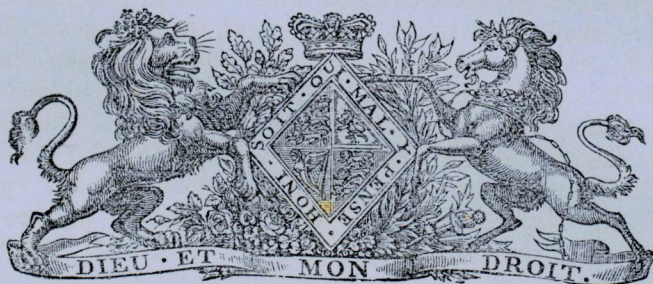


New South Wales.



ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.

No. XIX.

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. [Assented to, 24th November, 1858.]

WHEREAS by an Act of Council passed in the thirteenth year of the Preamble.
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: 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
a whatsoever,

Government Railways Act.—1858.

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 herein before 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:—

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the Sydney Railway Company and the Hunter River Railway Company, and the 18 Vict., No. 40, and 19 Vict., No. 32, repealed.

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.

Property transferred to Commissioner to be appointed under this Act.

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 favor 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 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 favor of, and against the Commissioner to be appointed as aforesaid; and all judgments, decrees, and orders made in favor 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,

Government Railways Act.—1858.

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.

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 Commissioner for Railways.

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.

Governor in Council authorized to appoint other officers:

Provided that minor appointments may by Order in Council be vested in Commissioner, &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.

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

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 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.

Commissioner to be a corporation sole.

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

Government Railways Act.—1858.

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.

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

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.

Power to enter upon and take lands;

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, 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, 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 water-courses, 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, 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 Railway, 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

remove materials;

Construct inclined planes, tunnels, &c.

Alteration of course of rivers., &c.;

and of roads, &c.

The level of any such rivers or streams.

Drains, &c.

and

Government Railways Act.—1858.

and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, 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.

And to erect toll-houses, warehouses, &c.

Alterations and repairs.

General power.

Provido as to damages.

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 waggons 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.

Breadth of land to be taken for Railway.

Provido as to injuries to houses, &c.

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 connexion

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

Government Railways Act.—1858.

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

nexion 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.

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

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.

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

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.

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

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 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 seized, 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 seized, 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 seized 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

Government Railways Act.—1858.

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 cestuique trusts, whether infants, issue unborn, lunatics, femmes covert or other persons, and that to the same extent as such cestuique 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.

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

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

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,

Notice of lands taken for the Railway.

and

Government Railways Act.—1858.

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.

Service of notices on owners and occupiers of lands.

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.

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

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 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

Government Railways Act.—1858.

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.

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 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.

Vacancy of arbitrator to be supplied.

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

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

Government Railways Act.—1858.

arbitrators under their hands, the matters referred to them shall be determined by the umpire appointed as aforesaid.

Power of arbitrators to call for books, &c.

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.

Arbitrator or umpire to make a declaration.

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:

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

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 delivered to the Commissioner.

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 compensation 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

Government Railways Act.—1858.

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.

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

Compensation to absent parties to be 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.

Government Railways Act.—1858.

Commissioner to pay compensation within one month.

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.

Title to be made out.

Purchase-money payable to parties under disability, amounting to £200, to be deposited in the hands of the Master in Equity.

47. If the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein purchased or taken by the Commissioner from any corporation, tenant for life, or in tail, married woman seized 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),—

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,

Applications of moneys deposited.

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,

Government Railways Act.—1858.

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 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

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

Government Railways Act.—1858.

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, 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 enquiry 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.

Government Railways Act.—1858.

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 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.

Form of conveyances.

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 connexion 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

Proceeding in case of refusal to deliver possession of lands.

Government Railways Act.—1858.

receipt of such warrant, the Sheriff shall deliver 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 situate 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 piece of land so left into such 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, ascertain 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 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

Government Railways Act.—1858.

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 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

Deposit of money when refused on tender.

Government Railways Act.—1858.

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 mortgaged 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 endorsed 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.

Release of lands from rent charges.

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.

Government Railways Act.—1858.

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 endorsed 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 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

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

Government Railways Act.—1858.

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 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.

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

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

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Government Railways Act.—1858.

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.

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.

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.

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,)—

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, 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.

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

Government Railways Act.—1858.

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 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.

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

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.

Period for restoration of Roads interfered with.

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

Government Railways Act.—1858.

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.

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 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.

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.

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

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.

Power to owners of lands to make additional accommodation works.

Government Railways Act.—1858.

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 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)

Restrictions and conditions.

No such Branch Railway shall run parallel to the Railway:
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

Government Railways Act.—1858.

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 waggons 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: Provided that all such tolls be at all times 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 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 favor of or against any particular company or person travelling upon or using the Railway.

Commissioner to employ locomotive power, carriages, &c.

May demand toll.

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.

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 taken only whilst board exhibited.

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.

Tolls to be paid as directed.

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.

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

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

Account of lading, &c., to be given.

Government Railways Act.—1858.

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 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, 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.

Toll collector to be liable for wrongful detention of goods.

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.

Penalty on passengers practising frauds on the Commissioner.

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

Government Railways Act.—1858.

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.

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 aqua-fortis, oil of vitriol, 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 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. Delivery of matters in possession or custody of toll collector at removal.

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— Commissioner to regulate the use of the Railway.

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

Government Railways Act.—1858.

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 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.

Such by-laws to be binding on all parties.

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.

Officers to account on demand.

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.

Summary remedy against parties failing to account.

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
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Government Railways Act.—1858.

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.

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 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.

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

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.

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

Sureties not to be discharged.

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

Power to lease the Railway.

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condition

Government Railways Act.—1858.

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.

Tender of amends.

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.

Penalty for obstructing construction of Railway.

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.

Penalty on persons obstructing free course of Railway.

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

Government Railways Act.—1858.

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 labour 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.

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

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 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.

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

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, waggon 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

Punishment for persons employed on Railway guilty of misconduct.

Government Railways Act.—1858.

labor for such period, not exceeding six months, as such Justices shall appoint, unless the penalty be sooner paid.

Method of proceeding 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 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.

Penalty for defacing boards used for publication.

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.

Penalties to be summarily recovered before two Justices.

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.

Damage to be made good in addition to penalty.

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.

Transient offenders.

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.

Parties allowed to appeal to Quarter Sessions on giving security.

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

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Government Railways Act.—1858.

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.

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 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.

141. Wherever the word " Railway " is used in this Act, it shall be construed to extend to any Railway or Tramway, parts or portions, extension or branch, of any Railways or Tramways constructed or worked under the provisions of this Act, and intended for the conveyance of passengers and goods in or upon carriages drawn or impelled by engines or any other locomotive power.

Interpretation clause.

The word " Toll " shall include any rate or charge or other payment payable for any passenger, animal, carriage, goods, merchandize, articles, matters, or things, conveyed on the Railway.

Toll.

The word " Goods " shall include things of every kind conveyed upon the Railway.

Goods.

Where under the provisions of this Act any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word " Owner " shall be understood to mean any person or Corporation, who under the provisions of this Act would be enabled to sell and convey lands to the Company.

Owner.

SCHEDULE A.

FORM OF CONVEYANCE.

I of in consideration of the sum
of paid to me (or as the case may be
into the hands of the Master in Equity of the Supreme Court, or to
of and of two trustees
appointed to receive the same pursuant to the Act of Council passed " *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,*") by the Commissioner for Railways, do hereby convey to the said Commissioner, his successors and assigns, for and on behalf of Her Majesty All, &c., (describing the premises to be conveyed) together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest, in and to the same, as I am, or shall become, seized or possessed of, or am by the said Act empowered to convey, to hold the premises to the said Commissioner, his successors and assigns, for ever, according to the true intent and meaning of the said Act.

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

