

## No. XIX.

GOVERNMENT  
RAILWAYS.  
—

An Act to make more effectual provision for the construction by the Government of Railways in the Colony of New South Wales and for the regulation of the same. [24th November, 1858.]

Preamble. **W**HEREAS by an Act of Council passed in the thirteenth year of the reign of Her Majesty Queen Victoria intituled “*An Act to incorporate a Company to be called The Sydney Railway Company*” certain persons were united into a Company for making completing and maintaining Railways in the Colony of New South Wales And whereas by another Act of Council passed in the seventeenth year of the reign of Her said Majesty intituled “*An Act to establish and incorporate a Company to be called The Hunter River Railway Company*” certain persons were united into another Company for making completing and maintaining a Railway from the City of Newcastle to the towns of East Maitland and West Maitland in the said Colony

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Colony And whereas by another Act intituled “*An Act to make provision for the construction by the Government of Railways in the Colony of New South Wales*” passed in the eighteenth year of the reign of Her said Majesty it was enacted that it should be lawful for the Governor to nominate and appoint three fit and proper persons to be Commissioners for making completing and maintaining Railways throughout the said Colony and that the Commissioners so to be appointed should constitute a body corporate by the name style and title of “*The Commissioners for Railways*” and further that it should be lawful for the Governor by and with the advice of the Executive Council in the name and on behalf of Her Majesty to purchase the Railways and other works with all their lands buildings and other hereditaments stock and appurtenances whatsoever belonging to or vested in the Sydney Railway Company and the Hunter River Railway Company respectively and that upon the completion of any such sale the Railways and other works with all their hereditaments stock and appurtenances whatsoever and all the powers authorities privileges and immunities whatsoever belonging to or possessed by such Company selling the same should thenceforth be vested in the said Commissioners And whereas the Governor by and with the advice of the Executive Council hath in the name and on behalf of Her Majesty purchased of the said Companies respectively the Railways and all other property whatsoever belonging to or vested in them and the same are now vested in the Commissioners for Railways appointed by the Governor under and in pursuance of the lastly recited Act And whereas it is expedient that the several Acts hereinbefore recited and also a certain other Act passed in the nineteenth year of Her Majesty’s reign intituled “*An Act to make further provision for the Regulation of Railways*” should be repealed and that more effectual provision be made for the making of Railways by the Government and for the regulation of the same Be it therefore enacted by the Queen’s Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1. From and after the first day of December one thousand eight hundred and fifty-eight the said several recited Acts and all the powers provisoes and directions therein respectively contained shall be and the same are hereby repealed Provided nevertheless that every contract purchase conveyance act matter proceeding and thing already made done executed commenced or instituted by virtue or in pursuance of the said recited Acts or any of them shall be and the same is hereby declared to be as good valid and effectual to all intents and purposes whatsoever as if the said Acts had not been hereby repealed.

Acts to incorporate the Sydney Railway Company and the Hunter River Railway Company and the 18 Vic. No. 40 and 19 Vic. No. 32 repealed.

2. All the Railways lands tenements buildings hereditaments and property of whatever nature and all powers rights remedies and capacities in respect thereof which lately were or now are vested in or held in trust for the said Companies or the said Commissioners for Railways or any of them shall vest in or be held in trust for the Commissioner for Railways to be appointed under this Act and all moneys due and owing by or to or on account of the said Companies or the said Commissioners or either of them shall be recoverable by or from the Commissioner for Railways to be appointed under this Act and all contracts agreements mortgages bonds covenants or securities made and entered into with or in favour of or by or for the said Companies or the said Commissioners or any of them or any person on their behalf shall take effect and may be proceeded on and enforced by and against and with reference to and in the name of the Commissioner for Railways to be appointed under this Act as fully in all respects as they might have been enforced by against and with reference to the

Property transferred to Commissioner to be appointed under this Act.

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said Companies and the said Commissioners or any of them if this Act had not been passed and all questions of compensation for lands taken or injuries committed by the said Companies or Commissioners or any of them under the authority of the said recited Acts shall be settled and determined and the amount paid under the provisions of this Act as if the lands had been taken and the injuries occasioned by the Commissioner for Railways to be appointed under this Act.

Suits &c. already in progress not to abate or be discontinued.

3. No action suit prosecution or other proceeding whatsoever commenced or carried on previously to the passing of this Act either by or against the said Companies or the said Commissioners shall abate or be discontinued or be prejudicially affected by force of this Act but the same shall continue and take effect both in favour of and against the Commissioner to be appointed as aforesaid and all judgments decrees and orders made in favour of or against the said Companies or the said Commissioners and all fines and penalties imposed and incurred respectively under any of the said recited Acts shall be enforced levied recovered and proceeded for by and against and with reference to and in the name of the Commissioner for Railways to be appointed under this Act in such and the like manner as they could have been enforced levied recovered and proceeded for by and against and with reference to and in the name of the said Companies or the said Commissioners if this Act had not been passed.

Governor in Council authorized to appoint Commissioner for Railways.

4. It shall be lawful for the Governor with the advice of the Executive Council from time to time to appoint some fit and proper person to be Commissioner for Railways who shall notwithstanding the incorporation of such Commissioner and his successors as hereinafter provided be deemed to be an officer under the Government of the Colony and shall as such be charged with the duty of carrying into effect the provisions contained or referred to in this Act subject to such regulations as shall from time to time be made by the Governor with the advice of the said Council.

Governor in Council authorized to appoint other officers.

5. It shall be lawful for the Governor with the advice aforesaid to appoint a Secretary Solicitor and such engineers surveyors and other officers and to cause to be employed such agents servants and workmen as to the said Governor and Council shall appear necessary and proper for the execution of the powers and duties vested or to be vested in the said Commissioner under the provisions of this Act and under and in pursuance of such orders directions and regulations as aforesaid Provided always that this enactment shall not extend to minor appointments which by this Act or by order of the Governor and Executive Council may at any time be vested in the Commissioner appointed under this Act.

Provided that minor appointments may by order in Council be vested in Commissioner &c.

Governor in Council to have power to suspend and remove &c.

6. The Governor with the advice aforesaid shall have power to remove or suspend such Commissioner or any other such officer so appointed by him as aforesaid and as often as any person so appointed shall die resign or become incapable of acting from absence illness or otherwise or shall be removed or suspended it shall be lawful for the Governor with the advice aforesaid in like manner to appoint either permanently or temporarily as the case may require another fit and proper person to be such Commissioner or other officer as aforesaid in the place of the person so dying resigning or becoming incapable or being removed or suspended.

Commissioner to be a corporation sole.

7. For greater convenience in respect of suits and otherwise the Commissioner so to be appointed as aforesaid and his successors in office shall be and they are hereby constituted a corporation sole by the name style and title of "The Commissioner for Railways" and by that name shall have perpetual succession and an official seal and shall and may sue and be sued plead and be impleaded answer and be answered unto defend and be defended and take all legal proceedings in

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in all Courts and places whatsoever and shall have power and authority to purchase and hold lands to him and his successors and assigns for the use of the said Railways and works and generally for the purposes of carrying this Act into effect and also to sell dispose of and convey the said lands again if necessary.

8. All contracts and other agreements with any person for the purchase of lands materials and stock and for engaging to execute perform and construct any works which shall be authorized to be made under and in pursuance of the provisions hereof and also for the use and management of Railways and the collection of the tolls payable in respect thereof shall be in the name of the said Commissioner and all such contracts may be made as follows (that is to say)—

Contracts for executing works and also for the use and management of such Railway to be in the name of the Commissioner.

With respect to any contract which if made between private persons would be by law required to be in writing and under seal the Commissioner may make such contract in writing and under his official seal and in the same manner may vary or discharge the same

With respect to any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith the Commissioner may make such contract in writing and in the same manner may vary or discharge the same

With respect to any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing the Commissioner may make such contract by parol only without writing and in the same manner may vary or discharge the same

And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the said Commissioner and his successors in office on behalf of Her Majesty and all other parties thereto their heirs executors or administrators as the case may be and on any default in the execution of any such contract either by the Commissioner or any other party thereto such actions or suits may be brought either by or against the Commissioner as might be brought had the same contracts been made between private parties only.

9. Copies of the plans sections and books of reference of every Railway which it is intended to construct shall be from time to time prepared by the Government and laid before Parliament and whenever such plans sections and books of reference shall have been approved of by a Resolution of both Houses it shall be lawful for the Governor with the advice of the Executive Council to cause lines of Railway with all proper works and conveniences connected therewith to be made in accordance with such Resolutions and to make such rules and regulations and to give such orders and directions for the due carrying out and execution of such works and for the effective control and direction of the said Commissioner and other officers in carrying out and executing the same as shall appear most expedient for the interests of the public.

Governor in Council to cause Railways to be made and to make rules and regulations &c. for the due execution thereof.

10. For the purposes of this Act and subject to such orders directions and regulations as aforesaid it shall be lawful for the Commissioner and all persons by him authorized to enter into and upon the lands and grounds of any person whomsoever and to survey and take levels of the same and to ascertain and stake or set out take and appropriate for the purposes herein mentioned such parts thereof as may be necessary and proper for the laying out making and using any Railway and all other works matters and conveniences connected therewith and in or upon such lands or any lands adjoining or contiguous thereto to bore dig cut trench embank and sough remove or lay

Power to enter upon and take lands

remove materials

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|--|--|
| Construct inclined planes tunnels &c.    | lay take carry away and use any earth stone timber gravel or sand or any other materials or things which may be dug raised or obtained therein in making such Railway and other works out of any lands contiguous or adjoining thereto and which may be proper or necessary for making maintaining altering repairing or using any such Railway and other works by this Act authorized or which may hinder prevent or obstruct the making maintaining altering repairing or using the same respectively and also to make or construct in upon  |
| Alteration of course of rivers &c.       | across under or over any lands streets roads rivers streams or other waters within the lands described in the plans or mentioned in the books of reference of any line of Railway or any correction thereof such temporary or permanent inclined planes tunnels embankments aqueducts bridges roads ways passages conduits drains piers arches cuttings and fences as shall be considered necessary and also to alter the course of any rivers not navigable streams or watercourses for the purpose of constructing and maintaining tunnels bridges passages or other works over or under the same or for any other necessary purpose and also to divert or alter as well temporarily as permanently the course of any such rivers or streams of water streets roads or ways  |
| and of roads &c.                         | or to raise or sink the level of any such rivers or streams roads streets or ways in order the more conveniently to carry the same over or under or by the side of any such Railway as may be thought proper and to make drains or conduits into through or under any lands adjoining the Rail-  |
| The level of any such rivers or streams. | way for the purpose of conveying water from or to the Railway and also in or upon any such Railway or any lands adjoining or near thereto to erect and construct such houses warehouses offices and other buildings yards stations wharves engines machinery apparatus and other works and conveniences as shall be thought requisite and also from time to time to alter repair or discontinue the before-mentioned works or any of them and to substitute others in their stead and where any Railway shall pass through any woodlands or forests it shall be lawful for the Commissioner and all persons by him authorized their agents and servants to fell or remove any trees standing thereon within the distance of fifty yards from either side of such Railway and generally to do all other acts necessary for making maintaining altering or repairing and using the Railway Provided always that in the exercise of the powers by this Act granted the said Commissioner and all other persons shall do as little damage as may be and that if required full satisfaction shall be made in manner herein provided to all persons interested in any lands or hereditaments which shall have been taken used or injured or prejudicially affected for all damages by them sustained by reason of the exercise of such powers. |
| Drains &c.                               |  |
| And to erect toll-houses warehouses &c.  |  |
| Alterations and repairs.                 |  |
| General power.                           |  |
| Proviso as to damages.                   |  |
| Breadth of land to be taken for Railway. | 11. The lands to be taken or used for any line of Railway shall not exceed one hundred yards in width except where a greater width shall be judged necessary for an approach to the Railway or for wagons and other carriages to turn remain stand in lie or pass each other or for raising embankments for crossing valleys or low grounds or in cutting through high ground or for the erection or establishment of any fixed or permanent machinery toll-house warehouses wharf or other erections and buildings or for excavating removing or depositing earth or other materials Provided always that nothing herein contained shall authorize the Commissioner or any person acting under the authority of this Act to take injure or damage any messuage dwelling-house or other permanent building or the immediate appurtenances thereof without the consent in writing of the owner and occupier thereof respectively until after the expiration of six calendar months from the time the Commissioner shall have given notice to the owner thereof that the same is required for the purpose of this Act as hereinafter mentioned.  |
| Proviso as to injuries to houses &c.     |  |

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12. When and as often as the Governor with the advice of the Executive Council shall deem it expedient to make a Railway in any part of the Colony and shall authorize the making of the same the Commissioner shall before commencing any such Railway and subject to such orders directions and regulations as aforesaid cause to be made and taken levels and surveys of the country and lands through which such Railway is to be carried together with a map or plan of the said line and of the lands through which it is to pass and also a book of reference in which shall be set forth a description of the said several lands and the names of the owners and proprietors thereof so far as the same shall be known or can with reasonable diligence be ascertained with a description of the said lands setting forth the bearings of such Railway as the case may require and the nature and quality state of cultivation the inclosures (if any) and the quantity of such land which may be required for the purpose of making such Railway.

Before commencing line Commissioner to cause map or plan of line and book of reference to be made.

13. Whenever any such map or plan and book of reference shall be primarily approved of by the Governor and the Executive Council notice thereof shall be given by the Commissioner by advertisement in the *Government Gazette* which notice shall set forth generally the extent and direction of the intended line of Railway and shall refer to such map or plan and book of reference to be seen at the office of the Commissioner at Sydney and shall call upon all persons interested in the lands to be affected by the said intended Railway to set forth in writing to the said Commissioner within one month from the first publication of such notice any well-grounded objection that may appear to them to exist to the adoption of the said line of Railway or any part thereof or of any works proposed in connection therewith and if any such objection shall be made the same shall be considered by the Governor and Executive Council who shall after due consideration thereof confirm or alter and confirm with alterations the said map or plan and book of reference as to the said Governor and Council shall seem meet and thereupon notice shall be given by the Commissioner in the *Government Gazette* of such confirmation with or without alterations as the case may be.

If such plan &c. be primarily approved of by the Governor in Council notice to be given and objections to be considered.

Governor in Council after considering objections to alter or confirm and thereupon notice to be given.

14. The said map or plan and book of reference as so altered or confirmed shall be kept in the office of the Commissioner at Sydney and true copies thereof signed by the Commissioner shall be deposited with the Clerks of Petty Sessions of the districts into or through which such Railway shall be intended to be carried and such map or plan and book of reference and such copies thereof respectively shall be exhibited at all convenient times for public examination from the day of the date on which the notice of intention to make such Railway as hereinafter provided shall be first published and all persons shall have free liberty and permission at all proper and convenient times to view and examine the said map or plan and book of reference or copies as aforesaid.

Map and book of reference to be deposited with the Clerks of Petty Sessions.

15. If any omission misstatement or erroneous description shall have been made of any lands or of the owners lessees or occupiers of any lands described on the plans or books of reference of any line it shall be lawful for the Commissioner after having given ten days' notice to the owners of the lands affected by such proposed correction and subject to such orders directions and regulations as aforesaid to lodge amended plans and books of reference in the same manner as the original books of reference and thereupon such original plans or books of reference shall be deemed to be so corrected and it shall be lawful for the Commissioner to make the works in accordance therewith.

Errors and omissions in plans and books of reference to be corrected.

16. The Commissioner shall by advertisement in the *Government Gazette* and in one or more of the Sydney newspapers forty days before commencing any Railway give notice that it is intended to make

Commissioner to give notice of his intention to make Railways between certain places.

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make the said Railway between certain places therein to be specified according to a map or plan and book of reference to be seen in the office of the Commissioner at Sydney and at the offices of the said Clerks of Petty Sessions and in case any material deviation from the said line indicated in such map or plan shall at any time afterwards be deemed by the said Governor and Executive Council to be desirable the like notices as aforesaid shall be given by the Commissioner relative to the proposed deviation.

Power to purchase lands by agreement.

17. It shall be lawful for the Commissioner subject to such orders directions and regulations as aforesaid to agree with the owners of any lands by this Act authorized to be taken and which shall be required for the purposes of this Act and with all parties having any estate or interest in such lands or by this Act enabled to sell and convey the same for the absolute purchase for and on behalf of Her Majesty for a consideration in money of any such lands or such parts thereof as shall be thought proper and of all estates and interests in such lands of what kind soever.

Parties under disability enabled to sell and convey and exercise other powers.

18. It shall be lawful for all parties being seised possessed of or entitled to any such lands or any estate or interest therein to sell and convey or release the same to the Commissioner for and on behalf of Her Majesty and to enter into all necessary agreements for that purpose and particularly it shall be lawful for all or any of the following parties so seised possessed or entitled as aforesaid so to sell convey or release (that is to say) all corporations tenants in tail or for life married women seised in their own right or entitled to dower guardians committees of lunatics and idiots trustees or feoffees in trust for charitable or other purposes executors and administrators and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower or to any lease for life or for lives and years or for years or any less interest and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties other than married women entitled to dower or lessees for life or for lives and years or for years or for any less interest not only on behalf of themselves and their respective heirs executors administrators and successors but also for and on behalf of every person entitled in reversion remainder or expectancy after them or in defeasance of the estates of such parties and as to such married women whether they be of full age or not as if they were sole and of full age and as to such guardians on behalf of their wards and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively and that to the same extent as such wives wards lunatics and idiots respectively could have exercised the same power under the authority of this Act if they had respectively been under no disability and as to such trustees executors or administrators on behalf of their cestui que trusts whether infants issue unborn lunatics femmes covert or other persons and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this Act if they had respectively been under no disability and the power hereinafter given to release lands from any rent-charge or incumbrance and to agree for the apportionment of any such rent-charge or incumbrance shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the said Commissioner.

Amount of compensation to be ascertained by arbitration in case of parties under disability.

19. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity and not having power to sell or convey such lands except under the provisions of this Act and the compensation to be paid for any permanent damage or injury to any such lands shall not except where the same shall have been determined by a surveyor appointed under

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under the provisions hereinafter contained be less than shall be determined by two Justices or by arbitrators appointed in the manner hereinafter provided.

20. It shall be lawful for the Commissioner subject to such orders directions and regulations as aforesaid in addition to the lands authorized to be compulsorily taken by him as aforesaid to contract with any party willing to sell the same for the purchase for and on behalf of Her Majesty of any lands for the purpose of making and providing additional stations yards wharves stellinges and places for the accommodation of passengers and for receiving depositing and loading or unloading goods or cattle to be conveyed upon any Railway under the authority of this Act and for the erection of weighing machines toll-houses and other buildings and conveniences and for any other purpose that may be deemed requisite or convenient for the use of the Railways and it shall be lawful for all parties who under the provisions hereinbefore contained would be enabled to sell and convey lands to sell and convey the lands so authorized to be purchased for the last-mentioned purposes.

Power to purchase lands for additional accommodation.

21. It shall be lawful for the Commissioner under such orders and directions as aforesaid to sell and convey the lands which he may have so acquired for extraordinary purposes as aforesaid or any part thereof in such manner and for such considerations and to such persons as he may think fit and again to purchase other lands for the like purposes and afterwards sell and convey the same and so from time to time.

Authority to sell such lands and to purchase others.

22. When the map or plan and book of reference of any line of Railway intended to be made shall have been confirmed as hereinbefore required the Commissioner shall give notice of the lands taken or required for the said Railway to all the parties interested in such land or to the parties enabled by this Act to sell and convey or release the same or such of the said parties as shall after diligent inquiry be known to the Commissioner and by such notice shall demand from such parties and the said parties are hereby required to deliver to the said Commissioner the particulars of their estate and interest in such lands and of the claims made by them in respect thereof and every such notice shall state the particulars of the lands so taken or required as aforesaid and that the Commissioner is willing to treat as to the compensation to be made to all parties for the lands taken or to be taken and the damage sustained or that may be sustained by them by reason of this Act.

Notice of lands taken for the Railway.

23. All notices required to be served by the Commissioner upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found) and in case any such parties shall be absent from the Colony or cannot be found after diligent inquiry shall be left with the occupier of such lands or if there be no such occupier shall be advertised not less than three times in one or more daily newspapers published in Sydney.

Service of notices on owners and occupiers of lands.

24. If for twenty-one days after the service of such notice any such party shall fail to treat with the Commissioner in respect of any such land or if such party and the Commissioner shall not agree as to the amount of the compensation to be paid by the Commissioner for the interest in such lands belonging to such party or which he is by this Act enabled to sell or for any damage that may be sustained by him by reason of the execution of the works the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation but the owner or party claiming compensation shall not be at liberty to institute any proceeding for recovery of his claim until after the expiration of fourteen days from the delivery of the particulars required by this Act to be furnished by

If parties fail to treat or in case of dispute compensation to be settled as after mentioned.



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by him Provided that if no claim shall be made within twelve months after such notice as aforesaid by the party entitled to make such claim the same shall be deemed to have been waived and abandoned.

How disputes as to compensation to be settled.

25. If no agreement be come to between the Commissioner and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of any of the powers hereby granted or any interest in such lands as to the value of such lands or of any interest therein or as to the compensation to be made in respect thereof and if in any such case the compensation claimed shall not exceed one hundred pounds the same shall be settled by two Justices and if the compensation claimed or offered shall exceed one hundred pounds the same shall be settled by arbitrators as hereinafter provided.

Method of proceeding before Justices for settling disputes as to compensation.

26. It shall be lawful for any Justice upon the application of either party with respect to any question of disputed compensation by this Act authorized to be settled by two Justices to summon the other party to appear before two Justices at a time and place to be named in the summons and upon the appearance of such parties or in the absence of any of them upon proof of due service of the summons it shall be lawful for such Justices to hear and determine such question and for that purpose to examine such parties or any of them and their witnesses upon oath and the costs of every such inquiry shall be in the discretion of such Justices and they shall settle the amount thereof Provided always that if the amount awarded by the Justices shall be one-fourth less than the amount claimed the owner of the land or person claiming compensation shall pay to the Commissioner the cost of and occasioned by the inquiry.

Appointment of arbitrators.

27. When any question of disputed compensation or any dispute or other matter authorized or directed by this Act to be settled by arbitration shall have arisen then unless both parties shall concur in the appointment of a single arbitrator each party on the request of the other party shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred and every appointment of an arbitrator shall be made on the part of the Commissioner under his hand and official seal and on the part of any other party under the hand of such party or if such party be a corporation aggregate under the common seal of such corporation and such appointment shall be delivered to the arbitrator or arbitrators and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other nor shall the death of either party to such submission operate as a revocation and if for the space of fourteen days after any such dispute or other matter shall have arisen and after a request in writing in which shall be stated the matter so required to be referred to arbitration shall have been served by the one party on the other party to appoint an arbitrator such last-mentioned party fail to appoint such arbitrator then upon such failure the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties and such arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single arbitrator shall be final and conclusive except as hereinafter provided.

Vacancy of arbitrator to be supplied.

28. If before the matter so referred shall be determined any arbitrator appointed by either party die or become incapable or refuse or for fourteen days neglect to act as arbitrator the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place and if for the space of seven days after notice in writing from the other party for that purpose he fail to

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do so the remaining or other arbitrator may proceed alone and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death refusal neglect or disability as aforesaid.

29. Where more than one arbitrator shall have been appointed such arbitrators shall before they enter upon the matters referred to them nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ or which shall be referred to him under the provisions of this Act and if such umpire shall die or become incapable to act or refuse or for seven days neglect to act after being called upon to do so by the arbitrators they shall forthwith after such death incapacity refusal or neglect appoint another umpire in his place and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

30. If in either of the cases aforesaid the arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for any Judge of the Supreme Court on the application of either party to such arbitration to appoint an umpire and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Act shall be final.

One of the Judges of the Supreme Court to appoint umpire on neglect.

31. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award or shall refuse or for fourteen days neglect to act the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator the matter to begin *de novo*.

32. If where more than one arbitrator shall have been appointed either of the arbitrators refuse or for seven days neglect to act the other arbitrator may proceed alone and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act the other to proceed *ex parte*.

33. If where more than one arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed or within such extended time if any not being greater in the whole than six months as shall have been appointed for that purpose by both of such arbitrators under their hands the matters referred to them shall be determined by the umpire appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

34. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Power of arbitrators to call for books &c.

35. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice of the Peace make and subscribe the following declaration that is to say :—

Arbitrator or umpire to make a declaration.

I do solemnly and sincerely declare that I have no interest either directly or indirectly in the property in question and that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of an Act intituled "*An Act to make more effectual provision for the construction by the Government of Railways in the Colony of New South Wales and for the regulation of such Railways.*"

A. B.

Made and subscribed in the presence of

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And

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And such declaration shall be annexed to the award when made and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

Cost of arbitration  
how to be borne.

36. All the costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Commissioner unless the arbitrators shall award the same or a less sum than shall have been offered by the Commissioner in which case each party shall bear his own costs incident to the arbitration and the costs of the arbitrators shall be borne by the parties in equal proportions but if the sum awarded shall be one-fourth less than the amount claimed the whole costs of and incident to the arbitration and award shall be borne by the claimant and the arbitrators shall direct the payment of the same accordingly. Provided that if either party shall be dissatisfied with the costs allowed by the arbitrators as aforesaid the costs may be taxed by the Prothonotary or other proper officer of the Supreme Court and the amount allowed by such officer shall be the amount to be paid.

Award to be de-  
livered to the Com-  
missioner.

37. The arbitrators shall deliver their award in writing to the Commissioner and the Commissioner shall retain the same and shall forthwith on demand furnish a copy thereof to the other party and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Submission may be  
made a rule of  
Court.

38. The submission to any such arbitration may be made a rule of the Supreme Court on the application of either of the parties.

Award not void  
through error in  
form.

39. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

Power to refer back  
award.

40. In any case where reference shall be made to arbitration as aforesaid the Supreme Court or a Judge shall have power at any time and from time to time to remit the matters referred or any or either of them to the re-consideration and re-determination of the said arbitrators or umpire as the case may be upon such terms as to costs and otherwise as to the said Court or Judge may seem proper.

Questions of compen-  
sation in certain  
cases to be decided  
by jury.

41. If the compensation awarded by the arbitrators shall exceed the sum of three hundred pounds and either party shall be dissatisfied with the award and shall desire to have the compensation settled by a jury and shall within fourteen days after making the award and notice thereof signify such desire by notice in writing to the other party then no steps shall be taken to enforce performance of the award but the party claiming compensation shall proceed by action in the Supreme Court in the usual manner to recover from the Commissioner the compensation to which he may be entitled under the provisions of this Act and if upon the trial of the said action the verdict shall be for a greater sum than the sum previously offered by the Commissioner and awarded by the arbitrators all the costs of the said action and of the arbitration and award shall be borne by the said Commissioner and if the verdict be given for a less sum than the sum so awarded all the costs of the said action and of the arbitration and award shall be borne by the claimant but if the verdict of the jury shall be for the same sum awarded by the arbitrators all the costs of the said action and of the arbitration and award shall be paid by the party requiring the same to be referred to a jury and in every such case the costs of the arbitration and award shall be added to and be recoverable as the costs of the action.

Compensation to  
absent parties to be

42. The purchase money or compensation to be paid for any lands to be purchased or taken by the Commissioner from any party who

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who by reason of absence from the Colony is prevented from treating or who cannot after diligent inquiry be found and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of a competent surveyor and valuator nominated for that purpose as hereinafter mentioned.

determined by a surveyor appointed by two Justices.

43. Upon application by the Commissioner to two Justices and upon such proof as shall be satisfactory to them that any such party is by reason of absence from the Colony prevented from treating or cannot after diligent inquiry be found such Justices shall by writing under their hands nominate a competent surveyor and valuator for determining such compensation as aforesaid and such surveyor shall determine the same accordingly and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Two Justices to nominate a surveyor.

44. Before such surveyor and valuator shall enter upon the duty of making such valuation as aforesaid he shall in the presence of such Justices or one of them make and subscribe the following declaration at the foot of such nomination that is to say :—

Surveyor to make a declaration.

“ I A. B. do solemnly and sincerely declare that I have no interest directly or indirectly in the property in question and that I will faithfully impartially and honestly according to the best of my skill and ability execute the duty of making the valuation hereby referred to me.”

Valuation to be delivered to Commissioner.

Made and subscribed in }  
the presence of }

A. B.

And if any such surveyor shall corruptly make such declaration or having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor and the said nomination and declaration shall be annexed to the valuation to be made by such surveyor and valuator and shall be delivered to the Commissioner to be kept for the purpose and in the manner hereinbefore provided in case of awards and all the expenses of and incident to every such valuation shall be borne by the said Commissioner.

45. In estimating the purchase money or compensation to be paid under any of the provisions of this Act regard shall be had by the Justices arbitrators jury or surveyor as the case may be not only to the value of the land purchased or taken by the Commissioner on behalf of Her Majesty as aforesaid but also to the damage (if any) to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner or otherwise injuriously affecting such other lands by the exercise of the powers of this Act and they shall assess the same according to what they shall find to have been the value of such lands estate or interest at the time notice was given of such lands being required and without reference to any alteration in such value arising from the establishment of such Railway and other works.

Purchase money and compensation how to be estimated.

46. All moneys which by this Act are directed to be paid by the Commissioner shall be paid by warrant of the Governor upon the Treasury of the said Colony and in all cases where compensation or costs shall be awarded or adjudged to be paid by the Commissioner the amount thereof shall be paid to the party lawfully entitled thereto or to his agent duly authorized in his behalf within one month next after the amount of the said compensation or costs shall have been determined but in every such case the party claiming payment shall be bound to make out a title to the said lands or to the interest claimed by him therein to the satisfaction of the said Commissioner.

Commissioner to pay compensation within one month.

Title to be made out

47. If the purchase money or compensation which shall be payable in respect of any lands or any interest therein purchased or taken

Purchase money payable to parties under disability

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amounting to £200  
to be deposited in the  
hands of the Master  
in Equity.

taken by the Commissioner from any corporation tenant for life or in tail married woman seised in her own right or entitled to dower guardian committee of lunatic or idiot trustee executor or administrator or person having a partial or qualified interest only in such lands and not entitled to sell or convey the same except under the provisions of this Act or the compensation to be paid for any permanent damage to such lands amount to or exceed the sum of two hundred pounds the same shall be paid into the hands of the Master in Equity to be by him deposited to the account of such Master in Equity *ex parte* "The Commissioner for Railways" in the matter of A or B (the party entitled) pursuant to the method prescribed by any Act or by any rules for the time being in force for regulating moneys paid into the Supreme Court in its Equitable Jurisdiction and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes (that is to say)—

Applications of  
moneys deposited.

In the redemption of the quit rent or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid or affecting other lands settled therewith to the same or the like uses trusts and purposes or

In the purchase of other lands or of Government Debentures or other stock to be conveyed limited and settled upon the like uses trusts and purposes and in the same manner as the lands in respect of which such money shall have been paid stood settled or

If such money shall be paid in respect of any buildings taken under the authority of this Act or injured by the proximity of the works in removing or replacing such buildings or substituting others in their stead in such manner as the Supreme Court or the Primary Judge in Equity shall direct or

In payment to any party becoming absolutely entitled to such money.

Order for application  
and investment  
meanwhile.

48. Such money may be so applied as aforesaid upon an order of the said Court or Judge made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited and until the money can be so applied it may upon the like order be invested by the said Master in Equity in the purchase of Government or real securities and the interest dividends and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from £20 to  
£200 to be deposited  
or paid to trustees.

49. If such purchase money or compensation shall not amount to the sum of two hundred pounds and shall exceed the sum of twenty pounds the same shall either be paid to the Master in Equity to be by him deposited and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds or the same may lawfully be paid to two trustees to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable such nomination to be signified by writing under the hands of the party so entitled and in case of the coverture infancy lunacy or other incapacity of the parties entitled to such moneys such nomination may lawfully be made by their respective husbands guardians committees or trustees but such last-mentioned application of the moneys shall not be made unless the Commissioner approve thereof and of the trustees named for the purpose and the money so paid to such trustees and the produce arising therefrom shall be by such trustees applied in the manner hereinbefore directed with respect to money deposited to the account of the Master in Equity but

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but it shall not be necessary to obtain any order of the Court for that purpose and if such money shall not exceed the sum of twenty pounds the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable for their own use and benefit or in case of the coverture infancy lunacy or other incapacity of such parties then such money shall be paid for their use to the respective husbands guardians committees or trustees of such persons.

Sums not exceeding £20 to be paid to parties.

50. All sums of money exceeding twenty pounds which may be payable by the Commissioner in respect of the taking using or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands or of the interest therein contracted to be sold by him absolutely for his own benefit shall be paid to the Master in Equity or to trustees in manner aforesaid and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking using or interfering with any such lands or in lieu of bridges tunnels or other accommodation works or for assenting to or not opposing the taking of such lands but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands as well in possession as in remainder reversion or expectancy Provided always that it shall be in the discretion of the Judges of the Supreme Court or the Primary Judge in Equity or the said trustees as the case may be to allot to any tenant for life or for any other partial or qualified estate for his own use a portion of the sum so deposited or so paid to such trustees as aforesaid as compensation for any injury inconvenience or annoyance which he may be considered to sustain independently of the actual value of the lands to be taken and of the damage occasioned to the lands held therewith by reason of the taking of such lands and the making of the works.

All sums payable under contract with persons not absolutely entitled to be paid to Master in Equity or trustees.

51. All payments which shall be made in any of the cases aforesaid to the parties entitled under this Act to receive the same shall be a good and valid discharge to the Commissioner and he shall not be bound or required to see to the application of any of the moneys paid to the Master in Equity or other person by virtue hereof or to see to the performance of any trusts.

Payments made under this Act sufficient discharge to the Commissioner.

52. Where any purchase money or compensation paid into the bank under the provisions of this Act shall have been paid in respect of any lease for a life or lives or years or for a life or lives and years or any estate in lands less than the whole fee simple thereof or of any reversion dependent on any such lease or estate it shall be lawful for the said Court or Judge on the petition of any party interested in such money to order that the same shall be laid out invested accumulated and paid in such manner as the said Court or Judge may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease estate or reversion in respect of which such money shall have been paid or as near thereto as may be.

Court of Equity may direct application of money in respect of leases or reversions as they may think just.

53. If the owner of any lands taken or purchased under the authority of the hereinbefore recited Acts or of this Act or of any interest therein on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof refuse to accept the same or neglect or fail to make out a title to such lands or to the interest therein claimed by him to the satisfaction of the Commissioner or if he refuse to convey or release such lands as directed by the Commissioner or if any such owner be absent from the Colony or cannot after diligent inquiry be found it shall be lawful for the Commissioner if he shall think fit to deposit the purchase money or compensation

Purchase money or compensation may in certain cases be paid to the Master in Equity.

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compensation payable in respect of such lands or any interest therein in the hands of the Master in Equity to be by him deposited as aforesaid to his account to the credit of the parties interested in such lands (describing them so far as the Commissioner can do) subject to the control and disposition of the said Court.

Application of  
moneys so deposited.

54. Upon the application by petition of any party making claim to the money so deposited as last aforesaid or any part thereof or to the lands in respect whereof the same shall have been so deposited or any part of such lands or any interest in the same the said Court or Judge may in a summary way as to such Court or Judge shall seem fit order such money to be laid out or invested in the purchase of Government or real securities or may order distribution thereof or payment of the dividends thereof according to the respective estates titles or interest of the parties making claim to such money or lands or any part thereof and may make such other order in the premises as to such Court or Judge shall seem fit.

Party in possession  
to be deemed the  
owner.

55. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid the parties respectively in possession of such lands as being the owners thereof or in receipt of the rents of such land as being entitled thereto at the time of such lands being purchased or taken shall be deemed to have been lawfully entitled to such lands until the contrary be shewn to the satisfaction of the Court and unless upon such inquiry as the Court shall think fit to direct the contrary be shewn as aforesaid the parties so in possession and all parties claiming under them or consistently with their possession shall be deemed entitled to the money so deposited and to the dividend or interest of the securities purchased therewith and the same shall be paid and applied accordingly.

Costs in case of  
money deposited.

56. In all cases of moneys deposited under the provisions of this Act except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same or to convey or release the lands in respect whereof the same shall be payable or by reason of the neglect of any party to make out a good title to the land required it shall be lawful for the said Court or Judge to order the costs of the following matters including therein all reasonable charges and expenses incident thereto to be paid by the Commissioner (that is to say) the costs of the purchase or taking of the lands or which shall have been incurred in consequence thereof other than such costs as are herein otherwise provided for and the costs of the investment of such moneys in Government or real securities and of the re-investment thereof in the purchase of other lands and also the costs of obtaining the proper orders for any of the purposes aforesaid and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested and for the payment out of Court of the principal of such moneys or of the securities whereon the same shall be invested and of all proceedings relating thereto except such as are occasioned by litigation between adverse claimants Provided always that the costs of one application only for re-investment in land shall be allowed unless it shall appear to the said Court or Judge that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands in different sums and at different times in which case it shall be lawful for the Court if it think fit to order the costs of any such investments to be paid by the Commissioner.

Form of convey-  
ances.

57. Conveyances of lands to be purchased or taken under the provisions of this Act may be according to the form in the Schedule A to this Act annexed or as near thereto as the circumstances of the case will admit or by deed in any other form which the Commissioner may think

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think fit and all conveyances made according to the form in the said Schedule or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the Commissioner for and on behalf of Her Majesty and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interests so thereby conveyed and to bar and to destroy all such estates tail and all other estates rights titles remainders reversions limitations trusts and interests whatsoever of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned but although terms of years be thereby merged they shall in equity afford the same protection as if they had been kept on foot and assigned to a trustee for the Commissioner to attend the reversion and inheritance.

58. The costs of all such conveyances shall be borne by the Commissioner and such costs shall include all charges and expenses incurred on the part as well of the seller as of the purchaser of all conveyances and assurances of any such lands and of any outstanding terms or interest therein and of deducing evidencing and verifying the title to such lands terms or interests and of making out and furnishing such abstracts and attested copies as the Commissioner may require and all other reasonable expenses incident to the investigation deduction and verification of such title.

Costs of conveyances.

59. If the Commissioner and the party entitled to any such costs shall not agree as to the amount thereof such costs shall be taxed by the Master in Equity or other proper officer of the Supreme Court upon the application of either party and the Commissioner shall pay what the said Master or other proper officer shall certify to be due in respect of such costs to the party entitled thereto or in default thereof it shall be lawful for any Judge of the Supreme Court to make an order for the payment of the same and the said costs may be recovered in the same way as any other costs payable under any order of the said Court or a Judge thereof and the expense of taxing such costs shall be borne by the Commissioner unless upon such taxation one-sixth part of the amount of such costs shall be disallowed in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed and the amount thereof shall be ascertained by the said Master or other proper officer and deducted by him accordingly in his certificate of such taxation.

Taxation of costs of conveyances.

60. Provided always that after any lands which the Commissioner is by this Act authorized to take shall have been set out ascertained and finally appropriated for the purposes of a Railway or other works in connection therewith such lands and the fee simple and inheritance thereof together with the yearly profits thereof and all the estate use trust and interest of every person therein shall thenceforth be vested in the Commissioner for and on behalf of Her Majesty to and for the purposes of this Act for ever as fully and effectually to all intents and purposes as if the same had been conveyed by the persons legally entitled to sell and convey the said lands but nevertheless the Commissioner may if he think fit in any case demand such conveyance.

Lands taken in pursuance of this Act to vest in Commissioner without conveyance.

61. If in any case in which according to the provisions of this Act the Commissioner is authorized to enter upon and take possession of any lands required for the purpose of the undertaking the owner or occupier of any such lands or any other person refuse to give up the possession thereof or hinder the Commissioner from entering upon or taking possession of the same it shall be lawful for the Commissioner to issue his warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same and upon the receipt of such warrant the Sheriff shall deliver possession

Proceeding in case of refusal to deliver possession of lands.



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possession of any such lands accordingly and the cost 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 by the Commissioner 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 to any Justice for that purpose he shall issue his warrant accordingly.

Parties not to be required to sell part of a house.

62. No party shall at any time be required to sell or convey to the Commissioner a part only of any house or other building or manufactory if such party be willing and able to sell and convey the whole thereof.

Owners of intersected lands may insist on sale.

63. If any lands not being situated in a town or built upon shall be so cut through and divided by the works as to leave either on both sides or on one side thereof a less quantity of land than half a statute acre and if the owner of such small parcel of land require the Commissioner to purchase the same along with the other land required for the purposes of this Act the Commissioner shall purchase the same accordingly unless the owner thereof have other land adjoining to that so left into which the same can be thrown so as to be conveniently occupied therewith and if such owner have any other land so adjoining the Commissioner shall if so required by the owner throw the the piece of land so left into the adjoining land by removing the fences and levelling the sites thereof and by soiling the same in a sufficient and workmanlike manner.

Commissioner may insist on purchase where expense of bridges &c. exceed the value.

64. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre or of less value than the expense of making a bridge culvert or such other communication between the land so divided as the Commissioner is under the provisions of this Act compellable to make and if the owner of such lands have not other lands adjoining such piece of land and require the Commissioner to make such communication then the Commissioner may require such owner to sell to him such piece of land and any dispute as to the value of such piece of land or as to what would be the expense of making such communication shall be ascertained as herein provided for cases of disputed compensation and on the occasion of ascertaining the value of the land required or taken for the purposes of the works the Justices or the arbitrators or jury as the case may be shall if required by either party ascertained by their verdict or award the value of any such severed piece of land and also what would be the expense of making such communication.

Power to redeem mortgages.

65. It shall be lawful for the Commissioner to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of this Act and that whether he shall have previously purchased the equity of redemption of such lands or not and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party and whether he be in possession of such lands by virtue of such mortgage or not and whether such mortgage affect such lands solely or jointly with any other lands not required for the purposes of this Act and in order thereto the Commissioner may pay or tender to such mortgagee the principal and interest due on such mortgage together with his costs and charges if any and also six months additional interest and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the Commissioner or as he shall direct or the Commissioner may give notice in writing to such mortgagee that  
he

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he will pay off the principal and interest due on such mortgage at the end of six months computed from the day of giving such notice and if he shall have given any such notice or if the party entitled to the equity of redemption of any such lands shall have given six months notice of his intention to redeem the same then at the expiration of either of such notices or at any intermediate period upon payment or tender by the Commissioner to the mortgagee of the principal money due on such mortgage and the interest which would become due at the end of six months from the time of giving either of such notices together with his costs and expenses if any such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the Commissioner or as he shall direct.

66. If in either of the cases aforesaid upon such payment or tender any mortgagee shall fail to convey or release his interest in such mortgage as directed by the Commissioner or if he fail to adduce a good title thereto to his satisfaction then it shall be lawful for the Commissioner to pay into the hands of the Master in Equity to be dealt with by him in the manner provided by this Act in the cases of moneys required to be paid to such Master in Equity the principal and interest together with the costs if any due on such mortgage and also if such payment be made before the expiration of six months notice as aforesaid such further interest as would at the time become due and it shall be lawful for the Commissioner if he think fit to execute a deed poll containing a description of the lands in respect whereof such deposit shall have been made and describing the circumstances under which and the names of the parties to whose credit such deposit shall have been made and such deed poll shall be duly registered by the Commissioner and thereupon as well as upon such conveyance by the mortgagee if any such be made all the estate and interest of such mortgagee and of all persons in trust for him or for whom he may be a trustee in such lands shall vest in the Commissioner and he shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Deposit of mortgage money on refusal to accept.

67. If any of such mortgaged lands shall be of less value than the principal interest and costs secured thereon the value of such lands or the compensation to be made by the Commissioner in respect thereof shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part and the Commissioner on the other part and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation and the amount of such value or compensation being so agreed upon or determined shall be paid by the Commissioner to the mortgagee in satisfaction of his mortgage debt so far as the same will extend and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the Commissioner or as he shall direct.

Sum to be paid when mortgage exceeds the value of the lands.

68. If upon such payment or tender as aforesaid being made any such mortgagee fail so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the Commissioner it shall be lawful for the Commissioner to pay the amount of such value or compensation into the hands of the Master in Equity to be dealt with by him in the manner provided by this Act in like case of moneys required to be paid to such Master in Equity and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt so far as the same will extend and shall be a full discharge of such mortgaged lands from all money due thereon and it shall be lawful for the Commissioner if he think fit to execute a deed poll in manner hereinbefore provided and thereupon such lands as to

Deposit of money when refused on tender.

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all such estate and interest as were then vested in the mortgagee or any person in trust for him shall become absolutely vested in the Commissioner and he shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession nevertheless all rights and remedies possessed by the mortgagee against the mortgagor by virtue of any bond or covenant or other obligation other than the right to such lands shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be paid where  
part only of mort-  
gaged lands taken.

69. If a part only of any such mortgaged lands be required for the purposes of this Act and if the part so required be of less value than the principal money interest and costs secured on such lands and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon or be not willing to release the part so required then the value of such part and also the compensation (if any) to be paid in respect of the severance thereof or otherwise shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part and the Commissioner on the other part and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation and the amount of such value or compensation being so agreed upon or determined shall be paid by the Commissioner to such mortgagee in satisfaction of his mortgage debt so far as the same will extend and thereupon such mortgagee shall convey or release to the Commissioner or as he shall direct all his interest in such mortgaged lands the value whereof shall have been so paid and a memorandum of what shall have been so paid shall be indorsed on the deed creating such mortgage and shall be signed by the mortgagee and a copy of such memorandum shall at the same time (if required) be furnished by the Commissioner at the public expense to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of money  
when refused on  
tender.

70. If upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined such mortgagee shall fail to convey or release to the Commissioner or as he shall direct his interest in the lands in respect of which such compensation shall so have been paid or tendered or if he shall fail to adduce a good title thereto to the satisfaction of the Commissioner it shall be lawful for the Commissioner to pay the amount of such value or compensation into the hands of the Master in Equity to be dealt with by him in the manner provided by this Act in the case of moneys required to be paid to such Master in Equity and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt so far as the same will extend and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon and it shall be lawful for the Commissioner if he think fit to execute a deed poll in the manner hereinbefore provided and thereupon such lands shall become absolutely vested in the Commissioner as to all such estate and interest as were then vested in the mortgagee or any person in trust for him and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue thereof (as the case may be) and the interest thereof respectively upon and out of the residue of such mortgaged lands or the portion thereof not required for the purposes of this Act as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

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71. If any difference shall arise between the Commissioner and the party entitled to any rent-service rent-charge or chief or other rent or other payment or incumbrance not hereinbefore provided for upon any lands taken for the purposes of this Act respecting the consideration to be paid for the release of such lands therefrom or from the portion thereof affecting the lands required for the purposes of this act the same shall be determined as in other cases of disputed compensation.

Release of lands from  
rent-charges.

72. If part only of the lands charged with any such rent-service rent-charge chief-rent or other rent-payment or incumbrance be taken for the purposes of this Act the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part and the Commissioner on the other part and if such apportionment be not so settled by agreement the same shall be settled by two Justices but if the remaining part of the lands so jointly subject be a sufficient security for such charge then with consent of the owner of the lands so jointly subject it shall be lawful for the party entitled to such charge to release therefrom the lands required on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Release of part of  
lands from rent-  
charge.

73. Upon payment or tender of the compensation so agreed upon or determined the party entitled to any such charge as aforesaid such party shall execute to the Commissioner a release of such charge and if he fail so to do or if he fail to adduce good title to such charge to the satisfaction of the Commissioner it shall be lawful for the Commissioner to pay the amount of such compensation into the hands of the Master in Equity to be dealt with by him in the manner hereinbefore provided in the case of moneys required to be paid to such Master in Equity and also if the Commissioner think fit to execute a deed poll in the manner hereinbefore provided in the case of the purchase of lands by him and thereupon the rent-service rent-charge chief or other rent payment or incumbrance or the portion thereof in respect whereof such compensation shall so have been paid shall cease and be extinguished.

Deposit in case of  
refusal to release.

74. If any such lands be so released from any such charge or incumbrance or portion thereof to which they were subject jointly with other lands such last-mentioned lands shall alone be charged with the whole of such charge or with the remainder thereof as the case may be and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands for the whole or for the remainder of the charge as the case may be as he had previously over the whole of the lands subject to such charge and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the Commissioner for the purpose he shall affix his seal to a memorandum of such release indorsed on such deed or instrument declaring what part of the lands originally subject to such charge shall have been purchased by virtue of this Act and if the lands be released from part of such charge what proportion of such charge shall have been released and how much thereof continues payable or if the lands so required shall have been released from the whole of such charge then that the remaining lands are thenceforward to remain exclusively charged therewith and such memorandum shall be made and executed at the expense of the Commissioner and shall be evidence in all Courts and elsewhere of the facts therein stated but not so as to exclude any other evidence of the same facts.

Charge to continue  
on lands not taken.

75. If any lands shall be comprised in a lease for a term of years unexpired part only of which lands shall be required for the purposes of this Act the rent payable in respect of the lands comprised

Where part only of  
lands under lease  
taken the rent to be  
apportioned.

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prised in such lease shall be apportioned between the lands so required and the residue of such lands and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part and the Commissioner on the other part and if such apportionment be not so settled by agreement between the parties such apportionment shall be settled by two Justices and after such apportionment the lessee of such lands shall as to all future accruing rent be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of this Act and as to the lands not so required and as against the lessee the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease and all the covenants conditions and agreements of such lease except as to the amount of rent to be paid shall remain in force with regard to that part of the land which shall not be required for the purposes of this Act in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to be compensated.

76. Every such lessee as last aforesaid shall be entitled to receive from the Commissioner compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required or otherwise by reason of the execution of the works.

Compensation to be made to tenants from year to year.

77. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein he shall be entitled to compensation for the value of his unexpired term or interest in such lands and for any just allowance which ought to be made to him by any incoming tenant and for any loss or injury he may sustain or if a part only of such lands be required compensation for the damage done to him in his tenancy by severing the lands held by him or otherwise injuriously affecting the same and the amount of such compensation shall be determined by two Justices in case the parties differ about the same and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the Commissioner or to the person appointed by him to take possession thereof any such lands in their possession required for the purposes of this Act.

Where greater interest claimed than at will lease to be produced.

78. If any party having a greater interest than as tenant at will claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands the Commissioner may require such party to produce the lease or grant in respect of which such claim shall be made or the best evidence thereof in his power and if after demand made in writing by the Commissioner such lease or grant or such best evidence thereof be not produced within twenty-one days the party so claiming compensation shall be considered as a tenant holding only from year to year and be entitled to compensation accordingly.

Lands not wanted to be sold or in default to vest in owners of adjoining lands.

79. In case any of the lands taken by the Commissioner under the provisions of this Act shall not be required for the purposes thereof it shall be lawful for the Commissioner under such orders and directions as aforesaid absolutely to sell and dispose of all such superfluous lands and apply the purchase money arising from such sales to the purposes of this Act.

Lands to be offered to owners of lands from which they were originally taken or to adjoining owners.

80. Before the Commissioner disposes of any such superfluous lands he shall unless such lands be situate within a town or be lands built upon or used for building purposes first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed or if such person refuse to purchase the same

or

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or cannot after diligent inquiry be found then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold such persons being capable of entering into a contract for the purchase of such lands and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession one after another in such order as the Commissioner shall think fit.

81. If any such persons be desirous of purchasing such lands then within six weeks after such offer of sale they shall signify their desire in that behalf to the Commissioner or if they decline such offer or if for six weeks they neglect to signify their desire to purchase such lands the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease and a declaration in writing made before a Justice by some person not interested in the matter in question stating that such offer was made and was refused or not accepted within six weeks from the time of making the same or that the person or all the persons entitled to the right of pre-emption were out of the country or could not after diligent inquiry be found or were not capable of entering into a contract for the purchase of such lands shall in all Courts be sufficient evidence of the facts therein stated.

Right of pre-emption to be claimed within six weeks.

82. If any person entitled to such pre-emption be desirous of purchasing any such lands and such person and the Commissioner do not agree as to the price thereof then such price shall be ascertained by arbitration and the costs of such arbitration shall be in the discretion of the arbitrators.

Difference as to price to be settled by arbitration.

83. Upon payment or tender to the Commissioner of the purchase money so agreed upon or determined as aforesaid he shall convey such lands for and on behalf of Her Majesty to the purchasers thereof by deed duly registered and a deed so executed and registered shall be effectual to vest the lands comprised therein in the purchaser for the estate which shall so have been purchased by him and a receipt under the hand and seal of the Commissioner shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Lands to be conveyed to the purchasers.

84. It shall be lawful for the Commissioner and all persons by him authorized to enter upon any lands not being more than two hundred yards distant from the centre of the Railway as delineated on the plans and not being a garden orchard or plantation attached or belonging to a house nor a park planted walk avenue or ground ornamentally planted and not being nearer to the mansion house of the owner of any such lands than five hundred yards therefrom and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the Railway or of the accommodation works connected therewith hereinafter mentioned and to use the same for any of the following purposes (that is to say)—

Power to take temporary possession of land.

For the purpose of taking earth or soil by side cuttings therefrom

For the purpose of depositing soil thereon

For the purpose of obtaining materials therefrom for the construction or repair of the Railway or such accommodation works as aforesaid or

For the purpose of forming roads thereon to or from or by the side of the Railway

And in exercise of the powers aforesaid it shall be lawful for the Commissioner and all other persons employed therein to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the Railway and also to take from any such lands any timber and also to dig and take from or out thereof any clay stone gravel

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gravel sand or other things that may be found therein useful or proper for constructing the Railway or any such roads as aforesaid and for the purposes aforesaid to erect thereon workshops sheds and other buildings of a temporary nature Provided always that nothing in this Act contained shall exempt the Commissioner from an action for nuisance or other injury if any done in the exercise of the powers hereinbefore given to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid Provided also that no stone or slate quarry brick-field or other like place which at the time of the passing of this Act shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same shall be taken or used by the Commissioner either wholly or in part for any of the purposes lastly hereinbefore mentioned.

Commissioner to separate the lands before using them.

85. If any such lands shall be used for any of the purposes aforesaid the Commissioner shall if required so to do by the owner or occupier thereof separate the same by a sufficient fence from the lands adjoining thereto with such gates as may be necessary for the convenient occupation of such lands and in case of any difference between the owners or occupiers of such lands and the Commissioner as to the necessity for such fences and gates then with such fences and gates as the Governor and Executive Council shall deem necessary for the purposes aforesaid.

Compensation to be made for temporary occupation.

86. In any of the cases aforesaid where the Commissioner shall take temporary possession of lands by virtue of the powers herein granted it shall be incumbent on him within one month after his entry upon such lands upon being required so to do to pay to the occupier of the said lands the value of any crop or dressing that may be thereon as well as full compensation for any other damage of a temporary nature which he may sustain by reason of the Commissioner so taking possession of his lands and shall also from time to time during such occupation of the said lands pay half-yearly or quarterly to such occupier or the owner of the lands as the case may require a rent to be fixed by two Justices in case the parties differ and shall also within six months after he shall have ceased to occupy the said lands pay to such owner and occupier or deposit with the Master in Equity in manner aforesaid for the benefit of all parties interested as the case may require compensation for all permanent or other loss damage or injury that may have been sustained by them by reason of the exercise as regards the said lands of the powers herein granted including the full value of all such clay stone gravel sand and other things taken from such land.

Compensation to be ascertained under the clauses in this Act relating to lands taken and injuries.

87. The amount and application of the compensation payable by the Commissioner in any of the cases aforesaid shall be determined in the manner provided by this Act for determining the amount and application of the compensation to be paid for lands taken under the provisions hereof.

Crossing of roads.

88. If the line of any Railway cross any public highway or carriage road then the Railway shall not be carried across over or under such road unless the proposed place and mode of such crossing and the immediate approaches thereto and all other necessary works connected therewith and the provisions to be adopted for the protection of the public using the same shall have been previously notified and shall have been approved of in the manner provided in respect of the opening of new lines of Railway as hereinbefore provided.

Before roads interfered with others to be substituted.

89. If in the exercise of the powers hereby granted it be found necessary to cross cut through raise sink or use any part of any road whether carriage road horse road or tram-road or railway either public or private so as to render it impassable for or dangerous or extraordinarily

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narily inconvenient to passengers or carriages or to the persons entitled to the use thereof the Commissioner shall before the commencement of any such operations cause a sufficient road to be made instead of the road to be interfered with and shall at the public expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with or as nearly so as may be.

90. If any party entitled to a right of way over any road so interfered with by the Commissioner shall suffer any special damage by reason that the Commissioner shall fail to cause another sufficient road to be made before he interferes with the existing road it shall be lawful for such party to recover the amount of such special damage from the Commissioner with costs by action in the Supreme Court.

Party suffering damage from interruption of road to recover in an action on the case.

91. If the road so interfered with can be restored compatibly with the formation and use of the Railway the same shall be restored to as good a condition as it was in at the time when the same was first interfered with by the Commissioner or as near thereto as may be and if such road cannot be restored compatibly with the formation and use of the Railway the Commissioner shall cause the new or substituted road or some other sufficient substituted road to be put into a permanently substantial condition equally convenient as the former road or as near thereto as circumstances will allow and the former road shall be restored or the substituted road put into such condition as aforesaid as the case may be with all reasonable expedition.

Period for restoration of roads interfered with.

92. If the Railway shall cross any highway other than a public carriage-way on the level the Commissioner shall make and at all times maintain convenient ascents and descents and other convenient approaches with hand-rails or other fences and shall if such highway be a bridle-way erect and at all times maintain good and sufficient gates and if the same shall be a foot-way good and sufficient gates or stiles on each side of the Railway where the highway shall communicate therewith.

Commissioner to make sufficient approaches and fences to bridle-ways and foot-ways crossing on the line.

93. The Commissioner shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the Railway that is to say—

Works for benefit of owners.

Such and so many convenient gates bridges arches culverts and passages over under or by the sides of or leading to or from the Railway as shall be necessary for the purpose of making good any interruptions caused by the Railway to the use of the lands through which the Railway shall be made and such works shall be made forthwith after the part of the Railway passing over such lands shall have been laid out or formed or during the formation thereof

Gates bridges &c.

Also sufficient posts rails hedges ditches mounds or other fences for separating the land taken for the use of the Railway from the adjoining lands not taken and protecting such lands from trespass or the cattle of the owners or occupiers thereof from straying thereout by reason of the Railway together with all necessary gates made to open towards such adjoining lands and not towards the Railway and all necessary stiles and such posts rails and other fences shall be made forthwith after the taking of any such lands if the owners thereof shall so require and the said other works as soon as conveniently may be

Fences &c.

Also all necessary arches tunnels culverts drains or other passages either over or under or by the sides of the Railway of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the Railway as before the making of the Railway or as nearly so as may be and such works shall be made from time to time as the Railway works proceed

Drains.

Provided



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Provided always that the Commissioner shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the Railway nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

Differences as to accommodation works to be settled by Governor and Executive Council.

94. If any difference arise respecting the kind or number of any such accommodation works or the dimensions or sufficiency thereof respecting the maintaining thereof the same shall be determined by the Governor and Executive Council who shall also appoint the time within which such works shall be commenced and executed.

Power to owners of lands to make additional accommodation works.

95. If any of the owners or occupiers of lands affected by such Railway shall consider the accommodation works made by the Commissioner or directed by the Governor and Executive Council to be made by the Commissioner insufficient for the commodious use of their respective lands it shall be lawful for any such owner or occupier at any time at his own expense to make such further works for that purpose as he shall think necessary and as shall be agreed to by the Commissioner.

Such works to be constructed under the superintendence of the Commissioner's Engineer.

96. If the Commissioner so desire all such last-mentioned accommodation works shall be constructed under the superintendence of the Engineer of the said Railway and according to plans and specifications to be submitted to and approved by the Commissioner nevertheless the Commissioner shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the Commissioner or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the Commissioner.

Owners to be allowed to cross until accommodation works are made.

97. Until the Commissioner shall have made the bridges or other proper communications which he shall under the provisions herein contained have been required to make between lands intersected by the Railway and no longer the owners and occupiers of such lands and any other persons whose right of way shall be affected by the want of such communication and their respective servants may at all times freely pass and repass with carriages horses and other animals directly (but not otherwise) across the part of the Railway made in or through their respective lands solely for the purpose of occupying the same lands or for the exercise of such right of way and so as not to obstruct the passage along the Railway or to damage the same nevertheless if the owner or occupier of any such lands have in his arrangements with the Commissioner received or agreed to receive compensation for or on account of any such communications instead of the same being formed such owner or occupier or those claiming under him shall not be entitled so to cross the Railway.

Penalty on persons omitting to fasten gates.

98. If any person omit to shut and fasten any gate set up at either side of the Railway for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the carriages cattle or other animals under his care have passed through the same he shall forfeit for every such offence any sum not exceeding ten pounds.

Power to parties to make private Branch Railways communicating with the Railway.

99. This Act shall not prevent the owners or occupiers of lands adjoining to any Railway or any other persons from laying down either upon their own lands or upon the lands of other persons with the consent of such persons any collateral branches of Railway to communicate with the Railway to be made under this Act for the purpose of bringing carriages to or from or upon the Railway but under and subject to the provisions and restrictions of this Act and subject to any regulations that shall be made by the Governor with the advice of

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of the Executive Council in respect thereof and the Commissioner shall if required at the expense of such owners and occupiers and other persons make openings in the rails and such additional lines of rail as may be necessary for effecting such communication in places where the communication can be made with safety to the public and without injury to the Railway and without inconvenience to the traffic thereon and the Commissioner shall not take any rate or toll or other moneys for the passing of any passengers goods or other things along any branch so to be made by any such owner or occupier or other person but this enactment shall be subject to the following restrictions and conditions (that is to say)—

No such Branch Railway shall run parallel to the Railway Restrictions and conditions.

The Commissioner shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere nor upon any inclined plane or bridge nor in any tunnel

The persons making or using such Branch Railways shall be subject to all by-laws and regulations of the Commissioner from time to time made with respect to passing upon or crossing the Railway and otherwise and the persons making or using such Branch Railways shall be bound to construct and from time to time as need may require to renew the rails crossings switches and sleepers according to the most approved plan adopted by the Commissioner and under the direction of the Engineer of the Railway.

100. It shall be lawful for the Commissioner under and subject to such orders directions and regulations as aforesaid to use and employ locomotive engines or other moving power and carriages and wagons to be drawn or propelled thereby and to carry and convey upon the Railways all such passengers and goods as shall be offered for that purpose and to make such charges in respect thereof as may from time to time be determined upon by the Governor with the advice of the Executive Council Commissioner to employ locomotive power carriages &c. Provided that all such tolls be at all times charged May demand toll. equally to all persons and after the same rate whether per ton per mile or otherwise in respect of all passengers and of all goods or carriages of the same description and conveyed or propelled by a like carriage or engine passing only over the same portion of the line of Railway under the same circumstances and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the Railway. Tolls to be charged equally under like circumstances.

101. Nothing in this Act contained shall extend to charge or make liable the Commissioner further or in any other case than where according to the laws of this Colony stage coach proprietors and common carriers would be liable nor shall extend in any degree to deprive the Commissioner of any protection or privilege which common carriers or stage coach proprietors may be entitled to but on the contrary the Commissioner shall at all times be entitled to the benefit of every such protection and privilege. Commissioner not to be liable to a greater extent than common carriers.

102. A list of all the tolls which the Governor with the advice aforesaid shall from time to time direct and appoint to be taken shall be published by the same being painted upon one toll board or more in distinct black letters on a white ground or white letters on a black ground or by the same being printed or written in legible characters on paper affixed to such board and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable. List of tolls to be exhibited on a board.

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Tolls to be taken  
only whilst board  
exhibited.

103. No tolls shall be demanded or taken by the Commissioner for the use of the Railway during any time at which the boards hereinbefore directed to be exhibited shall not be so exhibited and if any person wilfully pull down deface or destroy any such board or any milestone on the line of such Railway he shall forfeit a sum not exceeding five pounds for every such offence.

Tolls to be paid as  
directed.

104. The tolls shall be paid to such persons and at such places upon or near to the Railways and in such manner and under such regulations as the Commissioner shall subject to such orders and directions as aforesaid appoint.

In default of pay-  
ment of tolls goods  
&c. may be detained  
and sold.

105. If on demand any person fail to pay the tolls due in respect of any carriage or goods it shall be lawful for the Commissioner to detain and sell such carriage or all or any part of such goods or if the same shall have been removed from the Railway premises to detain and sell any other carriages or goods within such premises belonging to the party liable to pay such tolls and out of the moneys arising from such sale to detain the tolls payable as aforesaid and all charges and expenses of such detention and sale rendering the overplus if any of the moneys arising by such sale and such of the carriages or goods as shall remain unsold to the person entitled thereto or it shall be lawful for the Commissioner to recover any such tolls by action at law.

Account of lading  
&c. to be given.

106. Every person being the owner or having the care of any carriage or goods passing or being upon the Railway shall on demand give to the collector of tolls at the places where he attends for the purpose of receiving goods or of collecting tolls for the part of the Railway on which such carriage or goods may have travelled or be about to travel an exact account in writing signed by him of the number or quantity of goods conveyed by any such carriage and of the point on the Railway from which such carriage or goods have set out or are about to set out and at what point the same are intended to be unloaded or taken off the Railway and if the goods conveyed by any such carriage or brought for conveyance as aforesaid be liable to the payment of different tolls then such owner or other person shall specify the respective numbers or quantities thereof liable to each or any of such tolls.

Penalty for not  
giving account of  
lading.

107. If any such owner or other such person fail to give such account or to produce his way-bill or bill of lading to such collector or other officer or servant of the Commissioner demanding the same or if he give a false account or if he unload or take off any part of his lading or goods at any other place than shall be mentioned in such account with intent to avoid the payment of any tolls payable in respect thereof he shall for every such offence forfeit to the Commissioner on behalf of Her Majesty a sum not exceeding ten pounds for every ton of goods or for any parcel not exceeding one hundredweight and so in proportion for any less quantity of goods than one ton or for any parcel exceeding one hundredweight (as the case may be) which shall be upon any such carriage and such penalty shall be in addition to the toll to which such goods may be liable.

Disputes as to  
amount of tolls  
chargeable.

108. If any dispute arise concerning the amount of the tolls due to the Commissioner or concerning the charges occasioned by any detention or sale thereof under the provisions herein contained the same shall be settled by a Justice and it shall be lawful for the Commissioner in the meanwhile to detain the goods or (if the case so require) the proceeds of the sale thereof.

Differences as to  
weights &c.

109. If any difference arise between any toll collector or other officer or servant of the Commissioner and any owner of or person having the charge of any carriage passing or being upon the Railway or of any goods conveyed or to be conveyed by such carriage respecting the weight

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weight quantity quality or nature of such goods such collector or other officer may lawfully detain such carriage or goods and examine weigh gauge or otherwise measure the same and if upon such measuring or examination such goods appear to be of greater weight or quantity or of other nature than shall have been stated in the account given thereof then the person who shall have given such account shall pay and the owner of such carriage or the respective owners of such goods shall also at the option of the Commissioner be liable to pay the costs of such measuring and examining but if such goods appear to be of the same or less weight or quantity than and of the same nature as shall have been stated in such account then the Commissioner shall pay such costs and he shall also pay to such owner of or person having charge of such carriage and to the respective owners of such goods such damage (if any) as shall appear to any Justice on a summary application to him for that purpose to have arisen from such detention.

110. If at any time it be made to appear to any Justice upon the complaint of the Commissioner that any such detention measuring or examining of any carriage or goods as hereinbefore mentioned was without reasonable ground or that it was vexatious on the part of such collector or other officer then the collector or other officer shall himself pay the costs of such detention and measuring and the damage occasioned thereby and in default of immediate payment of any such costs or damage the same may be recovered by distress of the goods of such collector and such Justice shall issue his warrant accordingly.

Toll collector to be liable for wrongful detention of goods.

111. If any person travel or attempt to travel in any carriage employed on the Railway without having previously paid his fare and with intent to avoid payment thereof or if any person having paid his fare for a certain distance knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance and with intent to avoid payment thereof or if any person knowingly and wilfully refuse or neglect on arriving at the point to which he has paid his fare to quit such carriage every such person shall for every such offence forfeit to the Commissioner on behalf of Her Majesty a sum not exceeding forty shillings.

Penalty on passengers practising frauds on the Commissioner.

112. If any person be discovered either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned all officers and servants and other persons on behalf of the Commissioner and all constables gaolers and peace officers may lawfully apprehend and detain such person until he can conveniently be taken before some Justice or until he be otherwise discharged by due course of law.

Detention of offenders.

113. No person shall be entitled to carry or to require the Commissioner to carry upon the Railway any aquafortis oil of vitrol gunpowder lucifer matches or any other goods which in the judgment of the Commissioner or his officers may be of a dangerous nature and if any person send by the Railway any such goods without distinctly marking their nature on the outside of the package containing the same or otherwise giving notice in writing to the book-keeper or other servant of the Commissioner with whom the same are left at the time of so sending he shall forfeit to the Commissioner on behalf of Her Majesty a sum not exceeding fifty pounds for every such offence and it shall be lawful for the Commissioner to refuse to take any parcel that he may suspect to contain goods of a dangerous nature or require the same to be opened to ascertain the fact.

Penalty for bringing dangerous goods on the Railway.

114. If any collector of tolls or other officer employed by the Commissioner be discharged or suspended from his office or die abscond or absent himself and if such collector or other officer or the wife widow or any of the family or representatives of any such collector or other

Delivery of matters in possession or custody of toll collector at removal.

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other officer refuse or neglect after seven days' notice in writing for that purpose to deliver up to the Commissioner or to any person appointed by him for that purpose any station dwelling-house office or other building with its appurtenances or any books papers or other matters belonging to the Commissioner on behalf of Her Majesty in the possession or custody of any such Collector or officer at the occurrence of any such event as aforesaid then upon application being made by the Commissioner to any Justice it shall be lawful for such Justice to order any constable with proper assistance to enter upon such station or other building and remove any person found therein and to take possession thereof and of any such books papers or other matters and to deliver the same to the Commissioner or any person appointed by him for that purpose.

Commissioner to  
regulate the use of  
the Railway.

115. It shall be lawful for the Commissioner from time to time subject to the approval of the Governor and Executive Council and subject to the provisions and restrictions in this Act contained to make regulations for the following purposes that is to say—

For regulating the mode by which and the speed at which carriages using the Railway are to be moved or propelled

For regulating the times of the arrival and departure of any such carriages

For regulating the loading or unloading of such carriages and the weights which they are respectively to carry

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages

For preventing the smoking of tobacco and the commission of any other nuisance in or upon such carriages or in any of the Railway stations or premises

And generally for regulating the travelling upon or using and working of the Railway and the maintenance of good order and for regulating the conduct of the Railway officers and servants and for the providing for the due management of the affairs under charge of the Commissioner and the protection of the Railways and other works from trespass and injury

But no such regulation shall authorize the closing of the Railway or prevent the passage of engines or carriages on the Railway at reasonable times except at any time when in consequence of any of the works being out of repair or from any other sufficient cause it shall be necessary to close the Railway or any part thereof.

Power to make  
regulations by by-  
laws.

116. For better enforcing the observance of all or any of such regulations it shall be lawful for the Commissioner subject to the provisions herein contained and with the approval aforesaid to make by-laws and from time to time to repeal or alter such by-laws and make others. Provided that such by-laws be not repugnant to the laws of this Colony or to the provisions of this Act and such by-laws shall be reduced into writing and shall have affixed thereto the official Seal of the Commissioner and any person offending against any such by-law shall forfeit for every such offence any sum not exceeding ten pounds to be imposed by such by-laws as a penalty for any such offence and if the infraction or non-observance of any such by-law or other such regulation as aforesaid be attended with danger or annoyance to the public or hindrance in the lawful use of the Railway it shall be lawful for the Commissioner summarily to interfere to obviate or remove such danger annoyance or hindrance and that without prejudice to any penalty incurred by the infraction of any such by-law.

Publication of by-  
laws.

117. The substance of such last-mentioned by-laws shall be painted on boards or printed or written on paper and pasted on boards and hung up and affixed and continued on the front or other conspicuous part

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part of every wharf or station pertaining to the Railway according to the nature or subject matter of such by-laws respectively and so as to give public notice thereof to the parties interested therein or affected thereby and such boards shall from time to time be renewed as often as the by-laws thereon or any part thereof shall be obliterated or destroyed and no penalty imposed by any such by-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid.

118. Such by-laws when so published and affixed shall be binding upon and be observed by all parties and shall be sufficient to justify all persons acting under the same and for proof of the publication of any such by-laws it shall be sufficient to prove that a printed or written paper or painted board containing a copy of such by-laws was affixed and continued in manner by this Act directed and in case of its being afterwards displaced or damaged then that such paper or board was replaced as soon as conveniently might be.

Such by-laws to be binding on all parties.

119. Every officer or servant employed under the Commissioner shall from time to time when required by the Commissioner make out and deliver to him or to any person appointed by him for that purpose a true and perfect account in writing under his hand of all moneys received by him on behalf of the Commissioner in consequence of his employment under the Commissioner and such account shall state how and to whom and for what purpose such moneys shall have been disposed of and together with such account such officer shall deliver the vouchers and receipts for such payments and every such officer shall pay to the Commissioner or to any person appointed by him to receive the same all moneys which shall appear to be owing from him upon the balance of such accounts.

Officers to account on demand.

120. If any such officer fail to render such account or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power or to pay the balance thereof when thereunto required or if for three days after being thereunto required he fail to deliver up to the Commissioner or to any person appointed by him to receive the same all papers and writings property effects matters and things in his possession or power relating to the execution of this act or belonging to the Commissioner then on complaint thereof being made to a Justice such Justice shall summon such officer to appear before two or more Justices at a time and place to be set forth in such summons to answer such charge and upon the appearance of such officer or in his absence upon proof that such summons was personally served upon him or left at his last known place of abode such Justices may hear and determine the matter in a summary way and may adjust and declare the balance owing by such officer and if it appear either upon confession of such officer or upon evidence or upon inspection of the account that any public moneys which should be paid over to the Commissioner are in the hands of such officer or owing by him such Justices may order such officer to pay the same and if he fail to pay the amount it shall be lawful for such Justices to grant a warrant to levy the same by distress or in default thereof to commit the offender to gaol for a period not exceeding three months unless the said amount be sooner paid.

Summary remedy against parties failing to account.

121. If any such officer or servant refuse to make out such account in writing or to produce and deliver to the Justices the several vouchers and receipts relating thereto or to deliver up any books papers or writings property effects matters or things in his possession or power belonging to the Commissioner such Justices may lawfully commit such offender to gaol there to remain until he shall have delivered up all the vouchers and receipts (if any) in his possession or power relating to such accounts and have delivered up all books papers writings

Officers refusing to deliver up documents &c. to be imprisoned.

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writings property effects matters and things (if any) in his possession or power belonging to the Commissioner or which should be delivered up to him by such officer or servant.

Where officer about to abscond a warrant may be issued in the first instance.

122. If the Commissioner or other person acting on his behalf shall make oath that he has good reason to believe upon grounds to be stated in his deposition and does believe that it is the intention of any such officer as aforesaid to abscond or that he has absconded it shall be lawful for the Justice before whom the complaint is made if he shall think fit to issue a warrant in the first instance for the bringing such officer or servant before such two Justices as aforesaid but no person executing such warrant shall keep such officer or servant in custody longer than twenty-four hours or such longer period as may be rendered necessary by the distance of the place of apprehension from the residence of the nearest or most convenient Magistrate without bringing him before some Justice and it shall be lawful for the Justice before whom such officer may be brought either to discharge such officer if he think there is no sufficient ground for his detention or to order such officer to be detained in custody so as to be brought before two Justices at a time and place to be named in such order unless such officer give bail to the satisfaction of such Justice for his appearance before such Justices to answer the complaint of the Commissioner Provided nevertheless that no such proceeding against or dealing with any such officer or servant as aforesaid shall deprive the Commissioner of any remedy which he might otherwise have against such officer or any surety of such officer.

Sureties not to be discharged.

Power to lease the Railway.

123. It shall be lawful for the Commissioner if the Governor and Executive Council shall deem it expedient so to do and subject to such orders and directions as aforesaid to lease the Railways or any of them or any part thereof to any person willing to accept the same at such rate and for such period not exceeding three years as shall be agreed on and the lease to be executed shall contain all usual and proper covenants on the part of the lessee for maintaining the Railway or the portion thereof comprised in such lease in good and efficient repair and working condition during the continuance thereof and for so leaving the same at the expiration of the term thereby granted and such other provisions conditions covenants and agreements as are usually inserted in leases of a like nature Provided always that no such lease shall contain any authority to make or be construed to authorize any assignment transfer or under-lease of the said Railway or demised premises or any part thereof without the assent of the said Commissioner joining in such assignment transfer or under-lease.

Powers vested in the Commissioner may be exercised by the lessee.

124. Such lease shall entitle the lessee to whom the same shall be granted to the free use of the Railway or portion of Railway comprised therein and during the continuance of any such lease all the powers and privileges granted to and which might otherwise be exercised and enjoyed by the Commissioner or other officers agents or servants by virtue of this Act with regard to the possession enjoyment and management of the Railway or of the part thereof comprised in such lease and the tolls to be taken thereon shall be exercised and enjoyed by the lessee and the officers and servants of such lessee under the same regulations and restrictions as are by this Act imposed on the Commissioner and all other Railway officers and servants and such lessee shall with respect to the Railway comprised in such lease be subject to all the obligations hereby imposed on the Commissioner.

Service of notices upon Commissioner.

125. Any summons or notice or any writ or other proceeding in any suit or action or any legal proceeding requiring to be served on the Commissioner may be served by the same being given personally to the Commissioner or being left at or transmitted through the post directed to the principal office of the Commissioner in Sydney.

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126. If any party shall have committed any irregularity trespass or other wrongful proceeding in the execution of this Act or by virtue of any power or authority hereby given and if before action brought in respect thereof such party make tender of sufficient amends to the party injured such last-mentioned party shall not recover in any such action and if no such tender shall have been made it shall be lawful for the defendant by leave of the Court where such action shall be pending at any time before issue joined to pay into Court such sum of money as he shall think fit and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

127. If any person wilfully obstruct any person acting under the authority of the Commissioner in the lawful exercise of his power in setting out or in making any line of Railway or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out any line of Railway or deface or destroy any marks made for the same purpose or shall wilfully obstruct or impede any officer or agent of the Government or of the Commissioner in the execution of his duty upon any Railway or upon or in any of the stations or other works or premises connected therewith or if any person shall wilfully trespass upon any such Railway or any of the stations or other works or premises connected therewith every such person so offending and all others aiding or assisting therein shall forfeit to the Commissioner on behalf of Her Majesty a sum not exceeding twenty pounds for every such offence.

128. If any person shall throw any gravel stones or rubbish or any matter or thing upon any part of a Railway or shall drive or permit to wander stray or be driven upon any such Railway or the approaches thereto any horse ass sheep swine or other beast or cattle of any kind or shall do any other act matter or thing to obstruct the free passage of any such Railway or any part thereof every person so offending in any of the cases aforesaid shall forfeit and pay for every such offence any sum not exceeding fifty pounds and in default of payment thereof shall be imprisoned with or without hard labor for such period not exceeding six months as such Justices shall appoint unless the said penalty shall be sooner paid and such penalty may be recovered before any two Justices of the Peace on complaint to them for that purpose exhibited by any person on behalf of the Commissioner.

129. If any person shall wilfully and maliciously put place cast or throw upon or across any Railway any wood stone or other matter or thing or shall wilfully and maliciously take up remove or displace any rail sleeper or other matter or thing belonging to any Railway or shall wilfully and maliciously make or show hide or remove any signal or light upon or near to any Railway or shall wilfully and maliciously do or cause to be done any other matter or thing with intent in any of the cases aforesaid to obstruct upset overthrow injure or destroy any engine tender carriage or truck using such Railway or to endanger the safety of any person travelling or being upon such Railway every such offender shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be sentenced to hard labor on the roads or other public works of the Colony for any term not exceeding fifteen years or to be imprisoned with or without hard labor in any gaol or house of correction for any term not exceeding four years.

130. If any person shall wilfully and maliciously cast throw or cause to fall or strike against into or upon any engine tender carriage or truck used upon any Railway any wood stone or other matter or thing with intent to endanger the safety of any person being in or upon such engine tender carriage or truck every such offender shall be

Tender of amends.

Penalty for obstructing construction of Railway.

Penalty on persons obstructing free course of Railway.

Persons wilfully placing wood &amp;c. on Railways taking up Railways &amp;c. turning machinery or shewing signals &amp;c. with intent to commit injuries to Railway or endanger the safety of persons guilty of felony.

If any person shall cast any wood &amp;c. upon any Railway carriage with intent to endanger the safety of any person therein such person to be guilty of felony &amp;c.



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be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be sentenced to hard labor on the roads or other public works of the Colony for any term not exceeding ten years or to be imprisoned with or without hard labor in any gaol or house of correction for any term not exceeding three years.

Punishment for  
destroying works &c.

131. If any person shall wilfully and maliciously and to the prejudice of the public break injure damage throw down or destroy any part of any Railway or other works connected therewith every such person shall be judged guilty of misdemeanor and every person so offending and being thereof lawfully convicted shall be liable at the discretion of the Court to be sentenced to hard labor on the roads or other public works of this Colony for any term not exceeding ten years or to be imprisoned with or without hard labor in any gaol or house of correction for any period not exceeding three years.

Punishment for per-  
sons employed on  
Railway guilty of  
misconduct.

132. It shall be lawful for any Railway officer or agent or for any special constable duly appointed and all such persons as they may call to their assistance to seize and detain any engine driver wagon driver guard porter servant or other person employed upon the Railway or in repairing and maintaining the works of the said Railway who shall be found drunk whilst so employed upon the said Railway or who shall commit any offence against any of the regulations or by-laws of the Commissioner or who shall wilfully maliciously or negligently do any act or shall be guilty of any omission of duty whereby the life or limb of any person passing along or being upon such Railway or the works thereof respectively shall be or might be injured or endangered or whereby the passage of any engine carriage or trains shall be or might be obstructed or impeded and to convey such engine driver guard porter servant or other person so offending or any person counselling aiding or assisting in such offence with all convenient dispatch before any two or more Justices of the Peace without any other warrant or authority than this Act to be dealt with according to law and every person so offending as aforesaid and every person counselling aiding or assisting therein shall upon conviction before such Justices (upon a complaint in writing) in the discretion of such Justices be imprisoned with or without hard labor for any term not exceeding six months or shall in the like discretion forfeit any sum not exceeding fifty pounds and in default of payment thereof shall be imprisoned with or without hard labor for such period not exceeding six months as such Justices shall appoint unless the penalty be sooner paid.

Method of proceed-  
ing before Justices in  
question of damage  
&c.

133. Where in this Act any question of compensation expenses charges or damages or other matter is referred to the determination of any one Justice or more it shall be lawful for any Justice upon the application of either party to summon the other party to appear before one Justice or before two Justices as the case may require at a time and place to be named in such summons and upon the appearance of such parties or in the absence of any of them upon proof of due service of the summons it shall be lawful for such one Justice or such two Justices as the case may be to hear and determine such question and for that purpose to examine such parties or any of them and their witnesses on oath and the cost of every such inquiry shall be in the discretion of such Justices and they shall determine the amount thereof.

Publication of  
penalties.

134. The Commissioner shall publish the short particulars of the several offences for which any penalty is imposed by this Act or by any by-law of the Commissioner affecting other persons than the Railway officers or servants and of the amount of every such penalty and shall cause such particulars to be painted on a board or printed upon paper and pasted thereon and shall cause such board to be hung  
up

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up or affixed in some conspicuous part of the principal place of business of the Commissioner and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

135. If any person pull down or injure any board put up or affixed as required by this Act for the purpose of publishing any by-law or penalty or shall obliterate any of the letters or figures thereon he shall forfeit for every such offence a sum not exceeding five pounds and shall defray the expenses attending the restoration of such board.

Penalty for defacing boards used for publication.

136. Every penalty or forfeiture imposed by this Act or by any by-law made in pursuance thereof the recovery of which is not otherwise provided for may be recovered by summary proceedings before two Justices according to "The Justices Act of 1850" and the several Acts incorporated therewith.

Penalties to be summarily recovered before two Justices.

137. If through any act neglect or default on account whereof any person shall have incurred any penalty imposed by this Act any damage to any Railway or other property used in connection therewith shall have been committed by such person he shall be liable to make good such damage as well as to pay such penalty and the amount of such damages shall in case of dispute be determined by the Justices by whom the party incurring such penalty shall have been convicted and on non-payment of such damages on demand the same shall be levied by distress and such Justices or one of them shall issue their warrant accordingly.

Damage to be made good in addition to penalty.

138. It shall be lawful for any Railway officer or agent and all persons called by him to his assistance to seize and detain any person who shall have committed any offence against the provisions of this Act and whose name and residence shall be unknown to such officer or agent and convey him with all convenient dispatch before some Justice without any warrant or other authority than this Act and such Justice shall proceed with all convenient dispatch to the hearing and determining of the complaint against such offender.

Transient offenders.

139. If any party shall feel aggrieved by any determination or adjudication of any Justice with respect to any penalty or forfeiture under the provisions of this Act such party may appeal to the General or Quarter Sessions for the district or place in which the cause of appeal shall have arisen but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication nor unless ten days notice in writing of such appeal stating the nature and grounds thereof be given to the party against whom the appeal shall be brought nor unless the appellant forthwith after such notice enter into recognizances with two sufficient sureties before a Justice conditioned duly to prosecute such appeal and to abide the order of the Court thereon.

Parties allowed to appeal to Quarter Sessions on giving security.

140. At the General or Quarter Sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way or they may if they think fit adjourn it to the following Sessions and upon the hearing of such appeal the Court may if they think fit mitigate any penalty or forfeiture or they may confirm or quash the adjudication and order any money paid by the appellant or levied by distress upon his goods to be returned to him and also may order such further satisfaction to be made to the party injured

Court to make such order as they think reasonable.

In witness whereof I have hereunto set my hand and seal the  
in the year of our Lord