

No. XLI.

An Act for the managing making and upholding CUMBERLAND ROADS. of the Public Roads in the County of Cum- berland and for other purposes therein men- tioned. [12th October, 1849.]

WHEREAS by an Act of the Governor and Legislative Council of New South Wales passed in the second year of the reign of His late Majesty King William the Fourth intituled "An Act for 2 Wm. IV. No. 12. repealing so much of an Act intituled 'An Act to continue until further provision shall be made certain Duties Tolls Rates Fees and other sums of money imposed by the Governors of New South Wales and for other purposes as relates to the levying Tolls in New South Wales and for raising a Fund towards making repairing and upholding public Roads Bridges and Ferries and for regulating the collection of Tolls thereon'" certain powers were vested in the Governor of the said Colony and a fund was created for repairing the roads of the said Colony And whereas it is expedient to divide the public roads or leading thoroughfares of the County of Cumberland in the said Colony into the several Trusts specified in the Schedule to this Act annexed and to transfer the said powers and authorities and to vest so much of the said fund as may be collected by way of tolls or otherwise howsoever on the said roads or thoroughfares to and in Commissioners to be appointed in that behalf by the Governor for the time being and to make provision for the application of such funds as last aforesaid Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That the said public roads or leading thoroughfares in the County of Cumberland shall be divided into the several and respective Trusts in the said Schedule mentioned and that it shall be lawful for the Governor of the said Colony for the time being to nominate and appoint by writing under his hand fit and proper persons to be Commissioners for the said respective Trusts of whom any three shall be a quorum with power to act and carry the provisions of this Act into execution in respect of the Trusts for which they shall have been respectively appointed and it shall also be lawful for the said Governor from time to time as he may deem fit to revoke any such appointment and upon such revocation or the resignation or death of any such Commissioner of Trusts to appoint another Commissioner in his stead.

2. And be it enacted That the right interest and property in all toll gates and toll houses weighing machines and other erections and buildings lamps bars toll keepers' direction boards milestones posts rails

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rails fences bridges dams culvert drains and other things which shall have been or shall be hereafter erected and provided on or for the said roads or any of them under and by virtue of the said recited Act or this Act or either of them with the several conveniences and appurtenances thereunto belonging and the materials of which the same shall consist and all materials tools and implements which shall be provided for repairing the said roads or any of them shall be vested in the said Commissioners of Trusts for the time being and they are hereby authorized to apply and dispose of the same as they may think fit and to bring any action or prosecute any information or indictment or other proceeding for any injury to the property so vested in them or for any violation of the said recited Act or of this Act committed on the said roads or any of them or in any way affecting the same.

Powers of Commissioners.

3. And be it enacted That it shall be lawful for the Commissioners of Trusts so appointed as aforesaid for each such district respectively by a notice to be published in the *New South Wales Government Gazette* to appoint and direct tolls to be demanded taken and levied upon such roads and branches diverging therefrom within their respective districts and in such notice shall be stated the rates of such tolls and from time to time to alter such rates as they may deem fit Provided that such rates to be so stated and altered shall not exceed in amount the rates specified in the said recited Act passed in the second year of the reign of His late Majesty King William the Fourth and the manner of collecting and levying such rates shall be such as are set forth in the said recited Act.

Money vested in Commissioners.

4. And be it enacted That all sums of money which shall be collected and levied under this Act on such of the roads or thoroughfares aforesaid as are within their respective districts shall be vested in the said Commissioners of Trusts for each such district respectively to be applied by them in making repairing fencing and upholding such roads and thoroughfares within their district and also the bridges thereon and in erecting necessary toll houses and gates theron and keeping the same as well as those already erected in proper repair.

Toll gates &c. now standing to remain until removed by order of Commissioners.

5. And be it enacted That the several toll gates or turnpikes and toll houses now standing and being in or upon or across any of the said roads thoroughfares or branches diverging therefrom as aforesaid or on the sides thereof shall remain and be continued until removed by order of the said Commissioners respectively.

All powers and authorities vested by 2 Wm. IV. No. 12 in the Governor and Collector of Internal Revenue transferred to Commissioners.

6. And be it enacted That all powers of collecting tolls of appropriating places where tolls shall be collected of causing toll houses gates bars chains rails and fences to be built and set up and all powers of leasing putting up to auction or taking security for tolls and all other powers and authorities of whatsoever nature or kind which by the said recited Act are vested in the Governor and Collector of Internal Revenue respectively are hereby as far as relates to the said roads and thoroughfares in the Schedule to this Act mentioned and the branches diverging therefrom shall be transferred to and vested in the said Commissioners of Trusts for the time being in their respective districts.

Former tolls to continue until altered under this Act.

7. Provided always and be it enacted That tolls shall continue to be collected at the same rates as heretofore at any place bridge or ferry which under the provisions of the said recited Act has been appointed by His Excellency the Governor by any Proclamation under his hand duly issued in that behalf until otherwise altered in pursuance of the provisions of this Act.

Commissioners of Trusts and their officers and workmen to enter upon all lands for purposes of making or altering roads.

8. And be it enacted That for the purpose of tracing marking opening altering repairing or improving any of the said roads or thoroughfares or branches diverging therefrom in the Schedule to this Act annexed or for erecting forming or repairing any bridge dam or drain

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drain thereon or for performing any act matter or thing under the provisions of this Act it shall be lawful for the said Commissioners of Trusts for the time being in their respective districts or their respective surveyors duly appointed by them and for their servants workmen and laborers at all times hereafter and with all necessary and proper carriages oxen horses or other means to enter upon any lands adjacent to such roads and then and there severally to do and perform all such matters and things as are required by them to be done respecting the matters aforesaid.

9. And be it enacted That it shall be lawful for the said Commissioners of Trusts for the time being in their respective districts or any persons contracting with them for the making or repairing of the said roads or thoroughfares and for their respective surveyors assistants servants laborers and workmen at all reasonable times hereafter and with all necessary and proper carriages oxen horses and other means to search for dig and carry away any materials for making or repairing such roads or thoroughfares as aforesaid in through or from any land near to or adjoining thereto (not being a garden yard park planted walk or avenue leading to any dwelling-house or any piece of land set apart for a nursery for trees) without paying for the same and to carry away the same through the ground of any person without being deemed a trespasser or trespassers the said Commissioners of Trusts for the time being respectively and other persons as aforesaid filling up the pits or quarries levelling the ground wherefrom such materials shall be taken and railing off the pits or quarries so that the same shall not be dangerous to any person beasts or cattle Provided always that any fences which it may be necessary to take down for any of the purposes aforesaid shall be kept open only during such time as shall be necessary for ingress and egress to or from any such land and shall at all other times be kept closed in such manner as that cattle or other stock shall not be able to stray therefrom.

10. And be it enacted That it shall be lawful for the said Commissioners of Trusts for the time being respectively and their surveyors assistants servants laborers and workmen as aforesaid to enter into all such lands as aforesaid and to cut or cause to be cut all such brushwood and to lop or cause to be lopped such timber trees to the height of forty feet anywhere within twenty yards of the side of any public road as aforesaid Provided always that no such trees be kept for ornament or shelter to any house building or court yard and if the owner or occupier of the land upon which such brushwood or timber trees may be cut or lopped shall neglect or refuse to remove the same within seven days it shall be lawful for the said respective Commissioners or other officer or person as aforesaid to remove or burn any such brushwood or loppings without being deemed a trespasser or trespassers.

11. And be it enacted That it shall be lawful for the said Commissioners of Trusts to fence off any portion they may think necessary of the water saved by any dam now erected or hereafter to be erected at the public expense in order that all persons and stock may have free and uninterrupted access to the same.

12. And be it enacted That it shall be lawful for the said Commissioners of Trusts for the time being respectively or for any persons contracting with them as aforesaid for the making altering or repairing of such roads to cause to be cut through all or any lands or grounds whether adjacent to such roads or otherwise such drains or ditches for and also to remove such obstructions to the free passage of waters off such roads and to erect such causeways dams bridges archways and sewers and generally to use such means as to them shall seem requisite for the purposes aforesaid.

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Penalty for persons resisting or opposing Commissioners in the execution of their duties under this Act.

Commissioners may sue and be sued.

Commissioners may prosecute for nuisances &c.

Commissioners to appoint ministerial officers.

Commissioners and certain other persons not to share in any contract or let any team or dispose of any materials stores &c. under a penalty.

Commissioners may borrow money and mortgage tolls.

13. And be it enacted That in case any person or persons shall resist or in any manner forcibly oppose the said Commissioners of Trusts for the time being respectively their successors or their contractors as aforesaid or their surveyors assistants workmen or laborers employed by them respectively in the due execution of this Act every such person or persons so offending therein shall on conviction for every such offence forfeit and pay any sum not exceeding five pounds at the discretion of any Justice or Justices of the Peace before whom such person shall be convicted and any such Justice or Justices is and are hereby authorized to hear and determine the same in a summary way.

14. And be it enacted That it shall be lawful for the said Commissioners of Trusts for the time being respectively to sue and be sued in the name or names of any one of such Commissioners or of their respective Clerks for the time being and that no action or suit to be brought or commenced by or against any such Commissioners or Clerks by virtue of this Act in the name or names of any one of such Commissioners or Clerks shall abate or be discontinued by the death or removal of such Commissioner or Clerk by the act of such Commissioner or Clerk without the consent of the surviving or remaining Commissioners but that any one of such Commissioners or Clerks shall always be deemed to be the plaintiff or defendant (as the case may be) in every such action or suit Provided always that every such Commissioner or Clerk shall be reimbursed and paid out of the moneys belonging to the Trust for which he or they shall act all such costs charges and expenses as such Commissioner or Clerk shall incur or become chargeable with or liable to by reason of his being so made plaintiff or defendant.

15. And be it enacted That it shall be lawful for the said Commissioners of Trusts for the time being respectively and they are hereby empowered if they think fit to direct prosecutions by indictment or otherwise against any offender or offenders for any nuisance or other offence done committed or continued in or upon any of the highways or roads under their care respectively or to recover any penalty or forfeiture incurred under the provisions of this or any other Act or Acts relating to highways or roads at the expense of the revenues belonging to the roads under the care of such Commissioners respectively.

16. And be it enacted That it shall be lawful for the said Commissioners of Trusts for the time being respectively to appoint all such ministerial officers as shall be necessary for carrying this Act into effect and the salaries or other remuneration of such officers shall be paid out of the fund vested in the said Commissioners in their respective districts.

17. And be it enacted That no Commissioner of Trusts appointed under this Act nor any surveyor or other officer appointed by the said Commissioners as aforesaid shall have any part share or interest directly or indirectly in any contract or bargain for work or materials to be made done or provided upon for or on account of any of the highways or other works whatsoever under his or their care or management or shall upon his or their own account directly or indirectly use or let to hire any team or use or sell or dispose of any materials to be used or employed in making or repairing any such highways or other works as aforesaid or he or they shall forfeit for every such offence on conviction any sum not exceeding twenty pounds and be for ever after incapable of holding or being employed in any office under this Act.

18. And be it enacted That it shall be lawful for the Commissioners of the said Trusts respectively to borrow and take up at interest on the credit of the tolls arising on the roads within the said Trusts

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Trusts respectively such sum or sums of money as they shall from time to time respectively think proper and to mortgage the tolls on such roads or any part or parts thereof (the costs and charges of which mortgages shall be paid out of the tolls) as a security to any person or persons or their trustees who shall advance such sum or sums of money and it shall be lawful for all persons respectively to whom any mortgage shall be made as aforesaid or who shall be from time to time entitled to the money thereby secured to assign or transfer his her or their right title and interest in and to such mortgage and the principal money and interest thereby secured to any other person or persons whomsoever. Provided always that the sum or sums of money so borrowed shall not exceed three times the amount of the tolls received on the roads within the Trust on the credit of which such sum or sums shall be intended to be secured during the year ending on the thirty-first day of December immediately preceding. And provided also that no sum or sums of money to be so borrowed which would if added to the previous debt or debts of any such Trust make the aggregate of the debt or debts of such Trust to exceed three times the amount of the tolls so received within the year immediately preceding as aforesaid.

19. And be it enacted That the said Commissioners of Trusts for the time being respectively shall keep or cause to be kept true correct and particular accounts of all moneys received as well as of all moneys expended by them in the execution of their Trusts under this Act and they shall in each of their districts respectively within one month after the expiration of each half-year render such accounts for such half-year to the Auditor General of the Colony who after examination of the same shall cause them to be delivered to the Colonial Secretary to be laid before the Legislative Council of the said Colony and published in the *New South Wales Government Gazette*.

Commissioners to keep accounts of all moneys received and expended by them under this Act and to render such accounts half-yearly to the Auditor General for examination and transmission to the Colonial Secretary to be laid before the Legislative Council.

20. And be it enacted That all horses cattle carts drays and vehicles whatsoever belonging to or employed by the said Commissioners or their respective surveyors assistants servants laborers or workmen or any persons contracting with the said Commissioners for repairing the said roads dams and bridges shall whilst so employed respectively pass through all toll gates on such roads without payment of any toll.

Carts drays &c. of Commissioners and their servants to pass toll free.

21. And be it enacted That it shall be lawful for any one or more Justice or Justices of the Peace to hear and determine in a summary way all offences committed against the provisions of the said recited Act or this Act and to impose such fines and penalties as in the said recited Act or this Act are directed as fully and effectually as if the same were herein repeated. Provided that all proceedings by summons or warrant without a formal information in writing shall be as good valid and effectual to all intents and purposes as if a formal information in writing had been exhibited. Provided always that in every such summons or warrant the general nature of the charge shall be succinctly stated and the original complaint shall be on oath.

Fines and penalties may be imposed in a summary way by Justices of the Peace.

22. And be it enacted That the Justice or Justices of the Peace by whom any person shall be convicted and adjudged to pay any sum of money for any offence against the provisions of the said first recited Act or this Act may adjudge that such persons shall pay the same either immediately or within such period as such Justice or Justices shall think fit and that in default of payment at the time appointed he shall be imprisoned in the common gaol or house of correction for any term not exceeding two calendar months where the sum shall not exceed the sum of five pounds and for any term not exceeding three months where the sum shall exceed five pounds the imprisonment in each such case to cease upon payment of the sum due.

Justices may award mode of payment of penalties.

Imprisonment in default of payment of penalty.

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Fines and penalties
how to be appropriated.

Parties convicted
may appeal.

General issue.

Conviction not to be
quashed for want of
form.

11 Vic. No. 49

repealed except as to
institution of Trusts

and appointment of
Commissioners.

Proviso exempting
the military from
payment of toll.

Double toll not de-
mandable on Sun-
days.

23. And be it enacted That all such fines and penalties shall be paid one moiety to Her Majesty Her Heirs and Successors for the public uses of the said Colony and in support of the Government thereof and shall be applied in such manner as may from time to time be directed by any Acts of the Governor and Legislative Council thereof and the other moiety to the use of the informer or person prosecuting who shall also be entitled to costs over and above such fines and penalties to be assessed by the convicting Justices.

24. And be it enacted That any party or parties convicted of any offence under the said recited Act or under this Act shall have and be entitled to the same appeal from the decision of the convicting Justices as is given to any person or persons convicted under the said recited Act.

25. And be it enacted That if any Commissioners of Trusts or any person acting under their authority or directions shall be sued for any matter or thing which may be done or commanded to be done by them in the execution of this Act he or they may plead the general issue and give the special matter in evidence.

26. And be it enacted That no conviction under the said recited Act or under this Act shall be quashed for want of form or be removed by writ of *certiorari* or otherwise into the Supreme Court and no warrant or commitment shall be held void by reason of any defect therein provided it be therein alleged that the party has been convicted and that there be a good and valid conviction to sustain the same.

27. And whereas by an Act passed in the eleventh year of the reign of Her present Majesty intituled "*An Act to provide for the improvement of certain Roads in the neighbourhood of Sydney*" it was amongst other things enacted that it should be lawful for the Governor of the said Colony for the time being to appoint fit and proper persons to be Commissioners of Trusts for certain roads called the Old and New South Head Roads more particularly described in the Schedule to the said Act annexed for the purpose of carrying the said Act into execution And whereas by a certain Commission bearing date the eleventh day of November in the year one thousand eight hundred and forty-eight under the hand of Sir Charles Augustus Fitz Roy Governor of said Colony and also under the seal of said Colony the said Governor in pursuance of the said last recited Act and by virtue of the authority thereby vested in him duly appointed certain Commissioners to carry the said Act into execution And whereas it is deemed expedient that the said roads specified and described in the said Schedule to the said Act annexed should form one of the Trusts under this Act and it is therefore expedient to repeal the same (except as hereinafter is excepted) and to substitute this Act in its stead Be it therefore enacted That the said recited Act passed in the eleventh year of Her Majesty's reign shall be and the same

is from and after the first day of February next repealed except as to the institution of the said Trusts and the appointment of the Commissioners already made which shall be continued under this Act and all things relating to such Trust Roads shall be regulated and

managed according to the provisions herein contained Provided always that no toll shall be demandable or taken for or in respect of any horse or carriage of or belonging to any Military Officer in Her Majesty's service or for or in respect of any horse or carriage actually used by any such Officer or his family when passing on that part only of the Old South Head Road which lies between the boundaries of the City of Sydney and the main entrance to the Military Barracks.

28. And be it enacted That from and after the first day of January next no double toll shall be demandable taken or payable at any toll gate or ferry for passing through or over the said roads or ferries on Sunday.

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29. And be it enacted That except as hereinbefore provided this Act shall take effect from and after the passing thereof Provided however that every contract or agreement for the leasing or demising of any turnpike toll or ferry due on any public road or thoroughfare within the said County of Cumberland or for the making or repairing of such road or thoroughfare or otherwise in respect thereof which hath been entered into or agreed to be entered into by the Collector of Internal Revenue or by the Surveyor General or other Officer lawfully appointed in that behalf and any other person or persons whomsoever and also all powers and authorities which now are in what manner soever lawfully vested in the said Collector of Internal Revenue and Surveyor General respectively or their assistants in respect of any such turnpike toll or ferry due or any such roads and thoroughfares turnpike gates houses ferries punts boats and other appurtenances thereto belonging shall in respect of all such contracts or agreements remain in as full force and effect as if this Act had not been passed.

SCHEDULE REFERRED TO.**A.****SYDNEY TRUST.**

1. The Parramatta Road from the City boundary at the junction of the Cook's River Road to Longbottom Gate $7\frac{3}{4}$ miles.
2. The Liverpool Road from Ireland's Inn to Saltpan Creek $7\frac{1}{2}$ miles.

PARRAMATTA TRUST.

1. The Streets in Parramatta through which the mails pass.
2. The Sydney Road from the Parramatta Town Boundary to Longbottom Gate $6\frac{1}{2}$ miles.
3. The Dogtrap Road from Beckett's Bridge Toll-bar to the Great South Road 6 miles.
4. The Western Road from the Town Boundary of Parramatta to Eastern Creek 9 miles.
5. The Windsor Road from the Parramatta Town Boundary at Broken-back Bridge to the Lock-up at Vinegar Hill 11 miles.

LIVERPOOL TRUST.

1. The Streets through which the mails pass.
2. The Sydney Road from Liverpool to Saltpan Creek.
3. The South Road from Liverpool to the Cross Roads at Collins' Inn.

CAMPBELL TOWN TRUST.

1. The Sydney Road from Campbell Town to the Cross Roads at Collins' Inn.
2. The Road from Campbell Town to Appin.
3. The Road from Campbell Town to Menangle Ford including the crossing of the River at the said Ford.

NARELLAN TRUST.

1. The South Road from the Cowpasture Bridge to the Cross Roads at Collins' Inn.

PENRITH TRUST.

1. The Western Road from Emu Ferry to Eastern Creek including the crossing of that creek 11 miles.

WINDSOR TRUST.

1. The Streets in Windsor through which the mails pass.
2. The Streets in Richmond through which the mail passes.
3. The Road from Windsor to the Lock-up at Vinegar Hill $7\frac{1}{2}$ miles.
4. The Road from Windsor to Richmond 5 miles.
5. The Blacktown Road from Richmond to the Great Western Road 17 miles.