. of this Act.
 - (3.) Any person who wilfully obstructs any engineer, surveyor, overseer, workman, or other person in the performance of any duty, or in doing any work which he has lawful authority to do under the provisions of this Act, or wilfully and unlawfully cuts down, breaks, removes, or destroys any fence, survey mark, or peg in or upon any land taken under the provisions of this Act, shall be liable to a penalty of not more than fifty pounds for every such offence.
 - (4.) If any person wilfully and unlawfully cuts down, breaks, removes, or destroys any building or bridge in or upon any land taken under the provisions of this Act, he shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any time not exceeding two years, and with or without hard labour.

Part III

COMPENSATION

27 All persons suffering damages entitled to compensation.

Every person having any estate or interest in any lands taken under this Act for any public works, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby given, shall be entitled to full compensation for the same from the Minister or local authority, as the case may be, by whose authority such works may be executed or power exercised.

28 By whom compensation may be claimed.

A claim for compensation may be made by any person seised, possessed of, or entitled to such lands or to any estate or interest therein, whether such person

has or has not the power to sell and convey the same, or by any executor or administrator; and any such claim on behalf of *cestuis que* trust, wards, lunatics, or idiots, may be made by their trustees, guardians, or committees respectively.

29 Claims to be determined by Compensation Court.

All such claims shall, except where express provision is otherwise made, be determined by a Compensation Court constituted as hereinafter provided, and hereinafter called “the Court.”

30 Claimant and respondent.

Any person so claiming compensation is hereinafter called “the claimant”; and the Minister in the case of Government works, and the local authority in the case of local works, are hereinafter respectively called “the respondent.”

31 Procedure where lands taken out of Native reserves for public works.

In any claim for compensation for lands taken for any Government work out of Native reserves vested in the Governor under any Act relating to Native reserves, the Governor, for the purpose of such claims being determined by a Compensation Court under this Act, or otherwise by arbitration, shall be the claimant, and the Minister the respondent.

The Minister, on behalf of Her Majesty, may enter into agreements with the Governor for the purchase of any such lands in the manner prescribed by section twenty-two.

32 Procedure in unrepresented absentee claims.

Upon the application of the Minister to a Judge of the Supreme Court, accompanied by an offer of the amount of compensation in the matter, and upon such proof as shall be satisfactory to such Judge that any person who has any right or title to prefer a claim for compensation is absent from the colony, or is not known, or has no known agent in the colony, such Judge shall direct such claim to be heard by a Compensation Court under this Act, and shall appoint an Assessor to act in such Court on behalf of such person.

Thereupon such Court may proceed in the examination of such claim as in ordinary cases where the claimant is present.

In every such case the Public Trustee shall represent the claimant, and may act in his behalf in all matters incident to the claim or the hearing thereof; and the moneys payable as compensation shall be paid into the Public Trust Office, and shall there remain subject to the provisions of section sixty-four.

33 Claimant to send claim to respondent. Second Schedule.

In order to obtain compensation, the claimant shall serve upon the respondent a claim in writing, in one of the forms in the Second Schedule, describing the lands in respect of which he makes such claim, the nature of his interest

therein, the nature of the loss or injury on account of which he claims compensation, and the amount which he claims.

Service of notice of claim on Minister.

Such claim shall be served, in the case of the Minister, by being left at a public office in such place as the Minister appoints by public notice; and, in the case of a local authority, by being left at its office; and the claimant shall be entitled to receive from the person for the time being in charge of any such office a receipt, stating the day on which such claim was served, and any such officer refusing to give such receipt on demand shall be liable to a penalty of not more than five pounds.

34 Claims, if not admitted within sixty days, may be filed in the Supreme Court.

If the respondent does not, within sixty days after receiving such claim, give notice in writing to the claimant that he does not admit it, the claimant may file a copy of his claim, together with the receipt for the service thereof, in the Supreme Court; and such claim, when so filed, shall be deemed to be and shall have the effect of a judgment of the Supreme Court, and may be enforced in the manner provided in section sixty-four.

35 Respondent may make an offer; if refused, the claimant may require claim to be settled in Compensation Court and appoint Assessor. Third Schedule.

If the respondent does not admit the claim, he may, within the said sixty days, by notice in writing, make the claimant an offer of the sum which he is willing to pay in lieu of the amount claimed, and may file a copy of such notice in the Supreme Court.

If the respondent makes no such offer, or if the claimant does not accept the offer so made, the claimant may file a copy of his claim in the Supreme Court, together with a notice in the form in the Third Schedule that he requires such claim to be heard by a Compensation Court; and he shall, in such notice, state the name and address of some person whom he thereby appoints to act as Assessor in such Court, and shall give notice in writing to the respondent of the appointment of such Assessor.

If the claimant does not file such notice as aforesaid within thirty days after the time limited for the respondent to make an offer as hereinbefore provided, the claimant shall be deemed to have abandoned the proceedings in respect of his claim, and shall not be entitled to prosecute the same further, except with the leave of the Supreme Court, to be granted upon such terms and conditions as to the time and mode of procedure, and as to costs of the application for such leave, as the Court thinks fit.

36 Respondent to appoint Assessor within twenty-one days.

The respondent shall, within twenty-one days after receiving such last-mentioned notice, also appoint an Assessor, and shall give notice in writing of such appointment to the Registrar of the Supreme Court and to the claimant; and, if the respondent fails within the said twenty-one days to make such appointment, the Registrar of the Supreme Court shall forthwith appoint an Assessor on behalf of the respondent, and give notice thereof to the claimant.

37 Minister similarly may require to have claim heard and determined by a Compensation Court.

In any claim or matter arising for compensation for any lands taken or to be taken, and where a written offer on behalf of the Minister has been made therefor to the owner of such lands not less than thirty days previously, and the same has not been accepted, the Minister shall have the same right to require such claim to be heard by a Compensation Court as is given to a claimant by the thirty-fifth section.

Third Schedule.

And, at any time after the said Minister has filed a copy of the notice in the aforesaid section mentioned, such Minister may give notice in the form or to the effect contained in the Third Schedule, requiring such claim to be heard.

38 Consent of Assessor to act. Fourth Schedule.

No appointment of any person to be an Assessor shall be valid, unless such person signs the consent and declaration in the form contained in the Fourth Schedule. And every such consent and declaration shall be appended to the notice of appointment of such Assessor, and shall be filed in the Supreme Court.

39 Judge and two Assessors to constitute Court.

The Judge of the Supreme Court and the two Assessors so appointed shall, except as hereinafter provided, constitute the Compensation Court, and the Judge shall be the president thereof.

40 When claim less than £500, Judge may appoint deputy.

If the amount claimed be less than five hundred pounds, the Judge may appoint some other person, being a District Judge, Registrar of the Supreme Court, Sheriff, Resident Magistrate, or Justice of the Peace, to be a member of and to preside in the Court in his stead.

41 Deputy may be objected to as interested.

If either the claimant or respondent object to the person appointed under the last preceding section as being interested in the case, the Judge shall, unless he considers such objection to be frivolous or unreasonable, cancel such appoint-

ment, and appoint some other such person as aforesaid, having no interest in the claim, to preside in the Court in his stead.

42 When claim exceeds £500, Judge, with consent of parties, may appoint a District Court Judge to preside.

If the amount claimed exceeds five hundred pounds, and the claimant and respondent shall consent in writing that the claim should be heard before a Judge of a District Court, the Judge of the Supreme Court may order that such claim shall be heard accordingly, and may appoint a Judge of a District Court to preside in the Court instead of the Judge of the Supreme Court.

43 Parties may agree a single person to constitute the Court.

If, before the first sitting of the Court to hear any claim as hereinbefore provided, the claimant and the respondent make and execute an agreement in writing to the effect that the claim in question shall be heard and determined by one person named in such agreement, such agreement shall also state the fee (if any) to be paid such person for his services, and shall be filed in the Supreme Court.

The person so named shall be deemed to be the Compensation Court, and shall appoint a time and place for the sitting thereof, and shall hear and determine the claim accordingly.

44 Court may hear other claims by consent.

A Court constituted to hear any claim under this Act may, by consent in writing of the claimant and respondent in any other claim, in respect of the same or of any other lands, hear and determine such last-mentioned claim as though the Court had been constituted to hear and determine the same.

45 Assessors may be objected to as interested parties.

If either party, before the first sitting of the Court, objects to the appointment of any Assessor, on the ground of his being interested in the claim to be heard, the Judge may, upon the application of such party, unless the objection appears to be frivolous or unreasonable, order the Assessor so objected to to be discharged, and the person having appointed him shall, within twenty-one days after such order, in like manner appoint another in his stead.

46 If Judge interested, Governor to appoint another Judge.

If the Judge is interested in the claim to be heard, the Governor shall appoint some other Judge of the Supreme Court, or some other fit person, to be a member of and to preside in the Court in his stead.

47 Case of member of Court dying or unable to act.

If, before the award is given, any member of the Court dies or becomes incapable of acting, in the case of the Judge the Governor shall forthwith appoint

some other Judge of the Supreme Court, or some other fit person; and, in the case of an Assessor, the person having made the appointment shall forthwith appoint a fresh Assessor, in the place of the member so dying or becoming incapable of acting: But the inquiry before the Court shall proceed as if no such change in its members had taken place.

48 Sittings of Court.

The President shall appoint the time and place for the first sitting of the Court, and shall, not less than ten days before such sitting, cause a notice of such time and place to be served on each Assessor and upon the claimant and respondent severally.

49 Hearing to proceed in absence of parties.

If the claimant or respondent fails to appear before the Court at the time and place appointed, the Court may, upon proof of the service of the notice of such sitting, proceed to hear and determine the claim in his absence.

Either party may appear either personally or by his counsel or solicitor, or be any agent appointed in writing in that behalf.

50 Court may adjourn.

The Court, or, in the unavoidable absence of the Judge or either of the Assessors, any member of the Court, may adjourn its sittings so often as is necessary to a future day, of which the President or such member, as may be the case, shall give notice in open Court; and no further notice of such future sitting shall be necessary.

51 Court to examine witnesses, &c.

The Court shall have power to summon all persons required by either party or by the Court to give evidence before them, and may examine all such persons upon oath, and may require the production of any documents, plans, or ether papers in the custody or control of either party.

The claimant and respondent, and their counsel, solicitors, witnesses, and all other persons attending the said Court, shall have the same rights and privileges, and shall be subject to the same obligations, fines, and penalties, as in the trial of an action at law in the Supreme Court.

The Court shall, until they shall have made their award, have all the powers of the Supreme Court, so far as may be necessary for inquiring into and determining the claim referred to them.

The Court may receive such evidence as it thinks fit, whether the same is strictly legal evidence or not.

52 Questions to be determined by majority.

Every question before the Court shall be determined by a majority of the members thereof, but shall be deemed to be the award of the whole Court.

53 If Court unable to agree.

If the Court is unable by a majority to agree upon an award, the Judge shall discharge the Assessors, and cause notice thereof to be given to the claimant and respondent; and a fresh Court shall be constituted in the manner provided by the thirty-fifth and following sections, who shall hear the case *de novo*.

54 Where questions of law alone to be determined, Judge may sit alone, and determine the same.

In any case brought before a Compensation Court where any question of law shall arise, the Judge may hear and determine the same without the Assessors; or he may, if he think fit, state a case for the decision of the Supreme Court thereon.

Such determination or decision shall be followed by the Compensation Court on making their award.

55 Fees to Assessors hearing claims.

Every Assessor shall be entitled to a fee for every day upon which he attends a sitting of the Court in respect of each claim heard therein, the amount of such fee to be fixed by the Judge in each case, regard being had to the length of the sitting and the importance of the case.

56 When claim not more than £100, two Justices to be the Court.

If the amount claimed be not more than one hundred pounds, the case shall be heard and determined by any two Justices of the Peace having no interest in the case, without Assessors, in the Resident Magistrate's Court nearest to the land in respect of which the claim has arisen; and such Justices shall constitute the Compensation Court for the purpose of determining such claim; and in respect of any such claim the words "Supreme Court," and "Registrar of the Supreme Court," in this Part of this Act, shall be taken to mean respectively the Resident Magistrate's Court and the Clerk of the said Court.

Proceedings in such case.

All the proceedings in such last-mentioned Court in respect of any such claim, up to and including the making of the award, shall be had and taken in the same manner and with the like power and authority as in the case of proceedings in the ordinary jurisdiction of such Court; but the award shall be filed in the Supreme Court in the manner provided in section sixty-four.

57 Court to fix amount of costs.

The Court shall fix and determine the amount of the costs of the inquiry, and shall include the same in their award, and shall direct by whom such costs shall be paid.

Court may refuse or apportion costs.

The Court may in any case declare that no costs shall be awarded, and the fact shall be stated in the award. It may declare that a gross sum shall be awarded in respect of such costs without specifying the same, or may apportion any such costs between the parties to the proceedings in such manner or proportion as may be thought just.

Such costs shall include all reasonable costs and charges incurred in the inquiry, including the fees of Court, fees payable to Assessors, the expenses of witnesses, and the employment of counsel, solicitors, or agents, including the costs between solicitor and client.

But if the sum awarded does not exceed three-fourths of the amount claimed the claimant shall not be entitled to recover any costs, unless the Court shall otherwise direct.

58 Costs may be deducted from compensation awarded.

Costs payable by the claimant may be deducted from the compensation payable to the claimant under the award; and, if such costs exceed the compensation payable, the award shall be for the payment by the claimant of the amount of such excess.

59 Liability to pay rates not to be deemed interest in a case.

No member of the Court shall be deemed to be interested in any case solely on account of his liability to pay rates on which the compensation awarded may become a charge.

60 How award to be estimated.

In determining the amount of compensation to be awarded, the Court shall take into account severally the value of the land or interests in land, including riparian rights, taken, and the extent to which any adjacent lands in which the claimant has an interest are or are likely to be injuriously affected, either by severance or by the nature of the works in question, and shall also take into account, by way of deduction from the amount of compensation to be awarded, any increase in the value of such adjacent lands likely to be caused by the execution of such works.

61 Amount of compensation.

The Court may award one gross sum as the compensation to be paid to the claimant on all accounts, or they may determine that no compensation is payable.

62 Award not void for informality.

No award of a Compensation Court shall be void through any error or omission in matter of form.

63 Award to be in writing, and final as to amount, but not as to title.

The Court shall make its award in writing, which shall be drawn up and signed by the President as soon as conveniently may be after the making thereof; and the President shall deliver or transmit the same to the Registrar of the Supreme Court, to be by him filed in the said Court.

Such award shall be final as regards the amount awarded, but shall not be deemed to be final as regards the right or title of the claimant or any other person to receive the same, or any part thereof.

64 When title doubtful, compensation or purchase-money to be paid into Public Trust Office.

If any doubt or dispute arise as to the right or title of any person to receive any compensation awarded under this Act, or any purchase-money or compensation agreed to be paid by the Minister or a local authority under this Act,—

Enforcement of award.

- (1.) The respondent may, within the period of sixty days after such award shall have been filed as aforesaid, cause such sum to be paid into the Public Trust Office; and the Public Trustee shall deal with and apply such moneys in such manner and shall pay the same to such persons as the Supreme Court, upon the application of any of the parties interested, may order. If the sum awarded be not paid into the Public Trust Office as aforesaid, then, at the expiration of the said period of sixty days, the award so made and filed as aforesaid shall have the effect of a judgment of the Supreme Court, and may be enforced accordingly, subject, however, to the provisions of this Act.

Procedure when purchase-money paid into Public Trust Office.

- (2.) The Minister or local authority, respectively, may pay the purchase-money or compensation into the Public Trust Office; and the Supreme Court may make such order in relation thereto, upon the application of any of the parties interested, as it thinks just and proper; and the Public Trustee shall deal with and pay such purchase-money or compensation in accordance with such order.

Order as to costs.

- (3.) In any case which may be heard or disposed of by the Supreme Court under the preceding provisions of this section, such Court may order that all or any costs which may have been incurred in or in relation to such case, either before the Compensation Court or the Supreme Court, shall be paid by such of the parties, whether claimant, respondent, or a person interested as aforesaid, or that such costs be apportioned between such parties in such manner respectively, as

the Court may order; and such Court may alter, vary, or revoke any order previously made by a Compensation Court as to costs.

65 How compensation in ease of limited interests to be dealt with.

If the compensation is awarded or has been agreed to be paid as last aforesaid in respect of lands or any interest therein taken from any person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same, or in respect of any permanent injury done to such lands, such compensation shall be dealt with as follows, that is to say,—

- (1.) If the compensation amounts to two hundred pounds or upwards, it shall be paid into the Public Trust Office, and the Public Trustee shall apply the same, upon an order of the Supreme Court made on the petition of any person claiming any estate or interest in the same, to one or more of the following purposes, that is to say,—
 - (a.) To the discharge of any debt or incumbrance affecting the said lands, or affecting any of the lands settled therewith, or to the same or like uses, trusts, or purposes;
 - (b.) In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, or purposes;
 - (c.) In removing any buildings on the said land, or substituting others in their stead;
 - (d.) In the purchase of such debentures, bonds, or other securities issued by or on behalf of the Government of the colony under the authority of any Act of the General Assembly, as the Supreme Court may direct, to be settled in the same manner as the said lands;
 - (e.) In payment to any party becoming absolutely entitled thereto.
- (2.) If the compensation is more than twenty but less than two hundred pounds, it shall be paid into the Public Trust Office, and the Public Trustee may apply the same to any of the above-mentioned purposes, but no order of the Supreme Court shall be necessary.
- (3.) If the compensation is not more than twenty pounds, it shall be paid to the parties entitled to the rents and profits of the said lands, or, in case of the disability or incapacity of such parties, to their respective husbands, guardians, committees, or trustees, as the case may be.

Saving as to partial interests of an absolute character.

But the provisions of this section shall not be deemed to prevent any person who has a partial or other qualified interest in land to which he is solely entitled, and which he may absolutely sell or dispose of, from receiving any compensation in respect of such interest to which he may be declared entitled under any award, or which has been agreed to be paid to him as aforesaid.

66 Public Trustee may invest compensation money.

Until any compensation deposited in the Public Trust Office under this Act is applied as provided by the last preceding section, the Public Trustee shall invest the same in the manner in which any moneys in the Public Trust Office may by law be invested, and shall pay the annual proceeds thereof to the party for the time being entitled to the rents and profits of the lands in respect of which such compensation was awarded.

67 Public Trustee to be guardian, &c., in certain cases.

In the case of any person being an infant, lunatic or idiot, or *cestuique* trust, not having a guardian, committee, or trustee within the colony, the Public Trustee shall, for the purposes of this Act, be deemed to be the legal guardian, committee, or trustee of such person.

68 Case of mortgaged lands taken.

If the land in respect of which compensation is awarded is subject to a mortgage, such compensation, or so much thereof as is required for the purpose, shall, upon the application of the mortgagee, be paid in discharge of the mortgage debt or of part thereof, so far as the compensation will go; and if such land is a part of lands subject to a mortgage debt, and the mortgagee requires a part of such debt to be discharged, the Court shall determine what part of the compensation shall be paid in discharge of part of the mortgage debt, so that the remaining part of the mortgaged lands shall constitute as good security as theretofore for the part of the mortgage debt remaining undischarged.

The words "mortgage debt" in this section shall include the interest payable on such mortgage up to six months beyond the day on which notice was received by the mortgagee of the lands affected being taken under this Act.

69 Case of lands subject to rent-charge.

If the said land is subject to any rent-charge, the Court shall determine what part of such compensation shall be paid to the party entitled to such rent-charge in redemption thereof; and, if the said land is part of land subject to any rent-charge, the Court shall determine what part of such rent-charge shall be redeemed, and what part of such compensation shall be paid in the redemption thereof, so that the remaining part of the lands subject to such rent-charge shall be as good security as theretofore for the part of the rent-charge remaining unredeemed.

The expression "rent-charge" includes "annuity."

70 Case of lands on which rent is payable.

If the said land is part of land in respect of which any rent is payable, the Court shall determine what part of such rent shall cease to be payable, so that the remaining rent payable shall bear the same proportion to the whole rent as the

value of the land in respect of which compensation is awarded bears to the value of the whole land.

71 Compensation not to be claimed after five years.

No claim for compensation under this Act, or any Act repealed by this Act, shall be made in respect of any lands taken after a period of five years after the date of the Proclamation taking the said lands, or in respect of any damage done after a period of twelve months after the execution of the works out of which such claim has arisen or may hereafter arise; and all right and title to any compensation in respect of such lands, or for damage arising out of the execution of such works, shall after such period absolutely cease.

To be computed from original date of claim arising.

The provisions of this section shall also extend and apply to all claims for compensation of any kind which arose before the passing of “The Public Works Act, 1876,” or which may arise under that Act or any Act thereby repealed after the passing of this Act, so far as such Acts or any of them are capable of having effect.

72 When right of road reserved, no compensation payable.

No compensation shall be payable in respect of any land taken for a road or railway under this Act, the right to make a road over which is otherwise reserved to the Crown, and has not lapsed or become barred, or in respect of any road or public reserve upon which a railway is made under this and any special Act.

73 Out of what funds compensation to be paid.

Moneys payable as compensation or as costs under this Act shall—

- (1.) If payable by the Minister, be paid out of moneys appropriated by Parliament for the works in respect of which the claim for compensation arises;
- (2.) If payable by a local authority, be paid out of the ordinary fund of such local authority available for such purposes:

but neither the Minister nor any member of a local authority shall be personally liable for any compensation which may become payable under this Act.

Part IV SURVEYS

74 Surveyor may enter any lands.

Any surveyor may enter from time to time, during the daytime, upon any land, with such assistants as he thinks fit, for the purpose of making any survey which he is authorized to make, and may fix or set up thereon trigonometrical

stations, survey pegs, marks, or poles, and dig or bore into such land, so as to ascertain the nature of the soil, and set out the lines of any works thereon.

Sufficient survey defined.

Provided that no survey for the purposes of “The Land Transfer Act, 1870,” shall be deemed sufficient unless executed by a certificated surveyor.

75 Surveyor to give notice and produce written authority.

In all cases where possible, reasonable notice shall be given by the surveyor to the occupier (if any) of the intention to enter upon such land; and such surveyor shall, when required so to do, produce to the owner or occupier of any land on which he has entered the written authority under which he is making a survey.

76 Penalties for destroying survey marks.

Every person who without due authority destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole, fixed or set up by any such surveyor, or who wilfully obstructs such surveyor or his assistants in carrying on such survey, shall be liable for every such offence to a penalty not exceeding fifty pounds.

77 In respect of Native land, consent of Minister requisite.

Nothing herein contained shall authorize any surveyor to enter upon any Native land for any of the purposes herein mentioned until he shall previously have obtained in each case a special authority in that behalf signed by the Minister himself, or may be acting under any Order in Council made under the special provisions of Part II. of this Act respecting the power to take Native lands.

Part V ROADS AND RIVERS

Maintenance of Roads

78 Definition of “road.”

Throughout this Act, the word “road” means a public highway, whether carriage-way, bridle-path, or footpath, and includes the soil of—

- (1.) Crown lands over which a road is laid out and marked on the survey maps;
- (2.) Lands over which right of way has in any manner been granted or dedicated to the public by any person entitled to make such grant or dedication;
- (3.) Lands taken for roads under the provisions of this Act or any other Act or Ordinance:

and, unless repugnant to the context, includes all roads which have been or may hereafter be set apart, defined, proclaimed, or declared roads under any

law or authority for the time being in force, and all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging, upon the line and within the limits of the road.

79 Roads vested in the Crown.

All roads and the soil thereof, and all materials and things of which such roads are composed, or which are capable of being used for the purposes thereof, and are placed or laid upon any such roads, are hereby declared to be and are hereby vested in Her Majesty.

80 Governor may make government roads.

- (1.) The Governor may make Government roads within any part of New Zealand, and any road so made shall be deemed to be a Government road.
- (2.) The Governor may, by Order in Council duly gazetted, declare that any road so made shall be a county or district road, as may be thought fit, and such road shall become a county or district road accordingly.
- (3.) The Governor may, in like manner, declare that any county or district road, or any road the possession or control of which is in any manner vested in Her Majesty, shall be a Government road.
- (4.) The powers hereby conferred may be exercised from time to time, and any Order in Council made hereunder may be revoked or altered, and any road declared to be a county or district road may again be declared to be a Government road, and any such road may again be declared to be a county or district road, as often as occasion shall require.

81 County Council may make county roads.

The County Council may make county roads throughout the county, except within the limits of a borough, and may, by an order publicly notified, from time to time declare any district road within the county to be a county road; and may, with the consent of the Road Board, in a similar manner revoke such order, and on such revocation the road to which it relates shall again become a district road.

82 Powers of Governor and County Council over government and county roads.

All the powers, rights, duties, and liabilities hereby vested in and imposed upon a Road Board in respect of a district road shall in the case of a county road be vested in and imposed upon the County Council, and in the case of a Government road shall be vested in and imposed upon the Governor, instead of in or upon the Road Board.

83 Roads in outlying districts.

All roads in an outlying district, or on the boundaries thereof, shall be deemed to be county roads; and where the whole of "The Counties Act, 1876," is not brought into force, such roads shall be deemed to be Government roads.

84 Roads to be under control of Road Boards.

All roads, except as herein otherwise provided, shall be under the control of, and may be constructed and repaired by the Road Board of the district in which such roads are, and shall be called district roads.

85 Case of road in two districts.

When a road on the boundary of two districts lies lengthways partly in one district and partly in another, or between two districts, although not actually on such boundary, the whole of such road shall be under the control of the Road Board of such one of the two districts as the County Council directs.

County Council to give the control to either Road Board;

- (1.) The Road Board of either of the said districts may, after giving notice thereof to the Road Board of the other district, apply to the County Council to give such direction; and the County Council shall, after giving to each Road Board not less than seven days' notice thereof, hold a meeting, and shall, after hearing such statements as the members of either Board desire to make, direct under the control of which of the two Boards the road in question shall be.

And to divide the cost of maintenance.

- (2.) The County Council may direct what proportionate part of the cost of constructing and maintaining such road shall be borne by each district; and the Road Board having control of the road may recover from the other Board its share so determined of any reasonable costs incurred in constructing or maintaining such road.

Governor to exercise powers in certain cases.

In cases where the whole of "The Counties Act, 1876," is not in operation in any county, all the powers, duties, and functions vested in a County Council by this section shall vest in and be exercised and performed by the Governor.

86 Roads on boundaries of boroughs.

Where a road lies lengthways on the boundary of a borough, such road shall be under the control of and shall be maintained by the borough.

- (1.) The Council of the borough may recover from the Road Board of the road district, or, if there be no road district, from the Council of the county of which any such road is also a boundary, a reasonable share of the annual cost of maintaining such road.
- (2.) The share of such cost for any one year, if not settled by mutual agreement, may be recovered in any Court of competent jurisdiction.

87 Case of a river between two districts, or two counties.

- Every bridge, ferry, or ford across a river at a point where the two banks— (1.) Are in different road districts, or one bank is in a road district and the other is in an outlying district, shall be under the control of the county in which such banks are;
- (2.) Are in different counties, shall be under the control of the Governor, or of such one of the two counties as the Minister directs; and he may from time to time alter the control from one county to the other as he may deem expedient;
- (3.) Where the whole of “The Counties Act, 1876,” is not in operation, such bridge, ferry, or ford shall be under the control of such local authority as the Minister from time to time directs:

but the half cost of constructing or maintaining such bridge, ferry, or ford may be recovered, in the first case by the County Council from the districts on either side, in the second case by the Governor from the counties on either side, or by the county having the control of such bridge, ferry, or ford from the other county, as the case may be, and in the third case by the local authorities substituted in the place of a County Council.

88 Case of a river between borough and county, or between two boroughs.

If a bridge, ferry, or ford crosses a river where one bank thereof is situate in a borough and the other bank thereof is situate in another borough or in a county, the Minister may direct which local authority shall have the control thereof; but the cost of constructing or maintaining any such bridge, ferry, or ford shall be contributed to *pro rata*, in proportion to the rateable values of property in such boroughs and county respectively.

Such contribution may be recovered in any Court of competent jurisdiction by the local authority having the control of such bridge, ferry, or ford from the other local authority, as the case may be.

89 Road, bridge, &c., deemed to be entirely within district of authority having control thereof.

Every road that lies in part within two districts, and every bridge, ferry, or ford connecting two districts, shall, for all purposes of constructing and maintaining the same respectively, be deemed to be entirely within the limits of the jurisdiction of the local authority having, under the provisions of this Act, the control of such road, bridge, ferry, or ford.

And such local authority is hereby authorized to construct, maintain, and do all other things necessary towards or for the construction and maintenance of any such road, bridge, ferry, or ford. •

Contributory costs of maintenance.

As between local authorities liable to contribute towards the cost of maintaining any bridge, ferry, or ford connecting two districts, such cost shall be

deemed to be the actual cost in excess of any tolls collected in respect of such bridge, ferry, or ford, or the rental or produce of such tolls if they be leased.

90 Powers of a Road Board over district roads.

The Road Board shall have full power to do all things necessary to construct and maintain in good repair any road under its control, and therein especially to do the following things:—

- (1.) To make surveys for the laying out of new roads;
- (2.) To alter the line of any road: Provided that no new line of road shall be laid out by the Road Board over Crown lands without the consent of the Land Board;
- (3.) To increase or diminish the width of any road;
- (4.) To take land under the provisions of this Act for the purpose of making a new road, or altering or increasing the width of any road;
- (5.) To determine what part of a road shall be a carriage-way, and what part a footpath only;
- (6.) To alter the level of any road except as herein otherwise provided;
- (7.) To stop up any road as hereinafter provided;
- (8.) To stop the traffic upon any road temporarily, whilst being constructed or repaired;
- (9.) To close any public highway or bridge for such period as may be deemed advisable when it is found necessary to execute such repairs thereto as will prevent the use of the same for traffic;
- (10.) To enter upon any lands and cut therein such ditches and drains as may be required to drain water from any road, and to keep such ditches and drains open at all times for the flow of water; and to erect floodgates therein, and to open or close the same as the Board thinks fit, doing as little damage as may be;
- (11.) To enter upon any uncultivated and unfenced land adjacent to a road, and make thereon and use a temporary road whilst the road is being constructed or repaired;
- (12.) After twenty-four hours' notice to the occupier to enter upon any land, other than land occupied in a *bond fide* manner as a garden or ornamental shrubbery, and dig and take any stone, gravel, or other material therefrom, or from any river or stream, except within fifty yards above or below any bridge, dam, or weir, and so nevertheless as not to divert or interrupt the course of such river or stream, or damage any building, road, or ford.

Subject to compensation for injury done, &c.

Reasonable compensation shall be paid for any injury done and material taken; and, where any Road Board and the owner or occupier of land do not agree as

to the compensation, the same shall be determined as provided for in Part III. of this Act.

91 Level of road on a boundary of a road district to be agreed on by both Road Boards.

Where a road crosses the boundary of a district or meets another road on such boundary, it shall not be lawful to alter the level of such road or roads at such point of crossing or meeting, unless both the parties having the control of the roads respectively agree as to the new level at such point.

92 Authority may recover expenses for repairs to roads damaged by excessive weights.

Where it appears to the authority which is liable or has undertaken to repair any highway, whether a main road or not, that extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner, from any person by whose order such weight or traffic has been conducted, the amount of such expenses as may be proved to the satisfaction of the Court having cognizance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid:

Proviso.

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

Stopping of Roads

93 Road not to be stopped, except a way is left to adjacent land.

No road shall be stopped unless and until a way to the lands adjacent convenient as that theretofore afforded by the said road is left or provided, unless the owners of such lands give consent in writing to such stoppage, and no road along the bank of a river shall be stopped either with or without consent.

94 Mode of stopping a road.

No road shall be stopped except in the manner and upon the conditions following:—

- (1.) The Board shall have a plan prepared of the road proposed to be stopped, and, a survey made and a plan prepared of the new road (if any), showing the lands through which it is proposed to pass, and the owners and occupiers of such lands so far as known.

- (2.) The said plans shall lie open to public inspection at the office of the Board or other convenient place during eight consecutive weeks, and the Board shall, once in each week during such eight weeks, give public notice of the proposed alteration and of the place where the plans are on view.
- (3.) A notice of the proposed stoppage, printed on linen or calico, shall be fixed in a conspicuous place at each end of the road to be stopped.
- (4.) The Board shall, by public notice, call a meeting of the ratepayers of the district to be held on any day after the expiration of fourteen days after such notice.

“Ratepayer” means any person entitled to vote at the election of a member of the Road Board.

- (5.) The Chairman of the Road Board, or, in his absence, some other member of the Board appointed by the meeting, shall preside thereat; and such meeting shall decide by a majority of the ratepayers present whether or not the road shall be stopped.
- (6.) If the meeting decide that the road be not stopped, such decision shall be final, and no proceedings for stopping such road shall be taken by the Board for one year thereafter. If the meeting decide that the road may be stopped, the Board shall send the plans aforesaid, with a full description of the proposed alterations, and with their decision thereon, to the County Council.
- (7.) The County Council shall consider the proposed alterations and any objection made thereto by any person likely to suffer injury thereby, and shall confirm or reverse the decision of the ratepayers; and the decision of the County Council shall be final.

If the Council reverse the decision of the ratepayers, no proceedings shall be entertained by the County Council for stopping such road for two years thereafter.

- (8.) If the County Council confirm the decision of the ratepayers, the Board may declare, by public notice, that the said road is stopped; and such road shall thereafter cease to be a public highway.
- (9.) If the whole of the Counties Act is not in force in any county, the term “County Council” in this section shall be taken to mean the Resident Magistrate within whose district the road proposed to be stopped is situated, who shall have all such powers of a County Council as are applicable in any such case.

95 How the land of stopped road to be disposed of.

The land occupied by any road so stopped, except on the bank of a river, may be sold under the following conditions:—

- (1.) The Chairman of the County Council, or the Resident Magistrate (as the case may be), shall, in writing under his hand, certify that the said road has been stopped as by law required, and order that the same shall be sold.

- (2.) The Road Board shall cause the land proposed to be sold to be valued by one or more competent valuers, and shall offer such land, at the price fixed by such valuation, first to the person then entitled to the land from which such land was originally severed; and, if he refuse it, or cannot after due inquiry be found, then to the owner of the adjacent lands; or, if there be more than one such owner, then to each of such owners in such order as the Board thinks fit; and, if no such owner accept such offer, may cause the land to be sold by public auction.
- (3.) The purchase-money of lands so sold shall be paid into the District Fund, and shall form part of such fund.
- (4.) Upon payment of the purchase-money the Chairman of the Road Board shall file, in the District Land Registry Office for the district in which such land is, a copy of the order directing the sale of the said land, together with a map thereof certified in the manner required by subsection two of section eleven of this Act, and shall indorse thereon a certificate of the payment of the purchase-money, with the name and address of the purchaser; and such copy of the order so indorsed shall be deemed to be a memorandum of transfer of such land to such purchaser within the meaning of "The Land Transfer Act, 1870," and the Registrar shall register the same, and deal therewith in the manner in the said Act provided.

96 Exchange of land for roads.

The land occupied by any road so stopped may be exchanged for other land under the following conditions:—

- (1.) The Board may agree with the owner or owners of any land required for a road, to be made in lieu of a road stopped as herein provided, to exchange the whole or any part of the land occupied by such last-mentioned road for the whole or any part of the land so required.
- (2.) The Chairman of the County Council or the Resident Magistrate as aforesaid shall certify in writing under his hand that such road has been stopped as by law required.
- (3.) The Chairman of the Road Board shall indorse on a copy of such certificate that the land occupied by such road so stopped has been exchanged for other land, and the name and address of the exchangee.
- (4.) And such copy of certificate so indorsed, together with such map as is mentioned in subsection four of the last foregoing section, shall, when filed in the District Land Registry Office for the district in which such land is, be dealt with in the manner directed by the said subsection four, and shall confer upon the exchangee the same rights and titles therein mentioned.

97 Governor may sell stopped roads not required for public use.

Any road stopped under the authority of any Act or Provincial Ordinance may be sold or exchanged by the Governor, if the land occupied by the stopped

road is not required for public use; and the Governor may execute all necessary grants and assurances, and do all things requisite to carry into effect any such sale or exchange.

98 Where land of stopped road sold or exchanged, Governor may perfect sale or exchange.

Whenever it shall be made to appear to the satisfaction of the Governor—

- (1.) That any road has been stopped under the authority of any Act or Provincial Ordinance, and the same or any part thereof has heretofore been sold or exchanged, or agreed to be sold or exchanged, whether the contract for such sale or exchange be in writing or not; or
- (2.) That any contract has been entered into for the sale or exchange of any land for the purposes of a road, and whether such land consists wholly or in part of closed road-lines;

then, and in any such case, and for the purpose of completing and perfecting such agreement, sale, or exchange, the Governor may issue such grants or execute such conveyances, transfers, and other assurances as he may deem necessary, or may direct the issue of any other instrument of title authorized by law.

99 If road stopped for benefit of private person, to be at his sole expense.

If a road is proposed to be stopped upon the motion and solely for the convenience of any private person, such person shall pay all the costs incurred thereby, including the costs of constructing a new road, if in the opinion of the Board such new road be necessary, in the place of the road stopped; and the Board shall take no steps towards stopping such road until such person first pays into the District Fund the whole estimated cost of the proposed alteration.

Injuries to Roads

100 Penalties for injuries to roads, or for allowing tailings, &c., to flow into road or public drain.

If any person not having lawful authority or the written permission of the Board does knowingly or wilfully any of the following things:—

- (1.) Encroaches on a road by making or erecting any building, fence, ditch, or other obstacle, or planting any tree or shrub, thereon;
- (2.) Leaves on a road any timber, stones, or other material, so as to obstruct or endanger persons using the road;
- (3.) Digs up, removes, or alters in any way the soil or surface or scraping of a road;
- (4.) Fills up, alters, or obstructs any ditch or drain, whether on a road or elsewhere, made by or under the control of the Board to carry water off the road;

- (5.) Allows any water, tailings, or sludge, or any filthy or noisome matter to flow from any building or land in his occupation on to a road, or into any ditch or drain declared to be a public drain;
- (6.) Causes or allows any timber or other heavy material, not being wholly raised above the ground on wheels, to be dragged on a road;

he shall be liable to a penalty of not more than ten pounds for every day upon which such offence is committed or suffered to continue, and a further sum equal to the cost incurred by the Board in removing any such encroachment or obstruction, or in repairing any injury done to any road, ditch, or drain as aforesaid: Provided that no penalty shall be imposed unless the information or complaint is laid by authority of the Board or the Chairman thereof.

101 Power to remove tree overhanging a road.

If any tree or hedge overhangs a road so as to injure it, or any gorse be allowed to spread from any hedge into any road so as to injure the same, the Board may order the part of such tree so overhanging to be removed, or such hedge to be lowered or trimmed, or such gorse to be grubbed up and removed, as they direct.

Penalty for not trimming gorse, &c.

Any occupier of the land in which such tree or hedge is, who does not within one month after the receipt of such order obey the same, shall be liable to a penalty not exceeding five pounds for every day during which such order is not obeyed, and a further sum equal to the cost incurred by the Board in removing such tree, or lowering or trimming such hedge, or grubbing up or removing such gorse:

Limit to exercise of power.

Provided that the power granted to the Board hereby shall only be exercised upon the report of any two members of the Board, after together viewing the place, that such injury is being done, or upon the certificate of a competent surveyor to the like effect.

Offences on Roads

102 Penalties for offences on roads.

If any person does any of the following things upon a road:—

- (1.) Rides or drives any horse or vehicle furiously;
- (2.) Rides or drives any horse or vehicle on a footpath constructed for foot-passengers only;
- (3.) Tethers any animal on or so that it may be on a road;
- (4.) Drives any entire horse or any savage or dangerous animal loose;
- (5.) Plays any game to the annoyance of passengers;

- (6.) Pitches any tent, booth, or stall;
- (7.) Makes any fire without written authority from the Road Board;
- (8.) Discharges any firearms or fireworks on a road, or within fifty feet from the side of a road;
- (9.) Unlawfully obstructs in any manner the free passage of persons passing along a road;
- (10.) Drives any vehicle in his charge, sitting thereon, without having reins to guide the horse or other animal drawing the same;
- (11.) Goes to sleep in any vehicle in his charge, so as to leave any animal drawing the same without proper guidance;
- (12.) Leaves any such vehicle by going to such a distance as to be unable to control the animal drawing the same;
- (13.) Does not keep any vehicle driven by him on the left or near-side of the road when meeting, and on the right or off-side when passing another vehicle, or does not leave a reasonable portion of the road for any vehicle passing him;
- (14.) Impedes the traffic or endangers the safety of passengers by a load unduly projecting from the side of any vehicle or beast of burden; every person so offending shall be liable to a penalty not exceeding five pounds.

103 Penalty for being drunk in charge of vehicle or animal.

If any person is drunk when in charge of any animal or vehicle upon a road, he shall be liable to a penalty of not more than five pounds, or at the discretion of the Justices to be imprisoned, with or without hard labour, for not more than fourteen days.

104 Animals straying on roads may be impounded.

If any animal is found straying on a road which is fenced on both sides, or having a fence on one side and the sea on the other side, it shall be lawful for the Board or for any other person to cause such animal to be taken to the nearest public pound, whether in or out of the district in which it is found straying, to be dealt with as in the case of animals lawfully impounded.

Tolls

105 Toll-gates, &c., may be placed on roads, and tolls collected.

The Board may cause tolls to be collected upon any district road, and for that purpose may do the following things:—

- (1.) May appoint and discharge collectors of tolls:
- (2.) May place on a road toll-houses, gates and bars, and ferry-houses, posts, and other things necessary for working a ferry, and provide boats and punts for the use of any ferry:

- (3.) May from time to time fix the scale of tolls to be collected at any tollgate or ferry upon all persons, animals, or vehicles passing the same, and may revoke or alter such scale:

But no toll-gate shall hereafter be established within one mile from the boundary of any borough, except for a bridge or ferry.

106 Conditions under which tolls may be taken.

No toll shall be payable unless the following conditions are observed, that is to say, unless—

- (1.) The scale of tolls is publicly notified for fourteen days before becoming first payable;
- (2.) The name of the toll-gate or ferry, and the name in full of the collector, and the scale of tolls, are painted in black letters not less than two inches in length on a white board, and placed in a conspicuous place on or near the toll-house or ferry-house, so as to be conveniently read by every person from whom a toll is demanded.

107 Persons exempt from tolls.

The following persons, animals, and vehicles, and every animal and vehicle employed solely in carrying such persons or their tools and materials, shall be exempt from tolls:—

- (1.) The Governor and every person in attendance on the Governor:
- (2.) Every member of any military, militia, volunteer force, or armed constabulary when on duty, or going to or returning from parade, and in the uniform (if any) of his corps:
- (3.) Every policeman and constable on duty, and every prisoner in his custody:
- (4.) All passengers by any public conveyance; but this exception shall not apply to such passengers at any ferry at which tolls are lawfully taken from foot passengers:
- (5.) Every child going to or from school:
- (6.) Every animal, the property of any person residing within one mile of a toll-gate, going to or from water or feed:
- (7.) Every animal and cart employed solely in drawing manure:
- (8.) Every person, animal, or vehicle in respect of which toll has been paid at the same toll-gate at any time since the midnight previous.

But the three last-mentioned exceptions shall not apply to tolls payable at a ferry.

108 Penalty for falsely claiming exemption from tolls.

Any person falsely claiming exemption from toll shall be liable to a penalty of not less than two nor more than five pounds, and the proof of being exempt shall lie with the person claiming to be so.

109 Tolls may be let on certain conditions.

The Board may let or farm the tolls payable at any toll-gate or ferry, together with the buildings and other things belonging thereto, on the following conditions:—

- (1.) Such letting shall be for a period not exceeding one year.
- (2.) Such letting shall be by public auction or sealed tenders, after due public notice given.
- (3.) Security in two good sureties shall be given for the rent to be paid.
- (4.) The scale of tolls shall not be altered during such lease without the consent of the lessee, except under the provisions of the one hundred and twentieth section.
- (5.) The lessee or any person appointed by him in writing shall be deemed to be for all purposes a collector duly appointed by the Board.

110 Collector may distrain goods of person refusing to pay toll.

If any person refuse to pay a toll for which he is liable, the collector may seize and distrain any animal or vehicle on account of which such toll is payable, or any goods or chattels earned in such vehicle or on such animal, and, unless the toll, with reasonable charges for the seizure and distress, and for the maintenance of such animal, be paid within four days, may sell such animal, vehicle, goods, or chattels by public auction, and may apply the proceeds of such sale in the payment of such toll and charges, and shall pay the residue, if any, to the owner on demand.

111 Collector may recover toll and compensation instead of distraining.

Any collector may, instead of making such seizure and distress, recover from any person refusing to pay a toll for which he is liable the amount of such toll, together with such compensation for loss of time in recovering the same as the Court hearing the case determines.

112 Penalty for evading a toll.

Any person leaving a road and returning thereto within three hundred yards on either side of any toll-gate, so as and with the intent to evade paying toll, shall be liable to a penalty not exceeding five pounds for each such offence.

113 Penalty for forcible evasion of toll.

Any person attempting by force to evade the payment of any toll, or resisting or obstructing any toll-keeper in the execution of his duty, shall be liable to a penalty not exceeding twenty pounds.

114 Penalty for plying for hire across a stream near a bridge or ferry.

It shall not be lawful for any person to hire or to ply for hire in any boat or punt across any river, stream, or creek within half a mile in a straight line from any public ferry in working order, or bridge open for traffic across the same, at which tolls are payable; and any person so hiring or plying for hire in any boat or punt shall for every such offence be liable to a penalty not exceeding five pounds.

115 Penalties for offences by toll collectors.

If any toll collector does any of the following things,—

- (1.) Demands a larger toll than that payable by law,
- (2.) Does not maintain the board required by the one hundred and sixth section in a legible condition,
- (3.) Refuses, when required so to do, to give his name, or gives a false name, to any person of whom he has demanded a toll,
- (4.) Is drunk when in the discharge of his duty,
- (5.) Obstructs any person in passing when the lawful toll has been tendered,
- (6.) Uses any abusive or offensive language to any person passing, he shall be liable to a penalty not exceeding five pounds.

116 Toll-gates in different districts may be made to clear one another.

The Road Board may make any toll-gate clear any other toll-gate in the district, and the County Council may by an order declare, or any two or more Road Boards may agree, that any toll-gate in any road district shall clear any toll-gate in any other district; and no toll shall be payable at a gate so cleared by any person showing the ticket hereinafter mentioned.

117 Notice of gates cleared to be painted on toll-board.

Whenever any toll-gate clears any other toll-gate in the same or any other district, the words “Clears the [*naming the toll-gate cleared*] gate” shall be painted upon the board mentioned in the one hundred and sixth section.

118 Toll tickets.

Any person passing through a toll-gate may demand from the collector a ticket showing that he has passed the gate on that day; and any collector refusing to give such a ticket on demand shall be liable to a penalty not exceeding five pounds.

119 Penalty on transferring, &c., a toll ticket.

If any person, with intent fraudulently to evade any toll, transfers such a ticket to another person, or uses a ticket so transferred, or alters or forges such a ticket so as and with intent fraudulently to evade any toll, he shall be liable to a penalty not exceeding five pounds.

120 County Council, or Governor in Council in certain cases, may abolish toll-gate or diminish tolls.

If the County Council is of opinion that any toll-gate is not necessary, or that the road in respect of which the tolls are taken is not kept in proper repair, or that the tolls are excessive and unduly burdensome, the County Council may, after due inquiry into the case, by an order publicly notified, abolish such toll-gate, or may direct the Road Board having control thereof to diminish the the tolls taken thereat, as such Council thinks fit; and such toll-gate shall thereafter be abolished, or the tolls thereat diminished, in compliance with such order.

Provided that nothing herein contained shall deprive the lessee of such tollgate of the right which he may have of compensation for any loss which he may sustain thereby.

In any case where the whole of "The Counties Act, 1876," is not in force in any county, the Governor in Council may exercise within such county all the powers conferred on County Councils by this section.

121 Compensation if tolls not levied.

Nothing in this Act contained shall be construed to limit or interfere with the right to levy tolls on any bridge, ferry, tramway, or toll-gate granted to any person or persons during the period for which such tolls have been so granted, except on payment of adequate compensation.

122 Existing tolls to be tolls under this Act.

All tolls which may be lawfully taken at the time of the passing of this Act shall, subject only to the exemptions contained in this Act, be deemed to be tolls made and collected under the authority of this Act; and all the provisions of this Act shall apply thereto.

*Special Powers as to Construction of Roads in Certain Cases***123 Construction of Government roads in districts sparsely populated, and where land not surveyed.**

Notwithstanding anything in this Act contained, whenever under any Act or authority the Governor is empowered to construct a Government road in any part of the colony which is sparsely populated, and where the land through which such road is intended to pass may not be surveyed, and where it may

be impracticable to complete an immediate survey of such land, the Governor shall have and may exercise the following powers:—

- (1.) He may issue a Proclamation setting out the two termini of the proposed road, and the general direction and width thereof, together with such other particulars as he may be able to furnish respecting it.
- (2.) Upon the issue of such Proclamation he may enter on any lands affected or deemed to be affected thereby, for the purpose of surveying any land required for the road, and may set up pegs or marks thereon.
- (3.) At any time after the issue of such Proclamation he may take all such land as may be necessary for the construction of such road, not exceeding the width specified in such Proclamation, and may cause the construction of the road to be proceeded with as if the land required for the same had been duly taken under this Act.
- (4.) The land so taken and used for the road shall be deemed to be a Government road within the meaning of this Act, although the provisions of Part II. of this Act have not been complied with.
- (5.) Within one year from the issue of the Proclamation aforesaid the Governor shall cause all necessary steps to be taken for ascertaining and defining the land actually required for the said road, and he may issue a Proclamation setting out such lands, which shall be deemed to have vested in Her Majesty, to the same extent and with the like incidents as if such Proclamation had issued under section twelve of this Act.
- (6.) Compensation shall be payable in respect of any land taken or affected by the exercise of the powers herein conferred; and all the provisions of Part III. of this Act shall extend and apply accordingly.

RIVERS

124 Board of Conservators to have powers conferred on Road Boards for taking of lands for protective or other works.

The Board of Conservators for any river district constituted under any Act relating to the management of rivers shall, within their district, and in respect of protective or other works about such rivers, have, for the taking of lands necessary for such protective or other works, all the powers conferred by this Act upon Road Boards for taking lands for roads and public works within road districts.

125 When damage to a road by a river, Board of Conservators empowered to contribute to purchase land for diversion of road.

Whenever it is found desirable, in any case when any stream causes any damage to a road or highway, to purchase land for the diversion of such road or highway, the Board of River Conservators of the district in which such road or

highway lies may contribute from their funds to the purchase of the necessary land for such diversion, or the construction or maintenance thereof.

126 Rower to alter or divert rivers, streams, and watercourses, when desirable for the safety or maintenance of any public work.

Whenever it is found desirable for the safety or proper maintenance of any public work constructed or authorized under the authority of Her Majesty, or the Governor, or the Government of the colony, or by or under the provisions of any Act of the General Assembly, to protect the banks of, or to alter or divert, either wholly or partially, any river, stream, or watercourse, the Governor, by Proclamation publicly notified,—

- (1.) May declare that the banks of such river, stream, or watercourse shall be so protected, or its course so altered or diverted, and thereupon the protection of the banks, or the alteration or diversion of such river, stream, or watercourse, as the case may be, shall be a public work within the meaning of this Act:
- (2.) May declare any work or works of the description last mentioned which have been heretofore executed, or partially executed, to have been so executed for the purposes therein mentioned, and thereupon such work or works shall for all purposes be taken and deemed to have been executed under the authority of this Act.

Part VI RAILWAYS

127 Definition of “railway.”

The word “railway” includes the land upon which any railway is made or authorized to be made under this or any special Act, and all buildings and erections of every kind thereon. And, except where inconsistent with the context, such word, when used in this Act, also includes all works, wharves, and jetties, the property of Her Majesty, whether of a permanent or a temporary nature, used for the purposes of or in connection with such railway, and all materials and things of which such railway, buildings, erections, works, wharves, or jetties is or are composed, or which are capable of being used for the purposes thereof, and are erected, placed, or laid upon any such land.

Land purchased for a railway, and land on which works constructed for the use of a railway, to be deemed part of the railway.

Any land taken, purchased, or acquired for a railway shall be deemed and taken to be part of the railway, notwithstanding that such land is situate at a distance of more than five chains from the middle line of the railway.

128 Railways vested in the Crown.

Every railway, together with all the engines, rolling-stock, machinery, buildings, and appurtenances thereof of what kind soever, shall, except as herein otherwise provided, be vested in Her Majesty.

129 Railways to be made only under special Act.

Every railway shall be made only under the authority of a special Act, which shall state as nearly as may be the line of the railway and the two termini thereof.

130 Procedure for making railway.

When any railway is to be constructed under the provisions of any special Act,—

Governor to proclaim limits within which railway is to be made.

- (1.) The Governor shall issue a Proclamation defining the middle line of the railway or any part thereof, and may from time to time, by a Proclamation revoking or amending such former Proclamation, alter such line in any manner or to any extent which may be found necessary for the construction of such railway, within the provisions of the said special Act.

Plans to be deposited in Supreme Court.

- (2.) The Minister shall cause to be made, and to be deposited in the office of the Registrar of the Supreme Court, such maps and plans as may be necessary to explain the said line and the land through which the same passes; and such maps and plans shall be referred to in any such Proclamation, and shall form part thereof.

Such maps and plans shall lie open to public inspection at all reasonable hours.

After Proclamation, land may be occupied.

- (3.) At any time after the publication of any such Proclamation the Minister may enter upon any land required to be occupied for the construction of the railway, and do all things thereon which he is empowered by this Act to do for the construction of the railway, without being deemed to commit any trespass thereby.

Governor may take land for railway.

- (4.) The Governor may, at any time and from time to time after the deposit of such maps and plans, by Proclamation, take any land required for the railway.

The Proclamation, when gazetted, shall be conclusive evidence that the land therein referred to is vested in Her Majesty in fee-simple, freed and discharged from all mortgages, charges, claims, estates, and interests of what kind soever, for the use of the railway.

Every such Proclamation, together with a map of the land taken, certified as prescribed by subsection two of section eleven, shall be deposited as provided

by section twelve, and all things shall be done and happen thereupon as in cases provided for by that section.

Before or after the time of taking land notice to be given to person whose land is taken.

- (5.) At any time either before or after issuing any Proclamation taking land for a railway, the Minister shall cause notice to be given to every owner or occupier of such land, so far as they can be ascertained, and in such notice shall state that the land therein described is taken or intended to be taken for a railway, and that claims for compensation in respect thereof must be sent to the Minister pursuant to the provisions of this Act. With such notice a plan of the land taken or intended to be taken shall be sent.

The omission to send any such notice or plan shall not invalidate any Proclamation taking the same.

Proclamations to be indefeasible.

- (6.) No Proclamation taking land shall be impeached or defeasible on any ground whatsoever.

Sheriff may deliver possession of lands.

- (7.) If any person in possession of any land taken, purchased, held, or acquired for a railway refuses to give up possession, or hinders the Minister or any person appointed by him from taking or entering into possession, the Minister may issue his warrant to the Sheriff of the Sheriff's district within which the land is, to deliver possession of the same to the person appointed in the warrant to receive the same; and upon the receipt of the warrant the Sheriff shall deliver possession of any such lands accordingly.

Costs.

- (8.) The costs accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained from the compensation, if any, then payable to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress. And upon application by any person appointed in that behalf by the Minister to any Justice for that purpose, he shall issue his warrant accordingly, and such costs shall be paid into the Public Works Account.

Provisions as to notices of objections not to apply.

The provisions of sections ten and eleven of this Act shall not apply to a railway made by the Governor under the authority of any Act, or a Proclamation issued by virtue of any Act, unless it is otherwise provided in any special Act.

131 Powers to make railway and railway stations, &c.

Subject to the restrictions herein specified, the Minister may do the following things in respect of any railway authorized by a special Act:—

- (1.) May make the railway upon, over, or under any land necessary for the construction thereof, lying along the middle line defined in any such Proclamation, or within a distance of five chains on either side thereof; and for this purpose may construct works of every description and of every material necessary to the making thereof:
- (2.) May direct that any part of such line of railway may be constructed on and along any part of any road; and no person or body shall be entitled to any compensation for any road or land so used or occupied, or for or in respect of any inconvenience or damage arising out of the execution of such works to any lands fronting or adjoining any such road:
- (3.) May make the railway upon, over, or under any road, street, railway, tramway, or public reserve along such line, and may alter the level of any road, street, railway, tramway, or public reserve for such purpose:
- (4.) May make the railway across any arm of the sea, river, stream, or navigable water, but so as not to impede the navigation upon any navigable water, except as provided by a special Act:
- (5.) May alter the course or the level of any river not navigable, or of any stream, watercourse, ditch, or drain:
- (6.) May make drains or conduits on or under any land adjacent to and for the purpose of carrying water from off the railway; and may at all times maintain the same in good repair:
- (7.) May remove or alter any drain or sewer, or any pipes or other material for the supply of water or of gas belonging to any company or person within or beyond the limits of the railway:
- (8.) May make or construct all such buildings, stations, engines, machinery, piers, wharves, roads, approaches, and other works in connection with the railway, as may be thought necessary:
- (9.) May do all acts necessary for making, maintaining, altering, repairing, and using the railway.

132 Right of way at railway crossings.

Where any part of a road, except where it crosses a railway on a level, is taken for a railway, such part of the road shall thereafter cease to be a highway.

Where a road crosses a railway on a level, the public right of way at such crossing shall cease whenever any engine or carriages on the railway are approaching and within a distance of a mile from such crossing; and shall at all other times extend only to the right of crossing the line of railway with all convenient speed, but not to stopping or continuing thereon.

133 Right of way on joint railway and common bridges.

Where a bridge is used for railway and ordinary traffic jointly, the public right of way on such bridge shall extend only so far as shall be defined in any by-law made under the one hundred and forty-fourth section.

134 Maintenance of public roads at railway crossings.

On the level.

- (1.) Where a road or street crosses a railway on the level, the Minister shall maintain and metal the road and crossing on the railway, and for a distance on each side of thirty-three feet outside the centre-line of any line of rails so crossed; and the local authority having charge of the roads or streets in the district, shall maintain and metal the approaches to such crossing, subject to the approval of the Minister.

Over or under railway.

- (2.) Where a road or street crosses over or under any railway by means of a bridge, the structure of such bridge shall be maintained by the Minister; but the road or street on or under such structure shall be maintained and metalled by the local authority having charge of the roads or streets in the district.

135 Where railway made on public reserves, no compensation payable.

Where any Crown lands or any land reserved for public purposes are taken for a railway, such land shall cease to be Crown lands or public reserve within the meaning of any laws in relation to such lands, but shall be deemed to be land reserved for the use of the railway, and no compensation shall be payable in respect of any such land, except for improvements made thereon.

136 Alterations in roads, drains, pipes, &c, to be made without detriment to the public or to owners.

Where it is found necessary for the construction of a railway to alter any road street, tramway, watercourse, or drain, or any other public work, or any water-pipe or gas-pipe for the supply of water or gas belonging to a private person or company such alterations shall be made in such manner as to interfere as little as possible with the work so altered, and so as to afford to the public and to every person entitled to use the same an equal use and convenience as before such alteration.

Plans of such alterations to be agreed on with owners.

Before commencing any such alteration, the Minister shall cause a plan thereof to be prepared, and to be submitted to the local authority under whose control the work proposed to be altered is, or to the owner of such sewer, waterpipe or gas-pipe, or other work as the case may be.

Two Justices to settle disputes.

If such local authority or owner object to the proposed alteration, the Minister shall appoint a competent engineer to confer with such authority or owner, and to agree with them or him as to the manner in which such alteration shall be made; and if no agreement can be come to between the parties, the matter shall be referred to two Justices of the Peace, who shall make such order therein as they think fit, and the alteration shall be made in accordance with such order.

137 Land may be occupied temporarily.

Except as and subject to the conditions hereinafter provided, the Governor may temporarily occupy and use any land for the purpose of constructing or repairing a railway, and may do the following things thereon:—

- (1.) May take therefrom stone, gravel, earth, and other materials;
- (2.) May deposit thereon any such material;
- (3.) May form and use temporary roads thereon;
- (4.) May manufacture bricks or other materials thereon;
- (5.) May erect workshops, sheds, and other buildings of a temporary nature thereon.

Twenty-one days' notice of occupation to be given.

The Engineer or other person having the charge of the railway shall, before occupying or using any land as herein provided, and except in the case of accident to the railway requiring immediate repair, give to the owner or occupier thereof not less than twenty-one days' notice in writing, and shall state in such notice the use proposed to be made of such land.

Justices to decide if occupation necessary, and to settle conditions.

The said owner or occupier may, within ten days after receiving such notice, and after giving notice to the said Engineer or other person of his intention so to do, apply to any Justice of the Peace, who may thereupon summon such Engineer or other person to appear before two Justices of the Peace at a time and place to be named in such summons.

If it appears to the said Justices that the use proposed to be made of the said lands is unreasonable and unnecessary, or that other neighbouring lands are more fitting to be used for the purpose proposed, the said Justices may, by writing under their hands, order that the lands in question shall not be occupied or used in the manner proposed; or the said Justices may in such order direct that the said lands may be occupied and used, or material taken therefrom, in such manner, and to such extent only, and subject to such limitations and restrictions, as they think fit; and all persons concerned shall be bound by any such order.

138 Owner may require land to be permanently taken.

Provided that the owner of any land temporarily occupied as provided by the last foregoing section for the purposes of a railway may, at any time during such occupation, give notice in writing to the Minister that he requires the said land to be taken for the purpose of the railway; and such lands shall thereupon be taken for the railway in the manner herein provided; and upon the filing of the said notice by such owner in the Supreme Court, the said owner and all persons having any interest in such land may recover compensation as if the same were taken in the manner provided by Part II. of this Act.

139 Tree dangerous to railway to be removed.

If, upon the report of an engineer, the Minister is of opinion that any tree on land adjacent to a railway is likely by falling or otherwise to obstruct the traffic or endanger the travellers thereon, he may cause notice to be given to the owner or occupier of such land to remove such tree; and in default of such removal he may cause the tree to be removed; but such owner or occupier may recover the amount of any cost or damage incurred or suffered by such removal.

140 Penalties for trespassing on railway in course of construction.

Any person trespassing upon any railway in the course of construction, or upon any land occupied or temporarily occupied for the purpose of such construction under the powers hereby given, shall be liable to a penalty not exceeding two pounds.

Any person riding or driving any animal or vehicle upon such railway or land without lawful authority shall be liable to a penalty not exceeding five pounds.

Any such person refusing to leave such railway or land, or to remove such animal or vehicle therefrom, when warned so to do by the overseer, contractor, or any other person in charge of or employed upon such railway, may be seized and detained by such overseer or other person until he can be conveniently taken before some Justice of the Peace, to be dealt with according to law.

141 Railway buildings exempted from local building regulations.

No building or other erection upon a railway shall be subject to any Act, or any by-laws or regulations made under the same, by which any local authority is empowered to regulate the erection, construction, or use of any buildings or erections within the jurisdiction of such local authority.

*MANAGEMENT OF RAILWAYS OPEN FOR TRAFFIC***142 Interpretation of “goods.”**

In this Part of this Act, the word “goods” means goods and chattels of every kind, including live or dead animals.

143 No railway to be opened for traffic except on certificate of Engineer.

No part of any railway shall be open for traffic until an engineer appointed by the Minister for that purpose has reported to him that he has inspected the whole of such part, and all the rolling-stock to be used thereon, and that such railway and rolling-stock are in good and efficient repair, and may be safely and conveniently used for public traffic thereon.

144 Powers of Minister in respect to railways open for traffic.

The Minister may from time to time, by notice gazetted, do the do the following things in respect to railways open for traffic:—

(1.) May fix, alter, or revoke scales of fares, rates, and charges to be paid for,—

Persons carried on or using any part of a railway; or for

Goods carried on a railway, or received on or into, or stored in or delivered from, any wharf, pier, jetty, store, shed, or yard, in connection with a railway; or for

Passengers failing to take out tickets at the booking-office of the station whence they started; or for

Demurrage on the use of any rolling-stock; or for

The use of any cranes, hoists, or other machinery for loading and unloading goods; or for

Goods loaded or unloaded from or into lighters, into or from ships lying at any wharf, pier, or jetty in connection with any railway by the owners, masters, or agents of ships or vessels:

Provided, however, that the Minister, or any person duly authorized by him, may from time to time fix special fares to be paid in lieu of the ordinary fares, upon special occasions, or for such times and throughout such parts of any railway as he may think fit; and, notice of such special fares being previously publicly notified, it shall not be necessary to publish the same in the *Gazette*:

(2.) May from time to time declare certain kinds of goods, of a nature liable to injury, or goods over and above a certain value, to be special goods; all other goods shall be deemed to be ordinary goods;

And every person, before delivering any special goods at any railway station, shall first give to the person in charge of such station a statement in writing declaring the nature and value of such special goods, and the person so in charge shall give a receipt for the same, specifying the nature and value so declared;

And no person, unless he has first delivered such statement and obtained such receipt, shall be entitled to recover, in respect to any loss or damage of or to any such special goods, any greater sum than ten pounds in respect of any such parcel in which any such special goods are packed, fifteen pounds per head in

- respect of any horses, eight pounds per head in respect of any neat cattle, and fifteen shillings per head in respect of any sheep or swine;
- (3.) May from time to time determine what additional sum over and above the charges payable in respect of ordinary goods shall be payable in respect of special goods in proportion to the value thereof;
 - (4.) May impose such conditions and regulations with respect to any of the preceding matters as he may deem advisable;
 - (5.) May from time to time make, alter, or revoke by-laws for the management of railways open for traffic upon the following subjects:—
 - (a.) Regulating the mode in which, and speed at which, engines and all other rolling-stock on a railway are to be propelled or moved;
 - (b.) Making time-tables showing the times of arrival and departure of trains at stations;
 - (c.) Regulating the loading and unloading of carriages and wagons, and the weights they may carry;
 - (d.) Ordering the receipt and delivery of goods, and the storing of the same;
 - (e.) Preventing the smoking of tobacco or any other substance, and committing nuisances on railways;
 - (f.) Keeping accounts of all receipts and expenditure on railways, and conducting the traffic and ticket audit;
 - (g.) Regulating the traffic on roads and bridges used both for ordinary and railway traffic;
 - (h.) And generally for regulating the traffic on railways, and the conduct of all persons employed on or about the same or travelling thereon;
 - (j.) Authorizing and regulating the disbursement of all moneys appropriated by the General Assembly for the purposes of controlling, working, and maintaining the railways and conducting the traffic thereon and in connection therewith;
 - (k.) For organizing, classifying, and paying the staff, and for engaging and dispensing with the services of such persons as may be deemed advisable;
 - (l.) Regulating the manner, times, and places in and at which tickets of any kind shall be purchased by, issued to, used by, and delivered up by passengers on railways.

Provided that such by-laws may authorize the General Manager of Railways to do all things necessary, and to issue all such instructions and regulations as may be deemed advisable, in respect to any such subjects.

All fares, rates, charges, by-laws, and regulations in operation at the passing of this Act shall continue operative until cancelled or confirmed under the provisions of this section.

145 Provisions as to by-laws, &c.

In respect to by-laws made under the last preceding section, the following provisions shall apply:—

To be laid before Parliament.

- (1.) All by-laws shall be gazetted, and a copy thereof shall be laid before Parliament within ten days after its first sitting after the publication thereof.

To be exhibited at stations.

- (2.) A copy of all by-laws painted or printed in black letters on a white ground shall be fixed and maintained in a conspicuous place at every station at which tickets are sold.

Gazette to be evidence.

- (3.) Any such by-law, published in the *Gazette*, shall be evidence in all Courts of the same having been duly made under the authority of this Act.

May have general or only partial application.

- (4.) Any such by-law may apply to railways generally, or to any particular railway or part of a railway.

May impose penalties.

- (5.) Any such by-law may impose a penalty not exceeding ten pounds for the breach thereof.

Penalties on railway servants.

- (6.) Any such by-law may impose a penalty not exceeding one pound upon any person employed in or about a railway, which may be recovered by deducting the same from any salary or emoluments due to the person incurring such penalty.

“Railway Servant Fund.”

Penalties recovered under this subsection shall be paid into an account in the Public Trust Fund to be called the “Railway Servant Fund,” and may be issued and paid in such manner as the Governor directs to or for the benefit of persons employed on railways.

146 As to the custody, carriage, and delivery of goods.

In respect to the receiving, custody, and delivering of goods upon or from a railway, the following provisions shall apply:—

- (1.) All goods received upon any railway shall, subject to any by-laws, conditions, or regulations in that behalf, be deemed to be in the custody of the Minister until delivered to the consignee thereof.
- (2.) In respect of all ordinary goods, and, to the extent of the value declared in respect of all special goods, and in respect of all passengers carried upon any railway, the Minister shall be subject to the same liabilities and obligations,

and shall be entitled to the same rights and protection, as common carriers are subject or entitled to by any laws for the time being in force in New Zealand.

- (3.) The Minister may make special agreements with any persons—
- (a.) For insuring any goods delivered on a railway against all loss or damage from any cause whatsoever;
 - (b.) For insuring the Minister against all liability in respect of any such loss or damage;
- and may increase or diminish the charges payable on such goods.
- (4.) Nothing herein shall be interpreted to subject the Minister to any liability in respect of any goods left on the premises of a railway which, by virtue of any by-law, are so left or deemed to be so left at the risk of the person leaving the same.
- (5.) No action shall be brought against the Minister for any loss or damage of or to any goods in his custody on a railway unless the same is brought within three months after such loss or damage occurs.
- (6.) No such action shall be commenced until one calendar month after a notice in writing is given to the Minister, stating the cause of action, the Court in which such action is intended to be brought, and the name and residence of the parties about to sue.
- (7.) In any such action the defendant may plead a general denial of the allegations contained in the declaration or plaint, and at the time of settling the issues may propose any special matter of defence for issue upon such plea, or in any inferior Court may give any special matter of defence in evidence at the trial without notice.

147 Railway servants responsible for damage.

Every person employed on or about a railway shall be responsible for any damage caused by the wrong-doing or neglect of such person; and the loss occasioned thereby may be deducted by order of the Minister from any salary or emolument due to such person, or may be recovered in a summary way.

148 Penalty for giving false way-bill.

If any person knowingly and wilfully makes a false statement as to the nature, quantity, or value of any goods delivered upon a railway, in any way-bill or other document which by this Act, or by any by-law or regulation made thereunder, he is required to deliver in respect to such goods, he shall be liable to a penalty not exceeding fifty pounds.

149 Delivery outside the limits of a railway of goods carried thereon.

The Minister may cause to be delivered, at places outside the limits of a railway, goods carried on a railway, and for such purpose may do, execute, enter into, and perform all acts, deeds, matters, contracts, and things necessary

thereto: Provided that no such contract shall be entered into for a longer term than three years:

And may from time to time, by public notice, fix and define the limits within which such delivery will be made, and also the rates and charges to be paid therefor; and such rates and charges shall be payable notwithstanding that the person to whom such goods are deliverable shall himself take delivery of the goods at any place within the limits of a railway.

Such rates and charges shall be recoverable in the same manner as is provided by section one hundred and sixty-three in the case of fares and charges under any by-law.

Provided also that this section shall apply only to the delivery of goods from stations within or not more than one mile from any municipality.

150 Goods may be sold for charges in case of refusal to pay.

If any person, for one month after demand thereof made, by any person duly authorized to collect the same, refuses or fails to pay, in respect of any goods, any charges for the same imposed under section one hundred and forty-four of this Act, the Minister may order any such goods to be sold, or, in case such goods have been delivered, then any other goods on the premises of the railway belonging to the same person.

The proceeds of any such sale shall be used, first, for paying the said charges and the expenses of such sale, and the balance, if any, shall be paid over to the owner of the goods sold.

151 Goods left without owner may be sold.

If any goods are left on the premises of a railway, and the owner thereof, or the person liable for the charges thereon, is not known, the Minister may cause it to be publicly notified that such goods will be sold upon a day named in such notice, not less than one month from the publication thereof; and if such goods are not removed, and the charges thereon paid before such day, the said goods may be sold, and the balance of the proceeds of such sale, after paying the charges upon such goods, shall be paid into the Public Trust Office, and shall be paid by the Public Trustee to any person establishing a lawful claim thereto.

152 Dangerous goods not to be sent by railways.

No person shall have any right to send by a railway any goods of a dangerous nature; and if any person attempts to send by a railway, or deposits in any premises of a railway, any box or package containing any such goods, or any goods declared by the by-laws, or publicly notified by the Minister, to be of a dangerous nature, without distinctly marking the contents on the outside of such box or package, or giving notice in writing of the contents to the officer in charge of the station at which such box or package is left, he shall be guilty of a misdemeanour.

153 Subject to regulations, all persons may use railways.

Subject to the provisions of this Act and of the by-laws made thereunder, all persons shall be entitled to use any railway upon payment of the fares or charges fixed for such use.

154 Tables of fares and time-tables to be exhibited at stations.

At every station on a railway at which tickets are sold there shall be fixed and maintained in a conspicuous place for inspection by the public a list of the passenger fares authorized to be taken at such station, and also a timetable showing the times of arrival and departure of each train thereat.

155 Penalties for injuries to railways.

If any person not having lawful authority or the written permission of the Minister knowingly or wilfully does any of the following things,—

- (1.) Encroaches on a railway by making any building, fence, ditch, or other obstacle, or planting any tree or shrub thereon;
- (2.) Digs up, removes, or alters in any way the soil or surface of a railway;
- (3.) Fills up, diverts, alters, or obstructs any ditch, drain, or watercourse, directly carrying water off the railway, or made to protect the same; or does any act whereby any such ditch, drain, or watercourse is stopped, or the natural flow of water therein is obstructed;
- (4.) Interferes with or diverts any drain or watercourse so as to damage or injure any railway;
- (5.) Fells or removes any tree, shrub, or timber growing on any railway,—

he shall be liable to a penalty of not more than ten pounds for every day upon which such offence is committed or suffered to continue, and a further sum equal to the cost incurred in removing any such encroachment or obstruction, or in repairing any injury done to any railway, ditch, drain, or watercourse as aforesaid, or in replacing any such tree, shrub, or timber.

156 Penalties for grave offences on railways.

Whosoever knowingly and wilfully does or causes or procures to be done any of the following things,—

- (1.) Throws stones, gravel, timber, or any rubbish on a railway, or at any engine, carriage, or wagon thereon;
- (2.) Causes or allows any animal to wander on any portion of any railway where such portion is fenced in on both sides;
- (3.) Does any act which obstructs or might obstruct the working of a railway, or endangers or might endanger the lives of persons travelling thereon;

- (4.) Drives or attempts to drive any vehicle or animal across a level crossing or elsewhere on a railway when an engine or any carriages or wagons on the railway are approaching and within a quarter of a mile from such crossing;
- (5.) Places any rolling-stock on a railway without authority to do so;
- (6.) Moves any part of the rolling-stock on any railway, or leaves the same on any part of a railway, not having lawful authority so to do;
- (7.) Attempts to do, or assists or aids any other person in doing, any of the things mentioned in this section,—

shall be liable, on conviction thereof before any two Justices of the Peace, to a penalty not exceeding fifty pounds:

But this section shall not relieve any person from any other penalty or liability to which he may be subject for doing any of the said things.

157 Offences on railways punishable by fine or imprisonment.

Whosoever knowingly and wilfully does or causes or procures to be done any of the following things,—

- (1.) Defaces the writing on any board or any notice authorized to be maintained on any railway, or any railway carriage or rolling-stock, or any railway station;
- (2.) Obstructs any officer or servant employed on any railway in the performance by such officer or servant of his duty;
- (3.) Damages any railway, or any engine, carriage, truck, wagon, or any material or rolling-stock used upon any railway;
- (4.) Behaves in a violent or offensive manner to the annoyance of others, or is drunk, on any railway or in any carriage thereon;
- (5.) Alters any ticket with intent to avoid payment of the proper fare or any part thereof;
- (6.) Sells or offers for sale or transfer any free-pass ticket, or permits any person other than the person to whom such free-pass ticket is issued to make use of any such ticket;
- (7.) Uses or attempts to use any ticket, the time for the proper use of which has expired;
- (8.) Sells or transfers to any person a ticket which has been used for the whole or any part of the journey for which such ticket is issued, or travels or attempts to travel with any such ticket sold or transferred by any such person;
- (9.) Writes any indecent words or draws any indecent or obscene picture or representation on any part of a railway, or on any railway carriage or rolling-stock, or on any fences or buildings upon or adjoining any railway, or near to and conspicuous from any railway,—

shall be liable, on conviction thereof before any two Justices of the Peace, at the discretion of such Justices, to be imprisoned in any public gaol with or

without hard labour for any period not exceeding two months, or to pay a fine not exceeding ten pounds and costs, and in default of payment to be imprisoned in any public gaol for any period not exceeding two months, unless such fine and costs be sooner paid.

158 Offences on railways punishable by fine.

Whosoever knowingly and wilfully does or causes or procures to be done any of the following things,—

- (1.) Travels in a railway carriage of a class superior to that for which he is provided with a ticket;
- (2.) Affixes any placard or bill on any part of the buildings or fences upon or connected with any railway, or sells or attempts to sell any articles on any railway, without being thereto authorized by the Minister;
- (3.) Neglects to shut any gate or slip-panel in any fence forming the boundary of, or upon or adjoining, any railway;
- (4.) Trespasses upon any part of a railway not being a station, platform, or railway-crossing, or other part to which the public are allowed access by law,—

shall be liable, on conviction thereof before any two Justices of the Peace, to pay a fine not exceeding ten pounds and costs.

159 Persons committing certain offences may be arrested.

If any person—

Trespasses upon a railway, and refuses to leave after being warned by any officer or servant employed thereon; or

Is drunk or behaves in a violent or offensive manner to the annoyance of others on the railway or at any station or platform thereof, or in any carriage thereon; or.

Does or attempts to do, or counsels, aids, or assists another person to do, anything which may endanger the lives of persons employed on or travelling on the railway,—

it shall be lawful for any constable or any person employed on or about such railway or carriages, without warrant or other authority, to arrest and detain the person so offending, and to take such person as speedily as conveniently may be before a Justice of the Peace to be dealt with as the law directs; and all persons present shall, when called upon, assist in making such arrest.

160 Monthly account.

The Minister shall, in every month, cause to be prepared a monthly Railways Working Account, showing the total gross receipts accruing from each railway or part of a railway, and the total expenditure upon the working management and maintenance of the same during the previous month.

Details of account.

Such account shall show the gross cost of construction of every railway or section of a railway, including the cost of rolling-stock and all incidental expenditure: Provided that, for the purpose of these monthly returns, the cost as ascertained at the end of each financial year shall be inserted as the cost during the twelve months next ensuing.

And all such accounts shall be gazetted and shall be laid before Parliament.

161 Annual account.

The Minister shall compile from such monthly returns an annual account of the receipts from and expenditure upon each such railway or section of a railway which shall show in a separate column the cost of all renewals of the permanent-way, as distinct from the cost of ordinary maintenance.

162 Receipts from railways to be Consolidated Fund.

All moneys received by way of rents, tolls, fares, freights, carriage, fines or penalties, or otherwise accruing from a railway, shall be paid into the Public Account, and, except as hereinafter provided, form part of the Consolidated Fund.

163 Charges may be recovered summarily.

All fares, rates, and charges may be recovered by and in the name of the manager of the railway, or of any person duly authorized by the Minister in that behalf, as an ordinary debt, in any Court of competent jurisdiction.

*Leasing Railways and Buildings, &c***164 Governor may lease railways.**

The Governor, on behalf of and in the name of Her Majesty, may let on lease any portion of a railway, with the rolling-stock and other appurtenances thereto belonging, to any person willing to take and work the same, subject to the following conditions

- (1.) That such letting shall be by public tender;
- (2.) That the terms and conditions of such lease shall be laid before the General Assembly not less than thirty days before tenders are called for;
- (3.) That such lease contain covenants for maintaining the railway and everything demised therewith in good and sufficient repair, and so leaving it and them at the conclusion or prior determination of the lease;
- (4.) That the lessee use the railway subject to the provisions of this Act and to the by-laws made thereunder for the management of railways;
- (5.) That the lessee find good and sufficient security for the due performance of the conditions of the lease, to such amount as the Governor directs.

165 Unused lands may be leased for stores or other buildings.

The Governor, in like manner, may lease any land not required for railway purposes as sites for storing goods, or erecting buildings thereon, or for such other purposes as may be approved by him.

In every case where the value of the land so let exceeds an annual rental of twenty pounds such letting shall be by public tender or public auction.

No lease shall be for a longer period than twenty-one years.

166 Buildings, workshops, &c., not required for public use, may be leased.

The Governor, in like manner, may also lease any buildings, workshops, or other erections used in connection with such railway, not required for public use, on such terms and conditions as he shall think fit: Provided that such letting shall be by public tender or public auction, and that no lease shall be for a longer period than five years.

167 Sites for refreshment rooms, book-stalls, &c., may be let.

The Minister, in the name and on behalf of Her Majesty, may let, upon such conditions and for such term as he thinks fit, not exceeding three years, any part of the land or buildings attached to a railway for the sale of refreshments, books, or other articles, or the use of the walls of any such buildings or of any part of the rolling-stock for the display of advertisements thereon.

168 Conditions of lease, &c., to be submitted to Parliament.

Particulars of the terms and conditions upon which any land or buildings have been let or are occupied under the last three preceding sections shall be laid before the General Assembly within twenty days after the making of any lease or contract thereunder, if the General Assembly be then in session, and if not, then within ten days after the first meeting of such Assembly next after such lease or contract shall be so made.

No part of any land or buildings belonging to a railway shall be occupied or leased otherwise than in accordance with the aforesaid sections.

169 Powers given to Governor in relation to use of railway, Wharves, &c.

The Governor may from time to time, on behalf of Her Majesty, enter into any agreement or contract with any person for any of the following things:—

- (1.) Providing that such person may, for a period not exceeding twelve months, use any works, buildings, wharves, and jetties constructed and used in connection with a railway constructed by the Governor;

- (2.) Providing that Her Majesty or the General Government may use any works, buildings, wharves, and jetties belonging to any such person, and constructed and used in connection with any railway.

Any such agreement or contract may be for all or either of the above purposes, or such of them as shall be deemed expedient.

170 Powers given to Minister in relation to use of railway, wharves, &c.

The Minister may from time to time, on behalf of Her Majesty, agree with any person for any of the following things:—

- (1.) For laying down any tramway or line of rails in or upon any wharf, quay, or dock, or upon any land vested in any such person for the conveyance of goods, animals, and passengers, or one or other of such purposes, to and from a railway of any kind:
- (2.) For the use of cranes, hoists, weighing and other machines, weights and measures, conveniences or appliances belonging to any such person:
- (3.) For the conveying wholly or partly, as may be agreed upon, or booking through to their destination on a railway, the passengers or luggage carried or conveyed by the steamers, coaches, and other conveyances of any such person:
- (4.) For the rates, fares, or charges to be payable for services performed by or on behalf of any person in connection with a railway of any kind, and for altering the same:
- (5.) For the collection of the dues, tolls, charges, and fares, and for the payment of the same, or any part thereof, collected as aforesaid, to or on behalf of any person with whom any agreement as aforesaid shall have been made:
- (6.) As to the payment to be made the one to the other of such rates and charges as may be fixed in that behalf, and as to the time and mode of payment thereof, and the keeping of accounts between the Governor and such person, in respect thereto:
- (7.) Generally, for the settlement of such terms and conditions as may be necessary to give effect to the foregoing provisions.

BRANCH AND OTHER RAILWAYS

171 Minister may agree for working a branch railway or siding in connection with railway.

The Minister may agree with any person or company desiring to construct a branch railway or siding in connection with any railway constructed under this Act, for the construction and maintenance of so much of such branch or siding as may be within the limits of the railway, and for the working of such branch or siding in connection with the railway, subject, however, to the following conditions:—

Conditions.

- (1.) No such agreement shall have effect for more than ten years from the date thereof.
- (2.) The part of such branch or siding within the limits of the railway shall be deemed to be a part of the railway, and shall be worked subject to any regulations for the time being in force in respect to the railway or such part thereof.
- (3.) In default of payment by such person or company of any moneys payable under such agreement, the Minister may at any time close the connection of such branch or siding with the railway until such payment is made, and no compensation shall be payable to any person whatever for any loss or damage arising from the connection being so closed.
- (4.) The Minister may, at any time after giving three months' notice thereof to the owner or manager of such branch or siding, close or remove the connection with the railway; and such owner shall thereupon be entitled to compensation for any depreciation in the value of any buildings, machinery, or fixtures constructed for the service of such branch or siding, arising out of its disconnection with the railway.

Such compensation shall be ascertained in manner provided in Part II. of this Act so far as applicable, and shall be payable only out of moneys appropriated by Parliament for the purpose.

172 Minister may agree with companies for running powers over lines, &c.

After the completion of any railway constructed by any company or persons under the authority of any Act, and which connects with any railway constructed under this Act, the Minister may agree with the company or persons, upon such terms and conditions as may be thought fit, that any trains or rolling-stock the property of Her Majesty or the Government of the colony may be run upon the railway the property of the company, and that any trains or rolling-stock the property of the company may be run upon any line or lines of railway the property of Her Majesty or the Government of the colony.

Provided that no such agreement shall be made to subsist for more than twelve months.

Provided also that nothing in this or any other Act shall be deemed to authorize any company or person to enter upon any railway the property of Her Majesty or the Government of the colony, for any purpose whatsoever, except with the written authority of the Minister first obtained in that behalf.

Provided further that a copy of such agreement shall be laid before the General Assembly within twenty days after the making of any such agreement, if the General Assembly be then in session, and if not then within ten days after the first meeting of such Assembly next after such agreement shall be so made.

173 And also ns to payments to be made under such agreements, &c.

The Minister and the company may also from time to time, in manner aforesaid, agree as to the payments to be made by the one to the other of them of such rates of charges as may be fixed in that behalf, and as to the time and mode of payment of such charges, and the keeping of accounts between the Government of the colony and the company in respect of any such agreement, and generally may enter into and agree upon such terms and conditions as may be necessary to give effect to this section of this Act.

174 During continuance of agreement, railway to be under this Act.

During the subsistence of any such agreement in respect of any railway not constructed by the Governor, and for all purposes of conducting traffic, and for levying rates, fares, and other charges, and for the operation of by-laws and regulations, such last mentioned railway shall be deemed to be a railway constructed under this Act, and all the provisions of this Act which may be applicable thereto shall be applicable to such railway accordingly.

But nothing in this or the last two preceding sections contained shall give to any corporation or company any power or authority to enter into any contract or agreement which may not be within the scope of the powers or authorities possessed by such corporation or company.

Part VII**RAILWAYS REGULATION AND INSPECTION****175 Interpretation.**

Where used in the following provisions respecting the regulation and inspection of railways,—

“Railway” means and includes all railways and tramways constructed under the authority of this or any other Act or Ordinance, and intended or used for the conveyance of passengers in or upon carriages drawn or impelled by steam or any other mechanical power, or by animals:

“Proprietors” means and includes the proprietors for the time being of any such railway as in this section defined, or in whom any such railway is vested, or who have the management or control of such railway, whether such proprietors be a body corporate or individuals.

*Regulation of Railways***176 General Manager to be appointed for every railway.**

There shall be for every railway on which passengers are carried an officer called the General Manager, and the name and address of each such General Manager shall be registered in the office of the Minister.

177 Mails to be conveyed free of charge. Railway at Governor's disposal in time of war.

The proprietors of every railway shall be bound to convey all public mails in the ordinary trains free of charge; and, in the event of war or civil commotion, the said proprietors shall, on the requisition of the Governor, place the whole of the resources of the railway at his disposal at the charges actually incurred.

178 Governor may construct telegraphs on any line.

The Governor shall have power at all reasonable times to enter into and upon any railway, and to take any necessary land, and erect stations and other buildings thereon for telegraph purposes, and may cause telegraph poles to be erected and an electric telegraph to be established along any railway, whether constructed under this Act or by any person or company whatever, without any compensation or payment for the same; but so nevertheless as not to cause any injury to such railway, or to impede or obstruct the working thereof.

Inspection of Railways

179 Inspectors of railways.

The Governor, from time to time, may authorize any proper person or persons to inspect any railway; and any person so authorized may, at all reasonable times, upon producing his authority if required, enter upon and examine any such railway, and the stations, works, and buildings, and the engines and carriages belonging thereto.

Penalty for obstructing Inspector.

Every person, wilfully obstructing any person duly authorized as aforesaid in the execution of his duty, shall for every such offence be liable to a penalty not exceeding ten pounds.

180 Notice of intended opening of railway.

No railway or portion of any railway, other than a railway constructed by the Governor under this Act or any Act relating to the construction of public works or railways, shall be opened for the public conveyance of passengers until two months after notice in writing of the intention of opening the same is given by the proprietors of such railway to the Minister, and until thirty days after notice in writing is given by such proprietors to the Minister of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers and ready for inspection.

Penalty for opening without notice.

If any such railway or portion of any such railway is opened without such notices, the proprietors of such railway shall forfeit to Her Majesty the sum of two hundred pounds for every day during which the same shall continue open until the said notices are given and have expired.

181 Governor empowered to postpone the opening or working a railway.

If the person appointed to inspect any railway or portion of railway shall, after any inspection thereof, report in writing to the Minister that in his opinion the opening or the continued working of the same would be attended with danger to the public or to the persons employed on such railway, by reason of the incompleteness of the works or permanent way, or the need of necessary repairs in any part thereof respectively, or the insufficiency of the establishment for working such railway, the Governor may from time to time:—

Order the proprietors of such railway to postpone such opening or discontinue such working for any period not exceeding one month at any one time, until it shall appear to the Governor that such opening may take place or such working may be resumed without danger to the public; or,

Where an order has been made under “The Tramways Act, 1872,” may direct that the works thereby authorized shall be completed in accordance with such order and any plans or documents mentioned therein, without suspending the traffic upon the tramway.

Provided always that no such order as aforesaid shall be binding upon the proprietors of any railway unless therewith shall be delivered to such proprietors a copy of the report of the person who inspected the railway on which such order shall be founded.

Penalty for opening contrary to order.

If any such railway or any portion thereof shall be opened contrary to any such order of the Governor, the proprietors of such railway shall forfeit to Her Majesty the sum of two hundred pounds for every day during which the same shall continue open contrary to such order.

182 General Manager to give notice of accidents to the Minister.

The General Manager of every railway shall, within forty-eight hours after the occurrence upon the railway under his management of any accident attended with serious personal injury to the public or to any person employed thereon, give notice thereof by a telegram to the Minister, which telegram may be sent by the officers of the Government lines of telegraph free of charge.

If any such General Manager shall wilfully omit to give such notice, he shall forfeit to Her Majesty the sum of five pounds for every day during which the omission to give the same shall continue.

183 Governor may direct returns of accidents to be supplied.

The Governor may order the General Manager of any railway to make up and deliver to the Minister returns of serious accidents occurring in the course of the public traffic upon the railway under his management, whether attended

with personal injury or not, in such form and manner as the Governor shall deem necessary and require, with a view to the public safety.

If any such returns shall not be so delivered within fourteen days after the same have been required, such General Manager shall forfeit to Her Majesty the sum of five pounds for every day during which he shall neglect to deliver the same.

Provided always that all such returns shall be privileged communications, and shall not be evidence in any Court whatever.

Part VIII

DRAINAGE BY PUBLIC BODIES

184 Definition of “drain” and “public drain.”

The word “drain” in this Act includes every passage or channel on or under ground through which water flows, except a navigable river.

Any such drain made by the Government or by any public Board or Commissioners before the passing of this Act, or made or declared to be a public drain under this Act, or made upon, above, or under any road or other land vested in the Crown, and every natural watercourse, stream, and river not navigable, is a public drain within the meaning of this Act.

185 Public drains under the control of County Council.

All public drains shall, except as herein provided, be under the control of, and shall be constructed and kept in repair by, the Council of the county in which they are.

186 Minister may make Government drains.

The Minister may construct Government drains through any lands within the colony; and the Governor may by Order in Council declare any drain within the colony to be a Government drain, and may by Order in Council revoke any such former order, and may declare that any drain shall cease to be a Government drain.

All drains upon railway land to be Government drains.

All drains now or hereafter existing or made upon, above, or under any land on which any railway the property of Her Majesty and open for traffic is constructed, or upon, above, or under any land within the limits of such railway, shall be Government drains. The Governor may from time to time by Order in Council declare that any such drain shall cease to be a Government drain.

187 In case of Government drains, Minister to have powers of County Council.

Whenever the Governor has exercised the powers in the last preceding section mentioned, all the powers and liabilities given to or imposed upon County Councils by this Part of this Act shall, in respect of Government drains, be

exercised by and imposed upon the Minister, and thereupon the powers and liabilities of the County Council in respect thereof shall cease.

188 Drainage map of county. Datum plane.

The Governor, by Order in Council, may from time to time direct any County Council, as soon as conveniently may be after the date of such Order, to cause to be prepared a drainage map of the county, on which shall be shown all the public drains within the county, with the levels and gradients thereof, referred to a datum plane thirty feet below the average level of the sea.

Datum plane to be fixed by appointed engineer.

The datum plane shall be fixed by an engineer to be appointed for that purpose by the Governor; and any errors or omissions in any drainage map shall from time to time be altered or supplied in such manner as such engineer directs.

Drainage map to be open for inspection.

The drainage map shall be open for public inspection at all reasonable hours at the office of the County Council; and any person under the authority of the Minister or any Road Board within the county may cause a copy to be made of any part of such map.

189 Powers of County Council to drain.

Subject to the conditions and restrictions herein contained, the County Council shall have the power to do the following things for the drainage of the county:—

- (1.) To make surveys on any lands:
- (2.) To take any land under the provisions of this Act required for the purposes of this Part of this Act:
- (3.) To make new public drains through, above, or under any lands:
- (4.) To make a public drain under any road, and for such purpose to cut through such road and alter the level thereof, and temporarily to stop the traffic thereon:
- (5.) To take any existing drain and declare the same to be a public drain:
- (6.) To erect banks and dams on any land or on any drain as a protection against water, and to make sluices therein:
- (7.) To impound, divert, or take water from any public drain:
- (8.) To keep all drains clean and in good repair, and to remove all obstructions to the flow of water therein:
- (9.) To widen, deepen, straighten, or otherwise alter the course or level of any drain:
- (10.) To enter upon any lands, and take therefrom stone or other material for constructing or repairing any drain, bank, or dam:

- (11.) To make and use temporary roads through any lands for such construction or repair:
- (12.) To place any soil or rubbish removed from any drain upon any land adjacent thereto:
- (13.) To inspect any private dam, weir, and mill-race, and to open or close any sluice or flood-gate for the purpose of such inspection:
- (14.) To make and maintain all such works and machinery of what kind soever, and generally to do all such things as may be necessary for the efficient drainage of the lands and houses within the county.

190 County Council may place drains under Road Board.

The County Council may from time to time, by an order publicly notified, place all the public drains within any road district under the control of the Road Board of the district in which they are, or place under such control any public drains to be specified in such order; and may revoke any such order, either in whole, or in respect of any particular drains.

The Road Board shall in respect of any such drains have all the powers and be subject to all the liabilities herein given to or imposed upon County Councils in respect of the construction and repair of public drains.

191 Where a drain runs through two counties Minister to construct it.

If for the efficient drainage of any of the lands of a county a public drain is required to run through two or more counties, the Minister may, upon the application of the County Council of either of such counties, cause plans to be prepared showing the course, dimensions, and levels of the proposed drain, and may, after submitting such plans to the said County Councils, and duly considering such reports, objections, or suggestions as either of them may make thereon, alter such plans and finally settle the same as he thinks fit, and may cause the said drain to be constructed in accordance therewith.

In cases where the whole of "The Counties Act, 1876," is not in operation in any county, all the powers, duties, and functions vested in a County Council by this section, and the last two preceding sections, shall vest in and be exercised and performed by the Governor.

192 Cost to be recovered from the County Councils.

The cost of constructing and repairing such a drain shall be divided amongst and charged upon the counties through which it runs in proportion to the benefit accruing to each county from the drainage of the lands therein. And the Minister shall fix the share so calculated to be paid by each county, and may recover the same from the County Council.

193 If any money provided by Parliament only balance of cost to be recovered.

If any such drain is constructed or repaired in part out of moneys appropriated by Parliament, the balance only of the cost thereof shall be charged on the counties as provided by the last section.

194 Penalties for destroying drains.

If any person wilfully and maliciously destroys or damages any public drain, or any bank or dam or other work made under the authority of this Part of this Act, such person shall be guilty of a misdemeanour, and shall be liable on conviction to a penalty not exceeding five hundred pounds, or, at the discretion of the Court inflicting the same, to be imprisoned with or without hard labour for any term not exceeding three years.

195 Saving of “Christchurch District Drainage Act, 1875.”

Nothing in this Act shall be deemed to repeal or alter any of the provisions of “The Christchurch District Drainage Act, 1875,” or “The Canterbury Rivers Act, 1870,” or any Act or Acts amending the same or either of them, or to authorize any interference by any County Council with any drains or other works under the control of the Boards constituted by the said Acts respectively without the consent of such Boards.

Part IX**SUPPLY OF WATER FOR GOLD FIELDS****196 Meaning of “waterrace.”**

The term “water-race” means the land occupied by any channel, natural or artificial, for the supply of water, or by any sludge-channel or drain for removing the wash or refuse matter from gold-mining claims, proclaimed to be a water-race under this Part of this Act, and includes all dams, sluices, reservoirs, and other waterworks, and all buildings and machinery upon the land and within the limits so proclaimed.

“Mining district” means and includes a gold-mining district within the meaning of “The Gold-Mining Districts Act, 1873,” and a mining district within the meaning of “The Mines Act, 1877.”

197 Governor may proclaim water-races, and take any stream to supply water-race.

The Governor may, by Proclamation publicly notified and gazetted, declare any land therein specified, whether within or without or partly within and partly without a mining district, to be a water-race, and may declare any stream therein specified to be taken for the purpose of supplying a water-race.

198 Map to be deposited in Warden's Court.

The Minister shall cause a map of such water-race to be deposited in the Warden's Court of the district in which such land is, and such map shall be referred to in, and shall form part of, any such Proclamation.

199 Governor may alter the course of any water-race.

The Governor may, by a similar Proclamation, at any time during the construction of such water-race, revoke any former Proclamation or part thereof, and alter the course of such water-race as he thinks fit.

200 On unsurveyed land, Proclamation to be in general terms, but line to be pegged out.

Where such water-race is proposed to be constructed over lands not surveyed, it shall be sufficient that such Proclamation and map describe in general terms, but as nearly as may be, the course and limits of the water-race; but, where it is proposed that the water-race shall pass through lands held or occupied, or contracted to be held or occupied, under grant, lease, or license from the Crown, the middle line of such water-race shall be marked out by pegs driven into the ground at a distance, wherever the nature of the ground admits, of not more than one chain from each other; and the said Proclamation shall describe the course of such water-race over such lands by reference to the middle line so marked out.

201 How and when limits of land for waterrace and streams taken therefor shall be determined.

In any case where the course and limits of any water-race or any portion thereof, constructed at any time under the powers given by this Act or any other Act relating to the supply of water to gold fields, whether at present or heretofore in force, and the streams taken for supplying the same, are described in general terms, and it is found expedient to describe the exact limits of such water-race or of any portion and the streams taken for supplying the same, the Governor may, by Proclamation, at any time and from time to time, define the exact limits of such water-race or any portion, and the streams for supplying the same.

The effect of such a Proclamation shall be to vest the land within such exact limits, and all buildings, machinery, dams, sluices, reservoirs, streams, and other waterworks on such land, in Her Majesty in fee-simple at law and in equity, freed and discharged from all mortgages, charges, claims, estates, and interests whatsoever theretofore affecting the same.

The Governor may also from time to time, by Proclamation, release any land, outside of the exact limits so to be defined from any previous Proclamation affecting the same, whether made under the powers conferred by this Act or any other Act at present or heretofore in force.

If the land released was, at the time it was affected by the Proclamation from which it is released, Crown land, the effect of the release shall cause it to again become Crown land, and, if within a mining district, to be portion of such district.

A copy of such Proclamation, together with a map showing such limits, shall be deposited in the Warden's Court of the district.

202 Water-races vested in the Crown.

All water-races constructed under this Act shall, except as herein otherwise provided, be vested in Her Majesty.

203 Powers of Minister to construct water-races.

For the purposes of this Part of this Act the Minister may do the following things:—

- (1.) May make surveys upon any lands:
- (2.) May make a water-race upon, over, or under any land within the limits defined in a Proclamation as aforesaid:
- (3.) May make such water-race over or under any road or through any public reserve within such limits:
- (4.) May alter the course or level of any road for such purpose within or beyond such limits:
- (5.) May make the water-race across any stream or river, but so as not to impede the navigation upon any navigable river except under the provisions of a special Act:
- (6.) May alter the course or level of any such stream or river, or of any ditch or drain:
- (7.) May take, impound, or divert the water from any stream specified in a Proclamation as aforesaid:
- (8.) May make dams, sluices, reservoirs, or other waterworks in any such stream, whether within or without the limits of such water-race:
- (9.) May enter upon any lands and take therefrom any materials required for the construction or repair of a water-race:
- (10.) May construct all works, buildings, and machinery of every description and material, and generally may do all things necessary for the construction, repair, maintenance, and use of any water-race.

204 Water-races subject to Gold Fields Regulations.

The construction, maintenance, and use of every water-race made under this Act shall be subject to the laws and regulations affecting water-races, aqueducts, dams, or reservoirs, for the time being in force in the mining district in which such water-race is.

205 Minister may make regulations for using water-races.

The Minister may from time to time make, alter, and repeal regulations prescribing the terms and conditions upon which any water-race may be used, and prescribing the rates and charges to be paid for water supplied or for the drainage of gold-mining claims.

All such regulations shall be gazetted and take effect from a future day to be therein named in that behalf.

All such rates and charges may be recovered by and in the name of any person duly authorized by the Minister in that behalf, as an ordinary debt before any two Justices of the Peace.

206 Penalty for taking water from proclaimed water-race or stream.

It shall not be lawful for any person to take or divert any water in, or supplying or flowing into, a stream declared in a Proclamation as aforesaid to be taken for the supply of a water-race; and any person doing or causing to be done any act whereby the water in any such stream is drawn off or diminished in quantity, and refusing or neglecting, when so required by the Minister or any person authorized by him, to restore the waters of such stream to the state in which they were before the said act, shall be liable to a penalty of not more than five pounds for every day during which the supply of such water is so drawn off or diminished.

If such person refuses or neglects so to restore the waters of such stream after receiving notice from the Minister or any person authorized by him to do so, the Minister may, at any time after one week from the serving of such notice, execute all works necessary so to restore the said waters, and may, by action in his own name, recover from such person the whole cost of such works, together with the amount of any damage sustained by reason of the taking or diverting of such water.

207 Penalty for damaging water-race.

If any person wilfully or maliciously destroys or does any damage to a water-race, he shall be liable to a penalty of not more than one hundred pounds, and, in addition, to pay the whole cost of restoring such damage.

208 Penalty for using water-race without paying charges.

If any person unlawfully obtains water from a water-race, or uses any sludge-channel or drain without payment of the lawful charges, or in other manner than as provided by the above-mentioned regulations, he shall be liable to a penalty of not more than fifty pounds.

209 Governor may lease water-race.

The Governor, in the name and on behalf of Her Majesty, may demise and lease any water-race to any person willing to work the same, subject to the

condition that such water-race shall be kept and delivered up at the end of the lease in good and substantial repair; and all the real and personal property included in any such lease shall, during the continuance thereof, and subject to the conditions thereof, be vested in the lessee.

210 Governor may contract for making water-race on certain conditions.

The Governor may contract with any person to make, maintain, and work a water-race—

- (1.) Either by agreeing to pay the contractor a subsidy not exceeding the amount agreed to be expended, and expended, by the contractor in the construction of such water-race;
- (2.) Or by agreeing to pay to the contractor year by year such sum as shall, together with the net profits of working the water-race, make up six per centum yearly upon the amount agreed to be expended, and expended, in the construction thereof:

And every such contract shall contain a condition for the purchase, whenever the Governor thinks fit, of the interest of the contractor in the water-race, upon terms to be specified in such agreement.

211 Such water-race to be under this Act, but to vest in contractors.

A water-race constructed under the last preceding section shall be deemed to be a water-race made under this Act; but so long as it continues to be worked by the contractor under and subject to the conditions of any such agreement, the property therein shall vest in the contractor.

212 Moneys accruing from water-races to be Consolidated Fund.

All moneys accruing from water-races constructed under this Act shall be paid into the Public Account, and form part of the Consolidated Fund.

213 Moneys payable to be voted by Parliament.

All moneys payable under any agreement made under this Part of this Act shall be paid out of moneys appropriated by Parliament for the purpose.

Transfer of Water-races to Counties

214 Governor may, with their consent, transfer water-races to counties.

The Governor may, by Proclamation publicly notified and gazetted, declare any water-race to be vested in the Corporation of the county in which such water-race is, and, if it lies in two or more counties, to be vested either jointly in the Corporation of such counties or wholly in the Corporation of such one as the Governor thinks fit; and from and after a day to be named in such

Proclamation the water-race therein mentioned shall cease to be vested in Her Majesty, and shall become vested as in such Proclamation set forth.

Provided that no water-race shall be so vested unless with the consent of the Councils of the Corporation in whom the same is intended to be vested.

215 Powers, &c., thereupon to vest in County Councils.

The Council or joint Councils of the county or counties in which any such water-race is so vested shall, in respect of such water-race, have and be subject to all the rights, powers, obligations, and liabilities which the Governor or the Minister has or is subject to under the provisions of this Act in respect of the same.

216 County Councils to keep water-races in repair.

Every water-race so vested in any county or counties shall be kept in good repair by and at the expense of the Council or Councils of such county or counties; and, if not so kept in good repair to the satisfaction of the Minister, the Governor may from time to time cause the same to be repaired out of any subsidies or other moneys payable to such county or counties under any Act in force in that behalf.

217 County Councils may make new waterraces.

The Council of any county, or the Councils of any two or more counties jointly, may make any new water-race therein, and for such purpose shall have all the powers which may be exercised by the Minister under this Part of this Act in respect of water-races. And all such water-races shall be deemed to be vested in the Corporation of such one of the counties as may be agreed upon between the respective corporations thereof, or as the Governor shall determine, as the case may be.

218 Revenue of waterraces to be paid to County Fund.

All moneys accruing from any water-race vested in a County Council shall be paid into and form parts of the County Fund instead of into the Consolidated Fund.

Where a water-race is vested jointly in two or more counties, such moneys shall be divided between the County Funds of such counties in such proportion as the several County Councils agree on, or, if they cannot agree, then in such proportion as the Governor determines.

Water-races, &c., held under Acts relating to Mining

219 Special provisions relating to waterraces and works within mining districts.

Whenever in any case it is not expedient that the preceding sections of this Part of this Act relating to the proclamation and construction of water-races

should be put in force, or whenever any rights to the use of water held under Acts relating to gold fields or mining districts, or for the construction of works connected therewith, have heretofore been acquired by or on behalf of Her Majesty the Queen under such Acts, the following provisions shall have effect:—

- (1.) Her Majesty the Queen may in any mining district apply for, receive, and hold any license or other authority to cut, construct, and use any water-race, sludge-channel, tail-race, dam, reservoir, or for any other purpose and in any manner authorized under “The Gold-Mining Districts Act, 1873,” or “The Mines Act, 1877” (which Acts and any regulations for the time being in force thereunder respectively are hereinafter included in the expression “the said Acts”):
- (2.) Every such license or other authority shall confer upon the Queen all rights, powers, remedies, and authorities, and she shall be subject to the same liabilities in respect thereof as if such license or authority had been issued to her as a private person, except that the same shall not be liable to forfeiture for any cause whatever.
- (3.)
 - (a.) The Governor may from time to time appoint some person or persons in any mining district under the said Acts or either of them, on behalf of the Queen, to apply for and obtain the issue of any license or other authority as aforesaid under the said Acts or either of them, or for the issue of any renewal of any such license or authority;
 - (b.) And he may in like manner appoint such person or persons or some other person or persons to exercise on behalf of the Queen all such rights, remedies, and authorities, execute all instruments or documents, and to perform all such conditions in respect of any such license or other authority in the name and on behalf of the Queen, as she might have or exercise, or could be called upon to perform, if she were a private person holding such license or authority;
 - (c.) Every such appointment may be limited to some particular power or purpose hereinbefore mentioned, to be specified in the appointment, or may include all such powers or purposes:
- (4.) A notification in the *Gazette* signed or purporting to be signed by the Minister of Mines, or some other member of the Executive Council for the time being acting for such Minister, shall be deemed to be sufficient evidence that such person has been duly appointed with all the powers and for all the purposes hereinbefore mentioned, unless in such notification there shall be expressed some limitation of the authority conferred upon him:
- (5.) Where, under the provisions of any Act heretofore in force relating to gold fields, or under the said Acts or either of them, any right to the use of water, or any license or authority, for all or any of the purposes hereinbefore mentioned has been acquired by the Queen or by any person for or on behalf of the Queen,

such right shall be deemed to be and to have been, from the date or time when the same was so acquired, vested in the Queen as effectually as if the same had been acquired by her under this Act, and shall be and be deemed to have been valid in law notwithstanding any defect or alleged defect in the title or status of the person or authority who may have held, or in any manner acquired, any such right or authority as aforesaid.

- (6.) Every Warden, registrar, clerk, or other officer whose duty it may be to issue any license or other authority under the said Acts or either of them, shall, upon application made to him for that purpose, and upon proof that any license or authority in respect of a right within the terms of the last preceding subsection is held on behalf of the Queen, alter or amend, as the case may require, any existing license or other authority or any register or record kept by him, and may insert the name of the Queen therein, and such other particulars as may be necessary to give due effect to this enactment. And this provision shall be sufficient authority for such alteration or amendment being made, any Act or regulation to the contrary notwithstanding:
- (7.) It shall not be necessary for the Queen or any person on her behalf to take out and hold any miner's right or business license under the said Acts or either of them, in order to enable her to hold any such license or authority as aforesaid; nor shall it be necessary that any such license or authority be renewed in any way, or that any annual or other fee in respect thereof be paid by or on behalf of the Queen; but such license or authority shall, during the term for which it was granted, subsist until relinquished by the Queen, or the original term for which it was granted has expired:
- (8.) Expressions and terms used in this section of this Act shall have the like meanings as expressions and terms used in the said Acts or either of them, or in any regulations made under the said Acts or either of them.

Part X GENERAL PROVISIONS

220 Recovery of possession of land from persons holding illegal possession thereof.

When any person shall be in occupation of any land acquired or taken or to be acquired or taken for any public work without any right, title, or license, or whose right, title, or license has expired or been forfeited or cancelled, and whether such land be within or outside of any mining district, the Minister of Lands, or the Minister for Public Works, or any person appointed in writing by either or both, may enter a plaint in the Resident Magistrate's Court of the district in which the land lies to recover possession thereof; and the jurisdiction of the Court or Magistrate shall not be ousted on the plea that a question of title is involved in any such case, or that the value of the premises possession

whereof is sought to be recovered is above the ordinary jurisdiction of such Court or Magistrate.

If upon the hearing of such plaint the defendant shall not appear, or shall appear but shall fail to establish in himself an absolute right and title to the possession of such land, or if upon such hearing it is shown to the satisfaction of the Court that the title under which the defendant claims has, as between himself and the Crown, expired or become liable to forfeiture or cancellation, the Court shall declare such title to be extinguished, and may order that possession of the said land be given by the defendant to the plaintiff, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

If delivery of the land be not made in pursuance of such order, the Court, or the Resident Magistrate of the district, or any Justice of the Peace, may issue a warrant authorizing and requiring the bailiff of the Court or any constable to give possession of such land to the plaintiff.

The provisions of sections ninety-one to ninety-five, both inclusive, of "The Resident Magistrates Act, 1867," shall, so far as they are not repugnant to or inconsistent with the same, apply to any proceedings taken under this section.

221 Penalty for obstructing workmen, or destroying fences, marks, &c.

Any person who wilfully obstructs any engineer, surveyor, overseer, workman, or other person in the performance of any duty, or in doing any work which he has lawful authority to do under the provisions of this Act, or wilfully and unlawfully cuts down, breaks, removes, or destroys any fence, surveymark, or peg, in or upon any land taken under the provisions of this Act, shall be liable to a penalty of not more than fifty pounds for every such offence.

222 Penalty for destroying buildings or bridges.

If any person wilfully and unlawfully cuts down, breaks, removes, or destroys any building or bridge in or upon any land taken under the provisions of this Act, he shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any time not exceeding two years, and with or without hard labour.

223 Penalties recoverable in a summary way.

All penalties recoverable under the provisions of this Act, except under subsection six of section one hundred and forty-five, may be recovered before any two Justices of the Peace in a summary way.

224 Powers of Resident Magistrate.

Where anything may be done by two Justices under this Act, the same may be done by any Resident Magistrate.

225 Validation of Orders in Council and Proclamations.

All Orders in Council and Proclamations made and issued, or purporting to be made and issued, under the authority of any Act or Ordinance repealed by this Act or by "The Public Works Act, 1876," are hereby declared to be and to have been as from the respective times of making and issuing thereof good, valid, and effectual to all intents and purposes whatsoever, and shall be final and conclusive with respect to the existence of all requisites thereto, and shall not be impeached or disturbed at law or in equity or otherwise on any ground whatsoever: Provided that nothing herein shall affect any claim or matter in respect of which any action or proceeding has been brought or taken in any Court, and is undetermined.

226 Validating by-laws and regulations made fixing rates and charges.

All Orders in Council, by-laws, and regulations heretofore made giving to the Minister power to fix and alter scales of fares and charges, and all notices by the Minister fixing or altering scales of fares and charges, are hereby declared, as on and from the making of such Orders in Council, by-laws, regulations, and notices, to have been and be good, valid, and effectual to all intents and purposes.

All fares and charges fixed by the Minister under the authority of such Orders in Council, by-laws, and regulations, and outstanding and payable at the time this Act comes into operation, may be sued for and recovered in any Court of competent jurisdiction as fully and effectually to all intents and purposes as if the same had been fixed by and were payable under the one hundred and fortyfourth section of this Act. Nothing herein contained shall prejudice any action or suit in which judgment has been given before this Act comes into operation, nor validate any claim which has been previously brought in any Court.

227 References to repealed Acts to apply to this Act.

Whenever any unrepealed Act of the General Assembly incorporates or refers to any Part or Parts or any provisions of any Act hereby repealed, such unrepealed Act shall be deemed to incorporate or refer to the Part or Parts or provisions of this Act corresponding to such repealed Parts or provisions as the case may be.

228 Repeals. Fifth Schedule. Saving of things done, &c.

The several Acts and part of an Act specified in the Fifth Schedule, saving the exceptions therein mentioned, are hereby repealed, subject as follows, that is to say, they shall notwithstanding remain in full force so far as relates to anything done, or any contract, agreement, deed, proclamation, or instrument made or issued, right or privilege accrued, work authorized, security taken or agreed to be taken, offence committed, forfeiture, penalty, or liability incurred, action,

prosecution, or proceeding commenced, under the authority of or against the provisions of any such Act before the passing of this Act.

229 Works authorized or anything commenced under repealed enactments may be completed under those enactments, or may be completed under this Act.

Any public work authorized under the authority of any Act repealed by this Act or of any Act or Ordinance repealed by “The Public Works Act, 1876,” and any land required to be taken, purchased, or acquired for such work, or anything commenced under any such authority as aforesaid, may be continued, taken, purchased, or acquired, executed, carried out, enforced, and completed under the provisions of this Act.

Proviso.

Provided nevertheless that in any case where it may be found that the provisions of this Act are not applicable to such work, land, or thing, then for the purposes of carrying out and completing such public work, land, or thing the said repealed Acts and Ordinances shall be deemed to be in full force and operation.

230 Railways and public works, &c., under previous Acts to be deemed constructed under this Act.

Subject to the provisions aforesaid, all railways and public works of every kind constructed, and all lands taken, or things done under the provisions of any Act or Ordinance repealed by “The Public Works Act, 1876,” or by this Act shall be deemed to have been constructed, taken, or done under this Act:

Existing Proclamations, Orders, regulations, &c., to remain in force.

And all Proclamations, Orders in Council, by-laws, regulations, and appointments, issued or made under any Act hereby repealed, and subsisting at the commencement of this Act, shall be deemed respectively to have been issued or made under this Act, and shall have effect accordingly.

SCHEDULES

FIRST SCHEDULE

Sec. 7.

Schedule showing the Railways on which Expenditure for Construction is authorized by this Act; the Railways or Sections thereof on which the Expenditure is to be incurred; the Definition and Length of such Railways or Sections; the Estimated Expenditure required to render the same available for use; the Amounts Appropriated for the Year ending , 18 ; and the Balances for future Appropriation.

Railway.		The Railway or Sections thereof for which Appropriation is made in this Act.			6.	7.	8.
1.	2.	3.	4.	5.	Estimated Expenditure required on the Length stated in Column 5.	Amount Appropriated for Expenditure during the Financial Year ending 31st March, 18.	Balance for future Appropriation.
Name.	Estimated Length of the whole Line.	From	To	Estimated Length of Section.			
	M. Ch.			M. Ch.			

SECOND SCHEDULE.

Sec. 33.

Form of Claim to Compensation where Lands are taken

(Under the Authority of "The Public Works Act, 1882.")

To the Honorable the Minister for Public Works [*or* the local authority of _____].

Whereas by a Proclamation by His Excellency the Governor of New Zealand, dated the _____ day of _____, 18____, the lands specified below were taken for the purpose of [*naming the public work*], and were vested in Her Majesty, and I have an interest in such land as [*Here state in full the nature of the interest*]: And whereas certain lands adjacent to the land so taken in which I have an interest as [*Here state in full the nature of the interest in such adjoining lands*] will be injuriously affected by the said work by reason that [*Here state the nature of the injury*]:

This is to give notice that I claim the sum of £ _____ as compensation for all loss and damage done to me arising out of the taking of the said land [*or* the construction of the said public work].

Given under my hand _____, this _____ day of _____, 18____.

A.B., Claimant.

Description of lands taken:

Description of lands injuriously affected:

Sec. 33.

Form of Claim to Compensation for Damage done where No Land is taken

(Under the Authority of "The Public Works Act, 1882.")

To the Honorable the Minister for Public Works [*or* the local authority of _____].

Whereas certain public works, that is to say [*Describe the work*], have been [*or* are about to be] executed by your authority, by which certain lands described below, in which I have an interest as [*Here state in full the nature of the interest*], have been [*or* will be] injuriously affected by the said works, by reason that [*Here state the nature of the injury*]:

This is to give notice that I claim the sum of £ _____ as compensation for all loss and damage done to me arising out of the construction of the said work.

Given under my hand at _____, this _____ day of _____, 18____.

A.B., Claimant.

Description of lands injuriously affected:

THIRD SCHEDULE.

Secs. 35, 37.

Form of Notice requiring Claim to be heard in Compensation Court

(Under the Authority of "The Public Works Act, 1882.")

To the Registrar [*or* Deputy Registrar] of the Supreme Court at [*or* Clerk to the Resident Magistrate's Court at].

Whereas a certain claim for compensation for the amount of [*Name the sum*] in respect of certain lands taken [*or* in respect of certain lands injuriously affected] in which I have an interest, a copy of which claim is attached hereto, was made by me on the day of , 18 , upon, and was duly served, as by the said Act required, upon [the Minister or local authority], and the said [Minister or local authority] has refused to admit the said claim [*or* has made me an offer of (*Name the sum*) in lieu of the said claim, which I do not accept]:

This is to give notice that I hereby require the said claim to be heard by a Compensation Court, as by the said Act provided: and I hereby appoint C.D., of M.N., to be an Assessor of the said Court. And I append hereto the consent and declaration of the said C.D. as by the said Act required.

Given under my hand at , this day of , 18 .

A.B., Claimant.

Enclosures:—

1. Copy of claim, on one of the forms in the Second Schedule.
2. Assent of Assessor to act, in the form provided in the Fourth Schedule of the Act.

FOURTH SCHEDULE

Sec. 38.

Form of Assent of Assessor to Act

I, A.B., consent to act as Assessor in the Compensation Court to be constituted under "The Public Works Act, 1882," to hear the claim of [*naming the claimant*] against [*naming the respondent*], for the sum of [*naming the amount of the claim*]; and I solemnly and sincerely declare that I will faithfully, honestly, and impartially, according to the best of my skill and ability, hear and determine the said claim.

FIFTH SCHEDULE
Acts Repealed

Sec. 228.

1873, No. 52.—The Railways Regulation and Inspection Act, 1873.

1876, No. 50.—The Public Works Act, 1876, *Except* section two hundred and twenty-two.

1878, No. 44.—The Public Works Act 1876 Amendment Act, 1878, *Except* sections ten, sixteen, and twenty-nine.

1879, No. 44.—The Public Works Act, 1879, *Except* sections six, seven, thirteen, twenty-two, twenty-three, twenty-five, thirty-two, and the First, Third, and Fourth Schedules.

1880, No. 54.—The Public Works Act, 1880, *Except* sections fourteen, fifteen, and twenty-one.

1876, No. 52.—The Municipal Corporations Act, 1876, *In part, namely*, section one hundred and eighty-eight.

1881, No. 7.—The Post Office Act, 1881, section 82, *Except* that the repeal of this section shall not affect any exemptions under existing contracts for the carriage of Her Majesty's mails.