

No. XIV.

An Act for the appointment of Commissioners
for making managing and upholding the Old
Botany Randwick and Coogee Roads. [14th
September, 1854.]

BOTANY ROAD
COMMISSIONERS.

WHIEREAS 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 and numbered twelve 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 place certain public roads in the County of Cumberland in the said Colony into a Trust specified in the Schedule to this Act annexed marked (A 1) 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 Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows:—

1. The public roads or thoroughfares as set forth in the said Schedule shall be placed in Trust according to the provisions of this Act. Public roads or thoroughfares to be placed under Trust.

2. It shall be lawful for His Excellency the Governor to appoint Commissioners to carry out the provisions of the said Trust. His Excellency to appoint Commissioners.

3. All questions matters and things which shall be discussed or considered at any meeting of the said Commissioners shall be decided and determined by the majority in number of the members present and the President (who shall be elected by the Commissioners from their own body) shall be entitled to vote thereat and in case of an equality of votes shall have an additional or casting vote Provided however that the said Commissioners shall in no case be competent to proceed to business unless there be at least three members present. Questions to be decided by majority.

4. 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 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 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. Property to be vested in the said Commissioners.

5. It shall be lawful for the said Commissioners 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 said Trust and in such notice shall be stated the rates of such tolls and from time to time to alter Powers of Commissioners.

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Tolls to be taken.

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 mentioned in the Schedule to this Act annexed marked B 2 And provided that when any toll has been paid at any turnpike-gate erected within the limits of the said Trust no toll shall be payable at any gate within eight miles of the former and the same toll shall free the same traffic on its return the same day.

Government Gazette evidence of notice.

6. In any proceeding under this Act or the said recited Act the production of the *New South Wales Government Gazette* containing such notice shall be *prima facie* evidence that such notice was duly published by the direction of the said Commissioners until the contrary shall be shewn and the like evidence shall be sufficient proof of the appointment of the said Commissioners.

Money vested in Commissioners.

7. All sums of money which shall be collected and levied under this Act on such of the roads or thoroughfares as are within the said Trust shall be vested in the said Commissioners to be applied by them in making repairing fencing and upholding such roads and thoroughfares within the said Trust and also the bridges thereon and in erecting necessary toll houses and gates thereon and keeping the same as well as those already erected in proper repair.

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

8. 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 annexed mentioned and the branches diverging therefrom shall be transferred to and vested in the said Commissioners and the said Commissioners shall be competent to grant leases for the tolls and dues to be collected and levied within the said district for any period not exceeding the term of two years if in their discretion they shall deem it expedient so to do anything in the present law to the contrary notwithstanding.

Nothing in the 2nd William IV. No. 12 to extend to any highway in any town.

9. Nothing in the said recited Act contained with reference to the width of any highway or turnpike road shall extend to any such highway or turnpike road which may be within the limits of any town situated within the boundaries of the said Trust.

Penalty on collector &c. taking less toll than allowed by law.

10. If any collector or keeper of tolls at any turnpike-gate established or to be established in pursuance of this Act or the said recited Act shall take a less toll from any person than he shall be authorized to do by virtue of the powers of this or any other Act or any proclamation issued or to be issued in pursuance thereof or of the orders resolutions and notices of the Commissioners made or published in pursuance thereof then and in every such case every such collector or keeper of tolls shall forfeit and pay any sum not exceeding twenty pounds for every such offence.

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

11. For the purposes 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 mentioned or for erecting forming or repairing any bridge dam or drain thereon or for the performing any act matter or thing under the provisions of the said recited Act or this Act it shall be lawful for the said Commissioners or the 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.

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12. It shall be lawful for the said Commissioners 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 take away any materials for making or repairing such roads or thoroughfares as aforesaid in through or from any land river or creek 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 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 persons 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.

Commissioners or persons contracting with them may search for dig and carry away any materials for roads.

13. It shall be lawful for the said Commissioners 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 brush-wood 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 Commissioners or other officer or person as aforesaid to remove or burn any such brush-wood or loppings without being deemed a trespasser or trespassers.

Branches of trees &c. to be cut and lopped.

14. It shall be lawful for the said Commissioners 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.

Dams may be fenced off.

15. It shall be lawful for the said Commissioners 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 bridges dams archways and sewers and generally to use such means as to them shall seem requisite for the purposes aforesaid.

Commissioners to have power to cut drains and ditches through all or any land.

16. In case any person or persons shall resist or in any manner forcibly oppose the said Commissioners their successors or their contractors as aforesaid or the surveyors assistants workmen or laborers employed by them in the due execution of this Act every person so offending therein shall on conviction for every such offence forfeit and pay any sum not exceeding ten pounds.

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

17. It shall be lawful for the said Commissioners to sue and be sued in the name or names of any one of such Commissioners or of their clerk for the time being and no action or suit to be brought or commenced by or against any such Commissioners or clerk by virtue of this Act in the name or names of any one of such Commissioners or clerk shall abate or be discontinued by the death or removal of

Commissioners may sue and be sued.

of

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of such Commissioner or clerk by the act of such Commissioner or clerk without the consent of the surviving or remaining Commissioners but any one of such Commissioners or clerk shall always be deemed 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 of the Trust 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.

Commissioners may prosecute for nuisances &c.

18. It shall be lawful for the said Commissioners 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 or to recover any penalty or forfeiture incurred under 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.

Commissioners to appoint ministerial officers.

19. It shall be lawful for the said Commissioners to appoint all such ministerial officers as shall be necessary for carrying this Act into effect and to assign reasonable salaries or other remuneration to such officers and the same shall be paid out of any sums of money which shall be collected and levied under this Act.

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

20. No Commissioner appointed under this Act nor any surveyor or other officer or servant appointed by the said Commissioners 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.

Commissioners may borrow money and mortgage tolls.

21. It shall be lawful for the Commissioners of the said Trust to borrow and take up at interest on the credit of the tolls arising on the roads within the said Trust such sum or sums of money as they shall from time to time 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 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 tolls received on the roads within the said 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 the said Trust make the aggregate of the debt or debts of the said Trust to exceed three times the amount of the tolls so received within the year immediately preceding as aforesaid.

Commissioners to keep and render accounts.

22. The said Commissioners 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 Trust under this Act and they shall within one month after the expiration of each half year

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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*.

23. No tolls or dues shall be demandable or taken by virtue of this Act for or in respect of any horses or carriages of or belonging to the Governor of the said Colony for the time being or any person in actual attendance upon him or for or in respect to the horses beasts carts carriages or other vehicle of or belonging to the Government and employed at the time of passing the gate in the Government service or for or in respect to any horse beast carriage or other vehicle conveying any clergyman in the discharge of his duty or any other person or persons going to or returning from the proper church chapel or other place of worship of the person or persons riding or driving the same on Sundays Christmas Day or Good Friday or for or in respect of any horse beast carriage or other vehicle attending funerals or for or in respect of any horse beast carriage or other vehicle carrying the Post Office mails or for any horse beast carriage or other vehicle which shall only cross any such turnpike road within the said Trust or shall not pass thereon above the distance of two hundred yards or for any horses or other beast going or returning daily to or from the usual place of pasturing or watering and all horses cattle carts drays and vehicles whatsoever employed by or belonging to the said Commissioners or their surveyors assistants servants laborers or workmen or any person contracting with the said Commissioners for repairing the said roads dams and bridges whilst so employed respectively and also all carts vehicles and conveyances belonging to or in the actual service of the Commissioners for the City of Sydney their contractors servants or agents when employed in their service in connection with the water works of the said City.

24. It shall be lawful for any one or more 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 and 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.

25. 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 with costs to be assessed by the Justice or Justices either immediately or within such period as the Justice or Justices shall think fit and 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 five pounds and for any term not exceeding three calendar months where the sum shall exceed five pounds the imprisonment in each such case to cease upon payment of the sum due.

26. All sums of money recovered under the provisions of this Act shall be paid to the said Commissioners to be applied by them towards the making managing and upholding the roads within the said Trust and other purposes relating thereto.

27. If any Commissioner of the said Trust 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

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execution of this Act he or they may plead the general issue and give the special matter in evidence.

Conviction not to be quashed for want of form.

28. 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 of 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.

Commencement and title of Act.

29. This Act may be cited as "The Randwick and Coogee Road Trust Act 1854" and shall take effect from and after the passing thereof.

SCHEDULES REFERRED TO.

A 1.

1st.—Old Botany Road from the south end of Botany-street in the City of Sydney to the commencement of the Randwick and Coogee Road being one mile and a quarter from the said City.

2nd.—Randwick and Coogee Road from the Old Botany Road aforesaid to Randwick and the Town of Coogee being two miles and thirty chains to Whale-street in the said township.

3rd.—Frenchman's Road from its intersection with the Randwick and Coogee Road to the western boundary of M'Gee's five acres &c. to the eastern boundaries of Gordon's eight acres &c. thence between the grants of Jones and Gordon to Gray's corner on the Old South Head Road being one mile and sixty-two chains.

B 2.

	s.	d.
For every sheep lamb pig or goat	0	0 $\frac{1}{4}$
For every ox or head of neat cattle	0	1 $\frac{1}{2}$
For every horse mare gelding ass mule or colt	0	2
For every cart dray gig chaise or other such vehicle with two wheels drawn by one horse or other animal	0	6
For every additional horse or other animal drawing such cart dray gig chaise or other such vehicle with two wheels	0	2
For every wain wagon coach chariot or other such carriage with four wheels drawn by two horses or other animals	1	0
For every additional horse or other animal drawing such wain wagon coach chariot or other such carriage with four wheels	0	2
For every coach chariot chaise or other such carriage with four wheels drawn by one horse or other animal	0	8
For every cart dray wain wagon or such carriage having the felloes and tire of the wheels of the breadth of six inches one-half of the above toll only		
For every empty cart dray gig chaise or other vehicle tied or secured to any other carriage the same toll as if drawn by one horse and every empty four-wheel carriage the same rate of toll as if drawn by two horses but if such have goods conveyed in them other than the harness they shall pay double toll.		
