

## No. XXXV.

GOVERNMENT  
RAILWAYS.

An Act to make better provision for the management of the Government Railways and Tramways of New South Wales and for other purposes connected therewith. [17th May, 1888.]

Preamble.

WHEREAS it is desirable that the powers and duties appertaining to the management of the Government Railways and Tramways, and the conduct of the traffic thereon, as well as the control and regulation of the staff employed in connection therewith, together with certain other powers and duties, should be separated from those appertaining to the construction of Railways and Tramways, and be vested in and imposed on the Authority hereby created, but without prejudice to certain powers of construction, repair, and alteration to be vested in such Authority,—Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

### PART I.

#### *Preliminary Provisions.*

Short title and  
interpretation.

1. This Act may be cited as the "Government Railways Act of 1888" and in its construction (unless the context requires a different meaning) the expression—

"Commissioners," means the Railway Commissioners appointed under this Act, and "Commissioner," means one of such Commissioners.

"Governor," means Governor with the advice of the Executive Council.

"Justice," means any Justice of the Peace.

"Magistrate" means any Justice who is a Police or Stipendiary Magistrate or any Justice lawfully acting as his Deputy, or in his place.

"Minister," means the Responsible Minister of the Crown for the time being administering this Act.

"Prescribed,"

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“Prescribed,” means prescribed by regulations or by-laws made under this Act.

Railway” and “Railways,” mean any Railway or Railways by this Act vested in the Commissioners; and include respectively any Tramway and Tramways so vested.

“Vessel,” includes ship, barge, lighter and boat, and howsoever propelled.

2. So much only of this Act as empowers the Governor to appoint Railway Commissioners for New South Wales, declares their tenure of office, and provides their salaries shall come into force on the passing of the Act. The whole Act shall come into force on a day to be proclaimed by the Governor and published in the *Gazette*. Provided that such day shall not be earlier than the sixtieth, nor later than the one hundred and twentieth, day after the passing of the Act. And such last-mentioned day shall for all purposes be deemed to be the “commencement of this Act.”

Different days for portions of Act to come into force.

3. On the commencement of this Act the office of Commissioner for Railways and the Corporation Sole as constituted by that name pursuant to the Act hereinafter repealed shall be, respectively, abolished and dissolved.

Abolition of office of Commissioner for Railways.

4. On the commencement of this Act the Acts twenty-second Victoria, number nineteen, and the Act thirty-seventh Victoria, number eighteen, shall be wholly repealed, but without prejudice to the past operation thereof, or to any rights accrued, offences committed, proceedings taken, or things done thereunder.

Repeal of Acts, &c.

5. The sections of this Act are arranged in the following order viz. :—

Divisions of Act.

PART I.—*Preliminary Provisions.*—ss. 1 to 5. *The Railway Commissioners.*—ss. 6 to 21.

PART II.—*Powers, duties, &c. of the Railway Commissioners.*—ss. 22 to 50.

PART III.—*Investigation of Accidents.*—ss. 51 and 52.

PART IV.—*By-laws, &c.*—ss. 53 to 57.

PART V.—*Appointment, Promotion and Discipline in, and Regulation of, Railway Service.*—ss. 58 to 80.

PART VI.—*Miscellaneous Provisions, Penalties, Procedure, &c.*—ss. 81 to 107.

*The Railway Commissioners.*

6. The Authority to carry out this Act shall be three Commissioners who shall be a body corporate by the name “The Railway Commissioners of New South Wales;” and, by that name, shall have perpetual succession and a common seal, and be capable in law of suing and being sued, and, subject to the provisions hereinafter contained, shall have power to take, purchase, sell, lease and hold lands, tenements and hereditaments, goods, chattels and other property for the purposes of this Act. But no sale or lease of any such lands, except as provided in section forty-three, shall have any force or effect unless the same has been approved by the Governor. And all courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commissioners affixed to any document or notice, and shall presume that such seal was duly affixed.

Constitution of Commissioners.

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Appointment of  
Commissioners.

7. (I) The Governor shall, as soon as conveniently practicable after the passing of this Act, appoint three persons to be "Railway Commissioners for New South Wales," who, subject to the provisions hereinafter contained, shall each hold office for a term of seven years.

(II) On the occurrence of any vacancy in the office of a Commissioner the Governor shall appoint a person to the vacant office, whose term of office shall be for his predecessor's unexpired term of office. All persons appointed under the authority of this section shall, at the expiration of their respective terms of office, be eligible for reappointment for a like term of seven years.

(III) In case of the illness, suspension or absence of any Commissioner, the Governor may appoint some person to act as the deputy of such Commissioner during such illness, suspension or absence; and every person so appointed shall, while so acting, have all the powers, and perform all the duties of such Commissioner.

Tenure of office of  
Commissioners.

8. (I) A Commissioner may be removed for misbehaviour or incompetence;—

(a) A Commissioner may be suspended from his office by the Governor for misbehaviour or incompetence, but shall not be removed from office except as hereinafter provided. The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within seven days after such suspension if Parliament be in Session and actually sitting, and when Parliament is not in Session or not actually sitting within seven days after the commencement of the next Session or sitting.

(b) A Commissioner suspended under this section shall be restored to office unless each House of Parliament shall within twenty-one days from the time when such statement shall have been laid before it declare by resolution that the said Commissioner ought to be removed from office, and if each House of Parliament shall within the said time so declare, the said Commissioner shall be removed by the Governor accordingly.

Office how otherwise  
vacated.

(II) A Commissioner shall be deemed to have vacated his office,—

(a) If he shall engage, during his term of office, in any employment outside the duties of his office.

(b) If he shall become insolvent, or apply to take the benefit of any Act now or hereafter to be in force for the relief of insolvent debtors, or shall compound with his creditors, or make an assignment of his salary for their benefit.

(c) If he shall absent himself from duty for a period of fourteen consecutive days except on leave granted by the Governor (which leave he is hereby authorized to grant), or shall become incapable of performing his duties.

(d) If he shall become in any way concerned or interested in any contract or agreement made by or on behalf of the Commissioners; or shall in anywise participate or claim to be entitled to participate in the profit thereof, or in any benefit or emolument arising therefrom.

Chief Commissioner.

9. One of such three Commissioners shall be appointed by the Governor as Chief Commissioner, and, on the occurrence of any vacancy in the office of Chief Commissioner, the Governor shall appoint a person to fill that office.

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10. The Commissioners shall receive the following salaries, viz:—  
 (I) The Chief Commissioner,—two thousand five hundred pounds Salaries of Commissioners.  
 per annum.  
 (II) Each of the other Commissioners,—one thousand five hundred pounds per annum.

All such salaries are hereby charged on the Consolidated Revenue Fund; and such Fund, to the extent required for the payment of such salaries, is hereby permanently appropriated.

11. For the conduct of business any two Commissioners shall be Quorum.  
 a quorum, and, subject to the enactment next following, shall have all the powers and authorities by this Act vested in Commissioners.

12. If, at any meeting at which two Commissioners only are Procedure on difference of opinion.  
 present, such Commissioners shall differ in opinion upon any matter, the determination of such matter shall be postponed until all the Commissioners are present.

13. No act or proceeding of the Commissioners shall be Acts of Commissioners not invalidated by vacancy.  
 invalidated or prejudiced by reason only of the fact that, at the time when such proceeding or act was taken, done or commenced, there was a vacancy in the office of any one Commissioner.

14. The Commissioners shall keep minutes of their proceedings Minutes of Proceedings.  
 in such manner and form as the Governor shall direct.

15. (I) The Commissioners shall appoint or employ such clerks, Commissioners to appoint staff, &c.  
 officers and employés to assist in the execution of this Act as they think necessary; and every person so appointed shall hold office during pleasure only.

(II) The Commissioners may remove such clerks, officers or employés; and may discontinue the offices of, or appoint other persons in the room of such as may be removed, or may die, or resign, or be convicted of any felony, or become bankrupt, or apply to take the benefit of any Act now or hereafter to be in force for the relief of insolvent debtors, or compound with their creditors, or make assignments of their salaries for the benefit of their creditors.

(III) The Commissioners shall pay such salaries, wages and allowance to such clerks, officers and employés respectively, as Parliament shall appropriate for that purpose.

(IV) All clerks, officers and employés in the employment of the Government, in the railway or tramway service at the time of the passing of this Act, shall be deemed to have been appointed by the Commissioners under this Act.

(V) No person appointed, or whose appointment has been confirmed, under this section, shall engage in any employment outside the duties of his office.

(VI) Nothing in this section shall apply to the present Engineer-in-Chief for Railways, or Solicitor for Railways; but the said Solicitor for Railways shall be Solicitor for Railways under this Act.

16. For the purposes of this Act there shall be vested absolutely Government railways, &c. vested in Commissioners.  
 in the Commissioners, and, in respect of land, for an estate in fee simple—

- (I) All railways and tramways, and all rolling-stock heretofore constructed or acquired by or on behalf of Her Majesty, pursuant to any Act in force for the time being authorizing the construction of railways, rolling stock, or tramways,—and all railways and tramways hereafter to be so constructed or acquired, upon transfer of the same to such Commissioners in the prescribed manner.  
 (II) All piers, wharves, jetties, stations, yards and buildings connected or used in connection with such railways, tramways and rolling-stock, being on Crown Land or land acquired for or on behalf of Her Majesty respectively.

(III)

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- (III) The land, being Crown Land or land acquired or which may be acquired for or on behalf of Her Majesty over or upon which, such piers, wharves, jetties, stations, yards and buildings have been, or may hereafter be constructed or erected.
- (IV) The Crown Land or land acquired for or on behalf of Her Majesty included within the boundary fences of all such railways or tramways.
- (V) All land outside such fences acquired by or on behalf of Her Majesty, under any Act authorizing the taking or acquiring of land for railway or tramway purposes.
- (VI) All Crown and other lands taken under the authority of any Act authorizing the taking of land for railway or tramway purposes.
- (VII) All telegraph posts erected on any lands by this Act vested in the Commissioners, which posts at the passing of this Act were under the control of the Commissioner for Railways or any person for or on behalf of Her Majesty, and all wires, instruments and other telegraphic or telephonic apparatus used in connection with the railways or tramways so vested as aforesaid.

Railway property not  
subject to rates, &c.

17. No rates, tax or assessment shall be made, charged or levied upon any railway, or upon any pier, wharf, jetty, station, yard, building, works or other property vested in the Commissioners.

Commissioners  
substituted with  
reference to rights,  
liabilities, &c.

18. (I) All purchases, sales, conveyances, grants, assurances, deeds, securities, contracts, bonds and agreements entered into, made or given before the passing of this Act by or to any Corporation or person, in connection with the railways, or with the piers, wharfs, jetties, stations, yards, buildings, lands or rolling-stock by this Act vested in the Commissioners, shall be as binding and of as full force and effect respectively, against or in favour of the Commissioners, and may be enforced as fully and effectually as if, instead of such Corporation or person as aforesaid, the Commissioners had been parties thereto.

(II) All powers conferred upon such Corporation or person, and all matters or things done or to be done, and all rights and privileges accrued or accruing, shall be exercised, enforced, and enjoyed by the Commissioners in the same way as such Corporation or person might have exercised, enforced, or enjoyed the same but for the passing of this Act,—and with respect thereto the Commissioners shall be substituted for such Corporation or person.

(III) Any penalty, forfeiture or other punishment incurred or to be incurred for any offence committed against such Corporation or person, in respect of the railways, or in respect of any such piers, wharfs, jetties, stations, yards, buildings, lands or rolling-stock before the passing of this Act, may be enforced and recovered by or on behalf of the Commissioners in the same way as such Corporation or person might have enforced and recovered the same, if this Act had not been passed.

Expenditure of  
money appropriated  
by Parliament.

19. All moneys appropriated by Parliament for the maintenance or management of the railways by this Act vested in the Commissioners, and for all purposes in connection therewith, shall be expended under the control and management of the Commissioners.

Audit Act to apply  
to Commissioners.

20. All moneys payable to the Commissioners, under this or any other Act, shall be collected and received by them on account of, and shall be paid into, the Consolidated Revenue; and the provisions of the "Audit Act of 1870," and of any other Act relating to the collection and payment of public moneys and the audit of the public account, shall, save as in this Act otherwise expressly provided, apply to the Commissioners and to all officers and employes under this Act.

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21. (I) No action, suit, prosecution or other proceeding whatsoever, commenced before the passing of this Act, by or against such Corporation or person as aforesaid, shall abate or be discontinued or be prejudicially affected by this Act, but the same shall continue and take effect in favour of or against the Commissioners appointed under this Act (as the case may be). Provision as to proceedings, &c., already commenced.

(II) All judgments, decrees or orders made in favour of or against such Corporation or person, and all fines and penalties imposed or incurred under any Act hereby repealed, shall be respectively enforced, levied, proceeded for and recovered by, against, with reference to, and in the name of, the Commissioners so appointed, the same as they might have been enforced, levied, proceeded for, and recovered by, against, with reference to, and in the name of such Corporation or person, if this Act had not been passed.

## PART II.

*Powers, duties, &c., of the Railway Commissioners.*

22. It shall be the duty of the Commissioners to maintain the railways and all works in connection therewith in a state of efficiency, and to carry persons, animals, and goods without negligence or delay; and in respect of the carriage of persons, animals, and goods, the Commissioners shall be common carriers. Duties of Commissioners in respect to the railways, &c.

23. (I) The Commissioners shall at all times cause to be made a careful inspection of the condition of the railways under their control. Other duties and powers of Commissioners.

(II) Whenever it shall appear to the Commissioners that for the purpose of maintaining the traffic on any existing line a partial reconstruction, or partial duplication, or other addition to, or extension of, the roadway of any existing line, or part of any such line, or any bridge, viaduct, or other work; or that the laying of new rails, or that any other repair or alteration of any line or work vested in them is necessary, they shall undertake, execute, and carry out any of the works aforesaid so far as may be required for such purpose.

(III) During any reconstruction, repair or alteration, the passenger and goods traffic may be conducted along temporary roadways, or otherwise, as the Commissioners may deem best for the public interest and safety.

24. The Commissioners shall not afford or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or to any particular description of traffic, in any respect whatsoever; nor shall they subject any particular person, company, firm, corporation, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Commissioners not to give undue preferences, &c.

25. Notwithstanding anything in this Act contained, the Commissioners may frame a special scale of tolls or charges for the conveyance of specific classes of produce or merchandize. Provided that the same charges shall apply alike to all corporations, companies, associations and persons using the railways. Special tolls, &c.

26. Subject to the provisions of this Act the Commissioners shall afford all reasonable, proper, and equal facilities for the interchange of traffic between the respective lines of railway vested in them; and for the receiving, forwarding, and delivery of passengers and goods to and from such lines. Commissioners to afford all reasonable facilities for interchange of traffic, &c.

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Issue of free passes.

27. Each of the persons hereinafter mentioned shall be entitled to receive from the Commissioners, and to hold and use, a free pass which shall authorize the holder to travel free on all railways vested in the Commissioners, but which shall in no case be transferable; viz.:—

(I) Every Member of the Legislative Council.

(a) Every pass issued to a Member of such Council shall be issued in the name of the person entitled to the same.

(b) Every such pass shall be forthwith returned to the Commissioners by the holder thereof or his agent or personal representative on his ceasing to be a member of such Council.

(II) Every Member of the Legislative Assembly.

(a) The free pass to be issued to such Member shall be issued to him in the name of the electorate which he has been elected to represent.

(b) Every such pass shall be returned to the Commissioners by the Member holding the same if the seat of such Member shall have been rendered vacant by his resignation or other act having the effect of vacating his seat in the Legislative Assembly under the law in force for the time being so soon as his successor shall have been elected.

(c) The passes issued by the Governments of other Colonies to members of the respective Parliaments of those Colonies shall be recognized and held to admit the holders thereof to travel upon the railways of New South Wales.

(d) Any free pass granted for life or for any fixed period at the time of the passing of this Act, shall not be affected by these provisions.

(III) Officers of Parliament.

(a) The Commissioners shall have power, with the approval of the Governor, to issue from time to time, on application, passes, available for a period not exceeding one calendar month, to such Officers of Parliament as have been heretofore accorded that privilege.

(IV) Every person who has held any of the offices enumerated in Schedule A hereto, and whether before or after, or partly before and partly after the commencement of this Act.

(a) Every such pass shall be issued in the name of the person entitled and shall be available during the term of his life, and shall bear on the face of it the name in full of the person to whom it is granted.

(v) Any person of distinction visiting the Colony or officially engaged in some public duty which renders it necessary for him to travel by railway, or who may have rendered some important public service to the Colony.

(a) No such pass shall be issued for a period exceeding one calendar month.

(vi) Every free pass issued under this section shall, in respect to the holder of such pass, and his personal representatives, be accompanied by, and entail, the like rights, remedies, obligations, and liabilities (except in respect of the payment of money therefor) as if the said pass had been a ticket issued to such holder for a money consideration.

Powers of  
Commissioners over  
lines in construction.

28. The Commissioners shall be the authority to decide on the position, character and suitability of all stations, station platforms, gate-houses, station-yards, sheds, piers, wharves, jetties required for or in connection with any railway hereafter to be constructed, and although such railway may not be constructed by them, or of any other building, siding, platform or work for the accommodation of the passengers, stock or goods to be carried on such railway.

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29. Before the second reading in the Legislative Assembly of any bill authorizing the construction of new lines of railway, the Commissioners shall transmit to the Minister a statement under their seal showing their estimate of the traffic on each proposed new line, and any other returns likely to be derived therefrom, and the Minister shall before such second reading lay the same upon the table of the Assembly.

Commissioners to prepare estimate of traffic.

30. The Commissioners may use locomotive engines and other motive or tractive power, and draw or propel thereby carriages and waggons and may carry and convey upon the railways all such passengers and goods as shall be offered for that purpose, and may demand reasonable tolls and charges in respect thereof. Subject to the provisions of this Act, all such tolls shall, at all times, be charged 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 over the same portion of the line of railway and 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.

Commissioners to employ locomotive power, carriages, &c.

May demand toll.

Tolls to be charged equally under like circumstances.

Prin. Act s. 100.  
8 Vic. c. 20 s. 86.

31. 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 Commissioners shall appoint.

Tolls to be paid as directed.

Prin. Act s. 104.  
8 Vic. c. 20 s. 96.

32. If, on demand, any person fail to pay the tolls due in respect of any carriage or goods, the Commissioners may;—

In default of payment of tolls, goods, &c. may be detained and sold.

(i) Detain and sell such carriage, or all or any part of such goods;

Prin. Act s. 105.  
8 Vic. c. 20 s. 97.

(ii) If the same shall have been removed from the railway premises, detain and sell any other carriages or goods within such premises belonging to the person liable to pay such tolls;

And, in either case, out of the moneys arising from the sale, retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the surplus (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,

(iii) Recover any such tolls by action at law.

33. Every person being the owner or having the care of any carriage or goods passing or being upon any 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;

Account of lading, &c. to be given.

Prin. Act s. 106.  
8 Vic. c. 20 s. 98.

(i) The number or quantity of goods conveyed by any such carriage,

(ii) The point on the Railway from which such carriage or goods have set out or are about to set out,

(iii) At what point the same are intended to be unloaded or taken off the Railway,

(iv) 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.

34. If any such owner, or person as in the last preceding section mentioned in contravention of the requirements thereof—

Penalty for not giving account, &c.

Prin. Act s. 107  
8 Vic. c. 20 s. 99.

(i) Fail to give an account;

(ii) Fail to produce his way-bill or bill of lading to such collector, or other officer or servant of the Commissioners, demanding the same;

(iii) Give a false account;

(iv)



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- (iv) 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 Commissioners 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.

Prin. Act s. 108.  
8 Vic. c. 20 s. 100.

35. If any dispute arise—

- (i) Concerning the amount of the tolls due to the Commissioners,  
(ii) Concerning the charges, occasioned by any detention or sale thereof under the provisions herein contained,—

the same shall be settled by a Magistrate or two Justices, and the Commissioners may, in the meanwhile, detain the goods or retain the proceeds of the sale thereof.

Differences as to  
weights &c.

Prin. Act s. 109.  
8 Vic. c. 20 s. 101.

36. If any difference arise between any toll collector or other officer or servant of the Commissioners and any owner of or person having the charge of any carriage passing or being upon any Railway, or any goods conveyed or to be conveyed by such carriage,—respecting the 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;

If upon such measuring or examination,

- (i) Such goods appear to be of greater weight or quantity, or of other nature than shall have been stated in the account given thereof, 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 Commissioners, be liable to pay, the costs of such measuring and examining.  
(ii) If such goods appear to be of the same or less weight or quantity than, but of the same nature as, shall have been stated in such account, the Commissioners shall pay such costs, and they 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 Magistrate or two Justices, on a summary application to him or them for that purpose, to have arisen from such detention.

Toll collector to be  
liable for wrongful  
detention of goods.

Prin. Act s. 110.  
8 Vic. c. 20 s. 102.

37. If at any time it be made to appear to any Magistrate or two Justices, upon the complaint of the Commissioners, that any such detention, measuring or examining of any carriage or goods, as hereinbefore mentioned was—without reasonable ground; or was vexatious on the part of such collector or other officer; such collector or 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 Magistrate or Justices shall issue his or their warrant accordingly.

Penalty on passen-  
gers practising frauds  
on the Commis-  
sioners.

Prin. Act s. 111.  
8 Vic. c. 20 s. 103.

38. If any person

- (i) Travel or attempt to travel in any carriage employed on any Railway without having previously paid his fare, and with intent to avoid payment thereof, or  
(ii) 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

(iii)

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(III) Knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage ;  
 (IV) Knowingly and wilfully travel, or attempt to travel in any carriage, of a superior class to that which his ticket entitles him to use, with intent to avoid payment of the additional fare ;  
 Every such person shall, for every such offence, forfeit to the Commissioners a sum not exceeding forty shillings.

39. If any person be discovered either in the act of or after committing or of attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants and other persons on behalf of the Commissioners, 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 in due course of law.

*Detention of offenders.*  
*Prin. Act s. 112.*  
*8 Vic. c. 20 s. 104.*

40. (I) No person shall be entitled to carry, or to require the Commissioners to carry, upon any Railway, any aqua-fortis, oil of vitriol, gunpowder, lucifer matches or any goods whatsoever which, in the judgment of the Commissioners or their officers, may be of a dangerous nature.

*Bringing dangerous goods on the Railway.*  
*Prin. Act s. 113.*  
*8 Vic. c. 20 s. 105.*

(II) If any person send by any Railway any such goods, without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing, at the time of sending the same, to the bookkeeper or other servant of the Commissioners, with whom the same are left, he shall forfeit to the Commissioners a sum not exceeding fifty pounds for every such offence.

(III) The Commissioners may refuse to take any parcel which they may suspect to contain goods of a dangerous nature, or may require any parcel to be opened, so that the nature of the contents may be ascertained.

41. The Commissioners may—

- (I) Appoint places as depôts for the receipt and delivery of parcels or passengers' luggage to be forwarded to or received from any railway ;
- (II) Contract with any person for the carriage of such parcels, or of passengers' luggage to and from any railway station or depôt ;
- (III) Instead of loading or unloading goods on or from any truck, shed or vessel by temporary day labour, invite public tenders on such terms and conditions as they think fit for the performance of such work, for a period not exceeding one year ; and shall have power to accept the lowest eligible tender, or invite fresh tenders, and may make a contract with the person whose tender is accepted.

*Depôts for receipt and delivery of parcels,*

*and may contract for loading or unloading goods.*

42. The Commissioners may apply in writing to the Minister for additional stores, plant, material, rolling-stock, stations, sheds and other accommodation which, in the opinion of the Commissioners, may be required to enable them to meet the traffic requirements, or ensure the efficient working of the railways.

*Commissioners to requisition for rolling-stock, &c.*

43. The Commissioners may lease any refreshment-room, shed, office, shop, stall, coal gears, sites for storage or for erecting sheds, right of entrance into any station by any public vehicle, right of advertising, or other convenience or appurtenance to any of the railways, for any term not exceeding five years on such conditions and at such rent as they may determine.

*Commissioners may lease refreshment-rooms, &c.*

44. In the first month in each quarter of every year the Commissioners shall report in writing to the Minister—

*Commissioners' quarterly report to Minister.*

- (I) The state of the traffic returns, with the approximate cost and earnings of trains per ton, per train mile, in respect of goods and passengers respectively, carried during the past quarter ;

(II)

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- (II) The general condition of the lines and accommodation for the traffic ;
- (III) The special rates, if any, which have been made, and the reasons for making such rates ;
- (IV) The appointments and removals of employés with the circumstances attending each case ;

Such reports shall be laid before Parliament, if Parliament be in Session, and if not, then within seven days after the commencement of the Session next ensuing.

Commissioners' annual report to Parliament.

45. The Commissioners shall prepare—

- (I) An annual report of their proceedings, and an account of all moneys received and expended during the preceding year. Such annual report shall be laid before both Houses of Parliament in the month of January in each year if Parliament be then sitting, otherwise, within one month after the commencement of the Session next ensuing.
- (II) Estimates, in such form as the Governor may direct, of receipts and expenditure for each period of twelve months ending on the thirtieth day of June in each and every year.

Working of the telegraphs vested in the Commissioners.

46. The several lines of telegraphic communication belonging to the Commissioners or which are worked under the direction, or on behalf of the Commissioners, may be used by them—

- (I) For the transmission of messages in relation to the working of the railways ;
- (II) So far as is consistent with the due and efficient working of the railways, for the transmission of messages by the public.

All such messages as last aforesaid shall be transmitted by the officers and employés on behalf of the Commissioners, as agents of the Postmaster-General; and there shall be demanded and received, in respect of such last-mentioned messages, such fees, rates and dues as may for the time being be lawfully demanded or received by the Postmaster-General, in respect of lines of telegraphic communication under his control ; and, save as aforesaid, the Commissioners shall not transmit or permit the transmission of messages on behalf of the public through their wires. The sum to be paid by the Postmaster-General to the Commissioners for the transmission of messages as aforesaid, may be either a lump sum or a percentage on the gross sum received by the Postmaster-General from the Commissioners, in respect of such transmission, or may be determined in such other way as may be agreed upon between the Postmaster-General and the Commissioners.

Commissioners may make contracts, &c.

47. (I) The Commissioners in their corporate name may contract for the execution of any work authorized by this or any other Act to be executed by them, or for furnishing materials or labour, or for providing locomotive engines or other motive or tractive power, or for any other matters and things whatsoever, necessary for enabling them to carry the purposes of such Act into full effect, in such manner and upon such terms for such sum and under such stipulations, conditions and restrictions as the Commissioners think proper.

(II) Every such contract shall be in writing, and shall specify the work to be done, the materials to be furnished, and the price to be paid for the same, and the time within which the work is to be completed, and the materials to be furnished, and the penalties to be suffered in case of non-performance thereof ; and every such contract may, if the Commissioners think fit, comprise several works and may in every case specify the person to whose satisfaction the work or works is or are to be completed or the material furnished, and the mode of determining any dispute which may arise concerning, or in consequence of, such contract.

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48. The Commissioners and the Postmaster-General may enter into, alter and rescind contracts and agreements, with respect to the receipt, carriage and conveyance of letters, newspapers, parcels and newspapers, and or with respect to any other matter or thing in relation to the postal service; also, with respect to the working of any of the lines of telegraphic communication of the Postmaster-General by the Commissioners, and generally with respect to telegraphs and the transmission of telegraphic messages.

Power for Commissioners and Postmaster-General to make contracts.

49. In case any difference shall arise between the Commissioners and the Postmaster-General, with regard to the terms and conditions on which any contract or agreement should be made or otherwise in relation thereto, the same shall be determined by the Governor.

How differences to be determined.

50. The Commissioners, at a meeting specially called for that purpose, may compound and agree with any person who has entered into any contract in pursuance of or under the authority of this Act, or against whom any action or suit is brought for any penalty contained in any such contract, or in any bond, or other security for the performance thereof, or for or on account of any breach or non-performance of any such contract, bond or security, for such sum of money or other consideration as the Commissioners think proper.

Commissioners may compound for breach of contracts.

## PART III.

*Investigation of Accidents.*

51. Whenever, upon or about any railway, or any works, building or place of any kind whatsoever, used or connected with any railway, any such accident as hereinafter specified takes place in the course of working such railway viz.:—

Accidents to be reported to the Minister.

34 and 35 Vic. c. 78 s. 6.

- (a) Any accident attended with loss of life or personal injury to any person—
- (b) Any collision where one of the trains is a passenger train—
- (c) Any passenger train or portion thereof accidentally leaving the rails—
- (d) Any accident of a kind not comprised in the foregoing descriptions, but which has caused or might have caused loss of life or personal injury—

The Commissioners shall—

- (i) Cause the earliest information by telegraph, post or otherwise to be forwarded to the Minister.
- (ii) Appoint such officer or officers as they may think fit to hold an inquiry into the matter.
- (iii) As soon as practicable after such inquiry, send to the Minister full information of the accident and the report of such officers.

52. Where it appears to the Minister, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, he shall notify the same to the Governor, and the Governor may, by order, direct such investigation to be held; and with respect to such investigation the following provisions shall have effect:—

Governor may direct formal investigation. *Id.* s. 7.

- (i) The Governor may, by the same or any subsequent order, direct a District Court judge, magistrate, or other person or persons, named in the same or any subsequent order, to hold such investigation with the assistance of the assessors named in the order;

Persons by whom the inquiry is to be held.

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| Inquiry to be held in open Court.                   | (II) The person or persons holding any such formal investigation (hereinafter referred to as the Court) shall hold the same in open Court, in such manner, and under such conditions as he or they may think most effectual for ascertaining the causes and circumstances of the accident, and enabling him or them to make the report in this section mentioned ;   |
| Powers of persons conducting inquiry.               | (III) The Court shall, for the purposes of such investigation, have all the powers of a Court of Petty Sessions acting in the exercise of its ordinary jurisdiction, and,  |
| May personally inspect.                             | (a) May enter and inspect any place or building, the entry and inspection whereof appears to such Court requisite for the said purpose.  |
| Call witnesses, &c.                                 | (b) May by summons under their hand require the attendance of all such persons as the Court thinks fit to call, and examine the same, and may require answers or returns to such inquiries as the Court thinks fit to make.  |
| Call for production of books, &c.                   | (c) May require and enforce the production of all books, papers and documents which the Court considers important.   |
| Administer oaths.                                   | (d) May administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination.  |
| Expenses of witnesses.                              | (e) Every person so summoned, not being a person engaged in the Railway service or otherwise connected with it, shall be allowed such expenses as would be allowed to a witness attending on subpœna before the Supreme Court ; and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to the Prothonotary of the Supreme Court, who, on request by the Court, shall ascertain and certify the proper amount of such expenses. |
| Persons holding inquiry to make report to Governor. | (IV) No answers or declarations of any person examined under this section shall be admissible in evidence in any proceeding against such person other than a prosecution for perjury, or for giving or making false answers or declarations.   |
|   | (V) The Court, after holding an investigation concerning any accident, shall make a report to the Governor stating the causes of the accident, and all the circumstances attending the same, and any observations thereon, or on the evidence, or on any matters arising out of the investigation, which the Court thinks right to make.   |

## PART IV.

*By-Laws, &c.*

By-laws may be made.

53. The Commissioners may make by-laws for all or any of the subjects or matters hereinafter mentioned, and may impose penalties not exceeding twenty pounds, upon any person committing a breach of any of such by-laws—

- (I) For fixing the amount of fares for the conveyance of passengers, and the charges for the carriage of animals, goods and parcels, and the circumstances and conditions under which the Commissioners will make special rates for the carriage of goods in quantities ;

(II)

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- (II) For preventing the commission of any nuisance in or upon the carriages, or in any of the stations, buildings, piers, wharves or jetties vested in the Commissioners;
- (III) For preventing the emptying of sewage or drainage on to any of the railways, or on to any lands, stations, buildings, piers, wharves or jetties vested in the Commissioners;
- (IV) For regulating the exercise of the several powers vested in any pier-master, wharfinger or berthing master;
- (v) For regulating the admission of vessels to any pier, wharf or jetty hereinbefore mentioned, and their removal from the same, and for the good order and government of such vessels, whilst at such pier, wharf or jetty;
- (VI) For regulating the use of any such pier, wharf or jetty;
- (VII) For regulating the shipping, unshipping, landing, warehousing, stowing, depositing and removing of all goods from or at any such station, building, pier, wharf or jetty;
- (VIII) For regulating the conduct of all persons (not being any officer of the Marine Board, or of the Department of Harbours and Rivers, or of the Customs), while upon or in any such station, building, pier, wharf or jetty, or while employed at or near the same;
- (IX) For regulating, subject to the approval of the Marine Board, the use of fires and lights within or on board any vessel being at any such pier, wharf or jetty;
- (x) For preventing damage or injury to any vessel or goods at any such station, building, pier, wharf or jetty;
- (XI) For regulating the duties and conduct of porters, cabmen, carmen, draymen and carriers (not being employes of the Commissioners), employed at any such station, building, pier, wharf or jetty, and fixing the charges to be paid to them for carrying any passengers, goods, articles or things from or to the same;
- (XII) For fixing the amount of tolls to be paid by any vessel using any such pier, wharf or jetty, or any crane, the property of the Commissioners; and for fixing the amount of tolls to be paid on goods brought to or taken from any vessel using any such pier, wharf or jetty, by lighter or other vessel;
- (XIII) For fixing the amount of tolls upon animals and goods received or delivered upon or from any such pier, wharf or jetty;
- (XIV) For regulating generally the travelling or traffic upon, or using or working of the railways, and of the stations, buildings, piers, wharves and jetties hereinbefore mentioned; and for the good government and maintenance of order thereon;
- (xv) For specially regulating the conduct of the traffic during any reconstruction or repair of any railway or tramway;
- (xvi) For regulating the terms and conditions upon which special trains will be run;
- (xvii) For regulating the admission of the public to any of the railways, and to any of the stations, buildings, piers, wharves or jetties, hereinbefore mentioned; and for fixing a charge therefor, or for dispensing with the same on certain days or for certain times;
- (xviii) For regulating the use of stamps as pre-payment upon parcels;
- (xix) For regulating the sale of tickets at places, other than railway stations, and the conditions under which such tickets shall be sold;

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- (xx) For fixing demurrage charges, where goods are to be loaded into or discharged from trucks by owners, consignors or consignees ;
- (xxi) For fixing the charges for warehousing goods, and the charges to be paid in respect of parcels and luggage left for transit or for care or custody, and the conditions upon which they respectively will be received ;
- (xxii) For regulating the disposal of unclaimed goods ;
- (xxiii) For imposing conditions upon which passengers luggage will be carried ;
- (xxiv) For preventing or regulating bathing or fishing in, or shooting over or upon, any reservoir or tank connected with any of the railways ;
- (xxv) For regulating the carriage of corpses, and for prohibiting the carriage or conveyance of the bodies of persons who have died from any contagious disease ;
- (xxvi) For prohibiting the carriage or conveyance of diseased animals, and preventing them from coming upon any station or premises ;
- (xxvii) For preventing damage or injury to railway stations, buildings, piers, wharves, jetties, premises, carriages, gates, fences or any property whatever ;
- (xxviii) For the issue of free passes on the railways ;
- (xxix) For regulating public or private traffic across any of the said railways, on the level thereof, and for preventing animals from trespassing on any of the railways ;
- (xxx) For altering or repealing any by-laws made heretofore with regard to the railways ;
- (xxxi) For regulating the manner in which public notices shall be advertised, and generally with regard to advertising in newspapers and elsewhere ;
- (xxxii) For facilitating and regulating the insurance of persons, travelling on the lines of railway, by any Accident Insurance Company now or hereafter to be formed.

By-law of Commissioners to be approved by Governor.

By-laws to be published.

54. (I) No such by-law shall have any force or effect unless the same has been approved by the Governor, and has been published for at least three clear days in the *Gazette*.

(II) The Commissioners shall cause the substance of such by-laws, and a list of any tolls, fares and charges from time to time imposed thereby, to be painted upon or to be printed and affixed to boards in large and legible characters, and shall cause such boards to be exhibited in some conspicuous place in or on every station, pier, jetty, wharf or other place where such tolls, fares or charges, or any of them are payable, and according to the nature and character of such by-laws respectively, so as to give public notice thereof; and shall cause every such board from time to time to be renewed, if destroyed or defaced.

Evidence of publication.

55. The exhibiting on boards of the substance of such by-laws, and lists of tolls, fares and charges, shall be deemed to have been complied with, if it be proved that, at the time of any alleged breach, a board was exhibited in accordance with the provisions of the next preceding section, at the station, pier, wharf, jetty or other place where tolls, fares or charges were payable, nearest to the place where such breach took place. The production of the *Gazette*, containing such by-law shall be *prima facie* evidence that such by-law has been duly made and confirmed, and that it is still in force.

Certain rules, regulations, and by-laws to remain in force.

56. The rules, regulations and by-laws in force at the passing of this Act in respect of the Government Railways and Tramways shall be read and construed as if the Authority therein named had been therein

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therein expressed to be "the Commissioners" appointed under this Act. Such rules, regulations and by-laws shall be deemed to have been made under the authority of this Act, and shall be and continue to be in full force and effect until altered or repealed by rules, regulations or by-laws made under the authority of this Act.

57. When the breach of any by-law would be attended with danger or annoyance to the public, or hindrance to any of the employés in the lawful use of any of the railways, or of any pier, wharf, jetty, station, yard or building, such employés or any of them may summarily interfere to obviate or remove such danger, annoyance or hindrance, and that without prejudice to any penalty incurred by the breach of such by-law.

Summary interference in certain cases of breach of by-law.

## PART V.

*Appointment, Promotion, and Discipline in, and Regulation of, Railway Service.*

58. The Governor may appoint for each branch of the Railway Service competent persons, to be Examiners of candidates for permanent employment in such branch and of employés who are candidates for promotion to the higher grades in such service. Provided that such Examiners shall not hold office longer than three years from the date of appointment, but shall be eligible for reappointment.

Governor to appoint Examiners.

59. Whenever the Commissioners require additional permanent officers, they shall give public notice thereof three times in a Sydney daily paper, which shall state the qualifications required and the branches for which such additional officers are required, and shall also state the time and place of examination. The Commissioners shall so arrange the times and places when and where candidates are to comply with the conditions of employment provided in this Act, and to undergo examination, that persons residing in country districts shall have reasonable facilities for being examined in the district in which they reside.

Notice of examination for permanent employment.

60. All persons employed in the Railway Service except supernumeraries shall be deemed to be employed in a permanent office. No person shall be employed in the Railway service as a supernumerary for a longer period in all than six months in any one year except persons employed as day labourers; and no person who has been so employed shall be again employed as a supernumerary until a period of six months has elapsed from the termination of the period during which he was so employed. The Commissioners shall cause to be kept a special record of all appointments of supernumeraries, and of the circumstances under which their services were deemed necessary, of the periods during which they were respectively employed, and of the payments received by them respectively; and a copy of such record shall be sent to the Minister at the end of every three months.

Permanent employment and appointment of supernumeraries.

61. No person shall be appointed as an additional permanent officer who has not obtained a certificate of fitness from the Examiners (which they are hereby empowered to issue).

Certificate.

62. If a greater number of candidates than are required by the Commissioners for appointment obtain certificates from the Examiners, the Commissioners shall appoint as many persons as are required, in such grades and to such situation as they may consider best. The persons in excess of the number required by the Commissioners shall be eligible for appointment for a period of twelve months then next ensuing from the date of such determination without further examination.

Order of precedence for appointment how determined.



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Appointments how to be made.

63. All appointments shall be made to the lowest grade in each of the various branches of the Railway service and on probation only for a period of six months. After the period of such probation, and upon production of a certificate of fitness from the officer at the head of the branch in which such probationer was employed, and upon proof to the satisfaction of the Commissioners that all the provisions of this Act have been complied with, such appointments may be confirmed by the Commissioners. The Commissioners shall, notwithstanding, have the power to appoint to any position or grade, if they think fit, without examination as aforesaid, persons of known ability not engaged in the Railway service. No such appointment shall be made unless the Commissioners shall have previously certified under their seal to the Governor that there is no person in the Railway service fit and qualified to be promoted to such appointment, and shall have obtained his sanction to such appointment.

Appointee to effect an insurance on his life.

64. No probationer's appointment shall be confirmed until he has effected, in some life insurance company carrying on business in this Colony, an insurance on his life providing for the payment of a sum of money at his death, should it occur before the age of retirement from the Railway service; or, if he survive until that age, of a sum of money or annuity on the date of such retirement. Such insurance shall be continued, and the amount thereof fixed and increased, from time to time, in the prescribed manner, and no policy of insurance so effected shall, during the time such person remains in the Railway service, be assignable either at law or in equity.

How promotions made.

65. When any vacancy occurs in any branch of the Railway service not open for competitive examination as hereinafter provided, it shall be filled, if possible, by the promotion of some officer next in rank, position or grade, to the vacant office; and no such officer shall be passed over unless the head of his branch, in writing, so advise the Commissioners. No officer shall be passed over without being allowed to show cause, in the prescribed manner, to the Commissioners, whose decision upon the matter shall be final.

Competitive examinations.

66. Whenever promotions to the higher grades of the Railway service are to be made, the Commissioners shall cause competitive examinations to be held by the Examiners; and the names of the candidates who have satisfied the Examiners that they possess the necessary qualifications shall be registered by the Commissioners, in a book kept for that purpose, in the order of their merit. And no promotions to the offices open to competitive examination shall be made except from the persons whose names are so registered, and in the order of such registration, taking the name first registered and following in regular order.

Gratuities and over-time payments.

67. The officer at the head of any branch of the Railway service may, if he thinks fit, certify that in his opinion any officer in his branch is entitled to a gratuity or to a payment for overtime work; but no gratuity or payment for overtime work shall be paid upon such certificate without the authority of the Commissioners.

Power to fine or reduce in rank any employé.

68. The officer at the head of each branch of the Railway service shall, in the prescribed manner, have the power with respect to any employé in his branch who has been guilty of misconduct or of breaking any rule, by-law, or regulation of the Railway service—

(I) To suspend him;

(II) To fine him in a sum not exceeding five pounds;

(III) To reduce him in rank, position or grade, and pay;

But every such employé shall have the right of appeal to the Commissioners.

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69. Any officer in charge of a railway station may temporarily suspend at such station any employé of inferior rank, position or grade to his own, until the officer at the head of such employé's branch has dealt with the suspension of such employé. Any charge brought against any employé, for the breach of any rule, by-law or regulation, or for misconduct, may be investigated and dealt with by the Commissioners, who may suspend such employé; or, if he have been already suspended, may further suspend him for a period not exceeding six months, without salary or wages, or may inflict a fine to be deducted from his pay, or may dismiss him; and their decision shall be final.

*Employés guilty of misconduct how dealt with.*

70. No officer or employé under the Commissioners shall be liable to dismissal or any disability for refusing, on conscientious grounds, to work on any Sunday except in cases of necessity. Such officer or employé to be subject to a proportionate reduction in his salary or wages on account of such refusal, provided always that such provision shall not apply to any officer or employé whose duties do not require him to work on Sunday.

*Employés not subject to dismissal for refusing to work on Sunday.*

71. The three Commissioners shall hear, and a majority of such Commissioners shall determine, any appeal made by an employé against the adoption or confirmation of the advice or decision of the officer at the head of his branch, with regard to his right to promotion, or with respect to any charge made against such employé, or with respect to any penalty imposed by such officer; and may confirm or modify such decision, or make such order as they think fit; and their decision shall be final. Every such appeal shall be heard within thirty days from the date of the appeal being lodged with the Commissioners.

*Commissioners to hear appeals.*

72. If any officer or employé be convicted of any felony or infamous offence, or become insolvent, or apply to take the benefit of any Act now or hereafter to be in force for the relief of insolvent debtors, or, by any deed or other writing, compound with his creditors, make an assignment of his salary for their benefit, he shall be deemed to have vacated his office.

*Forfeiture of office in certain cases.*

73. When any such officer or employé has vacated his office by reason of any such pecuniary embarrassment as aforesaid, if he prove to the satisfaction of the Commissioners that such embarrassment has not been caused or attended by any fraud, extravagance or dishonorable conduct, they may reinstate such officer or employé in his former, or any other inferior, position in the Railway service.

*Commissioners may reinstate insolvent officer in the absence of fraud.*

74. The Commissioners shall

- (I) Keep a record of all persons in the Railway service, and shall record therein the rank, position or grade, the length of service, salaries, and such other particulars with regard to such persons as they think fit;
- (II) Cause entries to be made in such record of deaths, dismissals, resignations, promotions and reductions;
- (III) In the month of June, in the year one thousand eight hundred and eighty-eight, and in each and every third year thereafter, publish in the *Gazette* a list of persons employed in the Railway service up to the thirty-first day of December of the preceding year.

*Record of particulars of Railway service to be kept.*

75. The Commissioners shall make regulations—

- (I) For prescribing the qualifications required of all candidates for permanent employment in each of the various branches of the Railway service, and, if necessary, in each grade of such branches.
- (II) For the examination of candidates and the granting of certificates to them.
- (III) For determining the nature or character and extent of examinations or tests, according to the requirements of each of the

*Regulations in respect of permanent appointments.*

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the higher grades in the Railway service, which employés in the lower grades, desiring to compete for and to be promoted to such higher grades, shall undergo.

- (IV) For regulating the relative rank, position or grade in the duties and conduct of the employés in each of the various branches of the Railway service; and for determining which of such grades shall be deemed the higher and lower grades, respectively, in such Railway service.
- (V) For regulating the duties to be performed by employés in the Railway service, and the discipline to be observed in the performance of such duties, the granting of leave of absence from time to time, and arranging for the performance of duties during holidays, and for affixing to breaches of such regulations, according to the nature of the offences, such penalties as by this Act are authorized.
- (VI) For regulating and determining the scale on which employés in the various grades of the Railway service shall insure their lives.
- (VII) For the hearing and determining of appeals.
- (VIII) For altering or repealing any rules or regulations made before the passing of this Act with regard to railways or tramways.
- (IX) For fixing the ages at which employés shall retire in the different branches of the Railway Service.

All such regulations, when confirmed by the Governor, shall have the same force and effect as if they had been contained in this Act.

Right to sue.

76. Nothing in this Act shall be held to, in any way interfere with the right of any employé to sue the Commissioners in any Court of Law, and this Act expressly reserves to every employé the right so to sue should he so desire. It shall not be within the powers of the Commissioners to agree with the employés in their service to contract themselves out of the provisions of any Act of Parliament, or to compel them to forego any civil rights to which any Act of Parliament entitles them.

Alterations of regulations.

77. No regulation which the Commissioners are by this Act empowered to make, in any way altering or annulling any privileges or immunities, which their servants have previously enjoyed, or dealing in any way with hours of work or wages shall have any force or effect until the same is confirmed by the Governor nor until the said regulation has been published in the *Gazette* one week.

Rights under Employer's Liability Act preserved.

78. The Commissioners shall not be deemed to be exempt from liability to any action which might be brought against an employer under the "Employer's Liability Act."

List of employés.

79. The Commissioners shall in each annual report include a list of all employés admitted to the Service since the date of the former annual report, and likewise a list of all employés who may have left the Service during the like period, giving date of appointment, positions and rates of pay to which appointed, and date and cause of leaving in each case.

Rights of employés to be represented at public inquiries.

80. In all public inquiries and investigations into the cause of any accident the employés shall have the right to be represented by one of their number, or by any person whom they may select to represent their interests at such inquiry.

## PART VI.

*Miscellaneous Provisions—Penalties—Procedure &c.*

81. The Commissioners shall cause all weights, measures, scales, Adjustment of weights and measures on railways. balances, steelyards, beams and other weighing machines in use upon any of the railways, or on any of the stations, piers, wharfs or jetties vested in the Commissioners, to be from time to time adjusted by some officer appointed by the Commissioners, either on comparison with authorized copies of the standard weights and measures made under the Act or Acts in force for the time being relating to Weights and Measures, or otherwise as the case may be; but, save as aforesaid, nothing in the said Act or Acts contained shall apply to the railways or to any station, pier, wharf or jetty vested in the Commissioners.

82. The Commissioners shall publish the short particulars of Publication of penalties. the several offences, for which any penalty is imposed by this Act or by any by-law of the Commissioners, 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 or affixed in some conspicuous part of the principal place of business of the Commissioners. When any such penalties are of local application they shall cause such boards to be affixed in some conspicuous place in the 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 the requirements of this section have been complied with.

83. If any person pull down or injure any board put up or Penalty for defacing boards used for publication. 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 Prin. Act s. 135. 8 Vic. c. 20 s. 144. five pounds, and shall defray the expenses attending the restoration of such board.

84. If any person without reasonable excuse (proof whereof shall lie on him) does any of the following things, namely:— Disobedience of person summoned as witness.

- (I) Having been summoned and having had the expenses (if any) to which he is entitled tendered to him, fails to attend as a witness before a court holding an investigation under this Act;
- (II) Fails, when required by such court, in pursuance of this Act so to do, to make any answer or to give any return, or to produce any document, or to make or sign any declaration;
- (III) Prevents or impedes such court in the execution of their duty;

he shall, for every such offence, incur a penalty not exceeding ten pounds; save that, in the case of a failure to give any return or produce any document, the said penalty shall not exceed ten pounds for every day that such failure continues; and where the offence consists of preventing or impeding as aforesaid, any member of such court, or any person called by him to his assistance, may seize and detain the offender, until he can be conveniently taken before a Magistrate or two Justices to be dealt with according to law.

85. Before any person entrusted with the custody and control of moneys, whether as collector, or other officer or servant of the Commissioners, enters upon his office, the Commissioners shall take sufficient security from him for the faithful execution of his office; and such security may be that of any incorporated company or guarantee society approved by the Commissioners in the prescribed manner. Commissioners to take security from officers entrusted with money.

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Delivery of matters  
in possession or  
custody of toll  
collector at removal.  
Prin. Act s. 114.  
8 Vic. c. 20 s. 106.

86. If any collector of tolls or other officer employed by the Commissioners 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 officer, refuse or neglect, after seven days notice in writing for that purpose, to deliver up to the Commissioners or to any person appointed by them for that purpose, any station, dwelling-house, office or other buildings with its appurtenances, or any books, papers or other matters belonging to the Commissioners, 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 Commissioners to any Justice, such Justice may order any constable, with proper assistance, to enter upon such station or other building, and remove any person found therein, and take possession thereof and of any such books, papers or other matters, and to deliver the same to the Commissioners or to any person appointed by such Justice for that purpose.

Officers to account  
on demand.  
Prin. Act s. 119.

87. Every officer or servant employed by the Commissioners shall, from time to time, when required by the Commissioners, make out and deliver to them or to any person appointed by them for that purpose, a true and perfect account in writing, under his hand, of all moneys received by him on behalf of the Commissioners, or by virtue of his employment; 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 Commissioners, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of any such account.

Summary remedy  
against parties fail-  
ing to account.  
Prin. Act s. 120.

88. If any such officer as last aforesaid fail

- (I) To render such account or
- (II) To produce and deliver up all the vouchers and receipts relating to the same in his possession or power or
- (III) To pay the balance thereof when thereunto required or
- (IV) Within three days after being thereunto required to deliver up to the Commissioners or to any person appointed by them 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 Commissioners;—

Then, on complaint thereof being made to a Justice, such Justice shall summon such officer to appear before a Magistrate, 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 Magistrate 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 Commissioners are in the hands of such officer or owing by him, such Magistrate may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such Magistrate to grant a warrant to levy the same by distress, or if he think fit, to commit the offender to gaol for a period not exceeding three months.

Officers refusing to  
deliver up documents,  
&c., to be imprisoned.  
Prin. Act s. 121.

89. If any such officer or servant, on being so brought before such Magistrate and being required so to do, refuse to make out such account in writing, or to produce and deliver to the Magistrate 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

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belonging to the Commissioners, such Magistrate 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 shall have delivered up all books, papers, writings, property, effects, matters and things (if any) in his possession or power belonging to the Commissioners, or which should be delivered up to him by such officer or servant.

90. If a Commissioner or any person authorized by a Commissioner shall make oath before a Justice that he has good reason to believe, upon grounds to be stated in the deposition, and does believe that it is the intention of any such officer as aforesaid, to abscond, or that he has absconded, the Justice before whom the complaint is made, may, if he think fit, issue a warrant in the first instance for the apprehension of such officer or servant to be brought before any Magistrate; 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 Justice, without bringing him before some Justice; and the Justice before whom such officer may be brought may either discharge such officer, if he think there is no sufficient ground for his detention, or order such officer to be detained in custody so as to be brought before such Magistrate, 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 Magistrate to answer the said complaint. Provided nevertheless that no such proceeding against, or dealing with, any such officer or servant as aforesaid, shall deprive the Commissioners of any remedy which they might otherwise have against such officer or any surety of such officer.

Where officer about to abscond a warrant may be issued in the first instance.  
Prin. Act s. 122.

Sureties not to be discharged.

91. If any person employed by the Commissioners

- (i) Exact, or take or accept on account of anything done by virtue of his office or in relation to the functions of the Commissioners, any fee or reward whatsoever other than the salary, rewards or allowances allowed or sanctioned by Parliament, or
- (ii) Be in anywise concerned or interested in any bargain or contract made by or on the behalf of the Commissioners, otherwise than as a member only, but not as a director or officer, of any registered, incorporated or joint stock company with whom any such bargain or contract may be made;

He shall be removed from office, and shall be incapable of being afterwards employed by the Commissioners, and shall also be guilty of a misdemeanour.

Officer taking fees to lose his office and to be guilty of a misdemeanour.

92. If any person employed upon the railway or in repairing and maintaining the works of the said railway shall

- (i) Be found drunk whilst so employed upon the said railway; or
- (ii) Commit any offence against any of the regulations or by-laws of the Commissioners, or
- (iii) Wilfully, maliciously, or negligently do any act, or 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;

Punishment of persons employed on railway guilty of misconduct.  
Prin. Act s. 132.

It shall be lawful for any railway officer or agent or any special constable duly appointed, and all such persons as any of them may call to his assistance, to seize and detain such person so offending, or any person counselling, aiding or assisting in such offence, and to convey

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convey him with all convenient dispatch before any Magistrate, 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 Magistrate (upon a complaint in writing), be imprisoned, with or without hard labour, for any term not exceeding six months, or shall forfeit any sum not exceeding fifty pounds, and in default of payment thereof shall be imprisoned, with or without hard labour, for such period, not exceeding six months, as such Magistrate shall appoint.

Penalty for obstructing construction of railway.

Prin. Act s. 127.  
8 Vic. c. 20 s. 24.  
3 & 4 Vic. c. 97 s. 16.

93. If any person shall
- (I) Wilfully obstruct any person acting under the authority of the Commissioners in the lawful exercise of his power or
  - (II) Pull up or remove any poles or stakes driven into the ground, for the purpose of setting out any line of railway, or deface or destroy any marks made for the same purpose, or
  - (III) Wilfully obstruct or impede any officer or agent of the Government or of the Commissioners 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
  - (IV) Wilfully trespass upon any such railway or any of the stations or other works or premises connected therewith;

Every person committing any such offence, and all others aiding or assisting therein, shall forfeit to the Commissioners a sum not exceeding twenty pounds for every such offence.

Penalty on persons obstructing free course of Railway.

Prin. Act s. 128.  
3 & 4 Vic. c. 97 s. 15.

94. If any person shall
- (I) Throw any gravel, stones or rubbish, or any matter or thing upon any part of a railway, or
  - (II) 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
  - (III) Do any other act, matter or thing to obstruct the free passage of any such railway or any part thereof;

Such person committing any such offence, and all others aiding or assisting therein, 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 labour, for any period, not exceeding six months; and such penalty may be recovered before any Magistrate on complaint to him for that purpose exhibited by any person on behalf of the Commissioners.

Penalty on Commissioners being interested in contracts.

95. If any Commissioner shall become in anyway concerned or interested in any contract or agreement made by or on behalf of the Commissioners, or shall in anywise participate or claim to be entitled to participate in the profit thereof, or in any benefit or emolument arising therefrom, he shall be guilty of a misdemeanour, and be liable, at the discretion of the Court, to a penalty not exceeding five hundred pounds, or to imprisonment for any term not exceeding three years, or to both such punishments.

Fraudulent use of free passes.

96. If any person, not being one of the persons entitled under the provisions of this Act to claim, hold and use a free pass on the railways

- (I) Shall travel or attempt to travel by virtue of any such free pass, or
- (II) Shall at any time exhibit or show or carry any such free pass pretending to be the rightful possessor thereof, he shall be guilty of a misdemeanour.

Transient offenders.  
Prin. Act s. 138.  
8 Vic. c. 20 s. 154.

97. 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,

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Act, and whose name and residence shall be unknown to such officer or agent, and to convey him with all convenient dispatch before some Magistrate, without any warrant or other authority than this Act; and such Magistrate shall proceed with all convenient dispatch to the hearing and determining of the complaint against such offender.

98. Where in this Act any question of compensation, expenses, charges, damages or other matter is referred to the determination of a Magistrate or two Justices, any Justice may, upon the application of either party, summon the other party to appear before a Magistrate or two Justices 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, such Magistrate or Justices may hear and determine such question, and for that purpose 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 Magistrate or Justices, and he or they shall determine the amount thereof.

Method of proceeding before Justices in question of damages, &c.

Prin. Act s. 133.  
8 Vic. c. 20 s. 142.

99. 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 any Magistrate according to "The Justices' Act of 1850" and the several Acts incorporated therewith. And where any such penalty so recovered or where any sum of money payable under this Act shall not be paid either immediately after conviction or adjudication or within the time appointed thereby, payment may be enforced by distress and sale of the offenders' or defaulters' goods and chattels in the manner provided by the said Act.

Penalties to be summarily recovered.  
Prin. Act s. 136.  
8 Vic. c. 20 s. 145.

100. If through any act, neglect or default whereby any person shall have incurred any penalty imposed by this Act, any damage to any railway or other property vested in the Commissioners 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 Magistrate or 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 Magistrate or Justices shall issue his or their warrant accordingly.

Damage to be made good in addition to penalty.  
Prin. Act s. 137.  
8 Vic. c. 20 s. 152.

101. If any party shall feel aggrieved by any determination or adjudication of any Justice or Justices 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 abide the order of the Court thereon.

Parties allowed to appeal to Quarter Sessions on giving security.  
Prin. Act s. 139.  
8 Vic. c. 20 s. 157.  
8 Vic. c. 18 s. 146.

102. 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 as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.  
Prin. Act s. 140.  
8 Vic. c. 20 s. 158.  
8 Vic. c. 18 s. 147.



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Services of notices  
upon Commissioners.

103. Any summons, notice, writ, process, or document required to be served on the Commissioners pursuant to any Act or to any by-law or regulation, may be served upon the Solicitor to the Commissioners.

Actions against  
Commissioners or  
officers.

104. All actions to be brought against the Commissioners or against any person for anything done or purporting to have been done under this Act shall be commenced within one year after the act complained of was committed;

(I) No action shall be commenced against the Commissioners or any person for anything done or purporting to have been done by them or him under this Act, until one month, at least, after a notice in writing of such intended action shall have been delivered to them or him, or left at their or his usual place of business, or at the office of the Solicitor for Railways, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action and the Court in which the same is intended to be brought shall be clearly and explicitly stated, and upon the back thereof shall be indorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the attorney or agent, if such notice shall have been served by such attorney or agent.

(II) A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the Judge before whom the action is tried shall be of opinion that the defendant in the action has been prejudiced in his defence by such defect or inaccuracy.

Defendant may plead  
general issue.

(III) The defendant in every such action may plead the general issue, and at the trial thereof give this Act and the special matter in evidence.

Tender of Amends.  
Prin. Act s. 126.  
8 Vic. c. 20 s. 139.  
8 Vic. c. 18 s. 135.

105. If any person 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 person make tender of sufficient amends to the person injured, such lastmentioned person shall not recover in any such action; and if no such tender shall have been made, the defendant may, by leave of the Court where such action shall be pending, at any time before issue joined, 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.

Saving of rights, &c.  
to officers and  
employés.

106. Nothing in this Act shall prejudice or affect any officer or employé in the Railway or Tramway service who has been a contributor to the Superannuation Account, in respect of his right to any compensation or retiring allowance under the provisions of the Civil Service or any other Act, or to any other rights, privileges and immunities thereunder.

Provision on abolition  
of office of present  
Commissioner for  
Railways.

107. Upon the abolition of the office of Commissioner for Railways, the person holding that office at the time of such abolition shall be entitled to a retiring allowance equal to three-fourths of his salary as such Commissioner. But, in the event of the said Commissioner accepting any office of profit under the Crown, such retiring allowance shall merge, or be reduced *pro tanto* during his tenure of such office, according as the salary or emoluments of the same are greater or less than such retiring allowance.

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*Consolidated Revenue Fund* (No. 5).

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## SCHEDULE A.

OFFICES entitling persons to free passes for life:—

- (i) The position of (a) head of an Administration or of Prime Minister, held for two years consecutively or in the aggregate; (b) The position of a Member of the Executive Council, so held for four years.
  - (ii) The office of—
    - (a) Chief Justice, held for three years.
    - (b) Lieutenant-Governor, held for one year.
    - (c) President of the Legislative Council, held for one year.
    - (d) Speaker of the Legislative Assembly, held for one year.
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