

WESTERN AUSTRALIA

ANNO QUADRAGESIMO NONO

VICTORIÆ REGINÆ

No. 23

An Act to facilitate the Construction and Working of  
Tramways. [*Assented to 24th September, 1885.*]

**B**E it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

*Sec 53 17c.,  
No. 22*

1. This Act may be cited for all purposes as 'The Tramways Act, 1885.'

*Short title*

2. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them, that is to say—

*Interpretation of  
terms*

The term 'Governor' shall mean the Governor of the Colony in Executive Council.

The term 'Commissioner' shall mean the Commissioner of Railways for the time being.

The term 'road' shall mean any carriage way being a public highway.

The term 'road authority' shall mean any local authority, board, town council, body corporate, Commissioner of Crown Lands, trustees, vestry, or persons in whom a road, as defined by this Act, is vested, or who have the power to maintain or repair such road.

The term 'district,' in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority.

The term 'prescribed' shall mean prescribed by any rules made in pursuance of this Act.

The term 'tramway' shall mean any railway, unless otherwise specified, the rails of which are laid along any public road or highway at the same level as that of the said road or highway, and used for the purposes of the tramway to be authorised by special Act.

3. Provisional orders authorising the construction of tramways in any district may be obtained by:—

*By whom pro-  
visional orders  
authorising the  
construction of  
tramways may  
be obtained*

(1) The local authority of such district; or by

(2) Any person, persons, corporation, or company, with the consent of the local authority of such district, and any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as 'the promoters.'

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Application for a provisional order shall not be made by any local authority until such application shall be approved in the manner prescribed in Schedule A annexed to this Act.

The Governor may in certain cases dispense with the consent of local or road authority

4. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such districts does not consent thereto, the Governor may, nevertheless, make a provisional order authorising the construction of such tramway if he be satisfied, after inquiry, that two-thirds of the length of such tramway are proposed to be laid in a district or in districts the local authority or authorities of which district or districts do consent thereto.

Notices and deposit of documents by promoters as in schedule

5. The promoters intending to make an application for a provisional order shall proceed as follows :—

- (a) They shall publish notice of their intention to make such application by advertisement in the form prescribed in the Schedule B annexed to this Act, both in the 'Government Gazette' and in one at least of the local newspapers if such exist :
- (b) They shall deposit at the Department of Public Works the documents described in Schedule C annexed to this Act, and according to the regulations therein contained :
- (c) They shall also deposit such documents with the town clerk or clerk of any local authority or authorities for the town or district in which it is proposed to construct the tramway.

Power for Commissioner to determine on application and on objection

6. The Commissioner of Railways shall consider the application, and may, if he think fit, direct an inquiry in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and he shall consider any objection thereto that may be lodged with him before such day as he may appoint within one calendar month from the date of the receipt of the application in accordance with the advertisement in the 'Government Gazette,' and shall determine whether or not the promoters may proceed with the application.

Commissioner to make provisional order

7. Where it appears to the Commissioner expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Commissioner may settle and make a provisional order accordingly.

Every such provisional order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the Commissioner of Railways, according to the nature of the application, and the facts and circumstances of each case, think fit to submit to the Legislative Council for confirmation in manner provided by this Act.

Regulations as to construction of tramways in towns

8. Every tramway in a town which is hereafter authorised by provisional order shall be constructed and maintained as nearly as may be in the middle of the road : and no tramway shall be authorised by any provisional order to be so laid at a less distance than ten feet between

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the outside of the footpath on either side of the road and the nearest rail of the tramway, if one-third of the owners, or one-third of the occupiers of the property abutting upon the part of the road where such less space shall intervene as aforesaid shall in the prescribed manner express their dissent from any tramway being so laid.

9. Every such provisional order shall specify the nature of the traffic for which such tramway is to be used, and the tolls and charges which may be demanded and taken by the promoters in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the Commissioner shall deem necessary and proper.

Nature of traffic on tramway, and tolls to be specified in provisional order

10. The costs of and connected with the preparation and making of each provisional order shall be paid by the promoters, and the Commissioner may require the promoters to give security for such costs before they proceed with the provisional order.

Costs of order

11. After a provisional order is ready and before the same is delivered by the Commissioner of Railways, the promoters, unless they are a local authority, shall within the prescribed time and in the prescribed manner and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay as a deposit into the hands of the Colonial Treasurer the sum of money prescribed which shall not be less than Five pounds per centum on the amount of the estimate by the promoters of the expense of the construction of the tramway, or deposit with the Colonial Treasurer any security of the prescribed nature the then value of which is not less than such sum of money.

Promoters to deposit five per cent. on estimate, in the hands of the Colonial Treasurer

12. When a provisional order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement according to the regulations contained in Schedule D to this Act.

Publication of provisional order

13. On proof to the satisfaction of the Commissioner of Railways of the completion of such publication as aforesaid, the Commissioner of Railways shall, as early as possible in the first ensuing session of the Legislative Council, procure a Bill to be introduced into the Legislative Council in relation to such provisional order for an Act to confirm the provisional order, which shall be set out at length in the schedule to the Bill; and until confirmation, with or without amendment, by Act of the Legislative Council, a provisional order under this Act shall not have any operation.

Confirmation of provisional order by Act of Legislative Council

If, while any such Bill is pending in the Legislative Council, a petition is presented against the provisional order contained therein, the Bill, so far as it relates to the order petitioned against, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose either in person or by counsel.

For the purposes of this Act, frontagers and omnibus proprietors shall be deemed to have a *locus standi* to oppose the Bill.

The Act of the Legislative Council confirming a provisional order under this Act shall be deemed a public general Act.

14. The Commissioner of Railways, on the application of any promoters empowered by a provisional order, may from time to time

Provisional order may be

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revoked or  
amended

revoke, amend, extend, or vary such provisional order by a further provisional order.

Every application for such further provisional order shall be made in like manner and subject to the like conditions as the application for the former provisional order.

Every such further provisional order shall be made and confirmed in like manner in every respect as the former provisional order, and until such confirmation such further provisional order shall not have any operation.

Cesser of powers  
at expiration of  
prescribed time

15. If the promoters empowered by any provisional order under this Act to make a tramway do not, within two years from the date of the same, or within any shorter period prescribed therein, complete the tramway and open it for public traffic; or,

If within one year from the date of the provisional order, or within such shorter time as is prescribed in the same, the works are not substantially commenced; or,

If the works having been commenced are suspended without a reason sufficient in the opinion of the Commissioner of Railways to warrant such suspension;

the powers given by the provisional order to the promoters for constructing such a tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised unless the time be prolonged by the special direction of the Governor.

A notice purporting to be published by the Commissioner of Railways in the 'Government Gazette,' to the effect that the tramway has not been completed and opened for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purpose of this section of such non-completion, non-commencement, or suspension.

Local authority  
may lease or  
take tolls

16. When a tramway has been completed under the authority of a provisional order by any local authority, or where any local authority has, under the provisions of this Act, acquired possession of any tramway, such authority may, with the consent of the Governor and subject to the provisions of this Act, by lease, to be approved by the Governor, demise to any person, persons, corporation, or company the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorised; but nothing in this Act contained shall authorise any local authority to place or run carriages upon such tramway and to demand and take tolls and charges in respect of the use of such carriages.

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Schedule E annexed; and unless such notice is given and such copy deposited such lease shall not be approved by the Governor.

Every such lease shall be made for a term or for terms not exceeding in the whole twenty-one years.

On the determination of any lease made under this Act, the

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local authority may from time to time, with the consent of the Governor, by lease, demise such rights for such further term or terms, not exceeding in any case nineteen years, as the Governor may approve.

Every such lease shall imply a condition of re-entry, if at any time after the making of the same the lessees discontinue the working of the tramway leased or any part thereof for the space of two calendar months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control).

17. Where the local authority in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a provisional order and carrying into effect the purposes of such provisional order, out of the local rate, and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

How expenses to be defrayed

18. Every tramway which is hereafter authorised by special Act shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramways of carriages constructed for use upon the Government Railways of three feet six inches, and shall be laid and maintained in such a manner that the uppermost surface of the rail shall be on a level with the surface of the road; and no tramway shall be open for public traffic until the same has been inspected and certified to be fit for such traffic by the Commissioner of Railways or his agent.

Mode of formation of tramways

19. The promoters from time to time for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorised, or any part or parts thereof respectively, may open and break up any road, subject to the following regulations:—

Power to break up street, &c.

- (1) They shall give to the road authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up; such notice to be given seven days at least before the commencement of the work.
- (2) They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work, and they shall pay all reasonable expenses to which the road authority is put on account of such superintendence.
- (3) They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length, the promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open

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or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

When the carriage way in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway.

Completion of works and re-instatement of road

20. When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations, namely :—

- (1) They shall with all convenient speed and in all cases within four weeks at the most (unless the road authority consent otherwise in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and to the satisfaction of the road authority restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby ;
- (2) They shall in the meantime cause the place where the road is opened or broken up to be properly fenced and watched, and to be properly lighted at night, and they shall be responsible for all or any accidents that may occur through their neglect of this ;
- (3) They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty not exceeding Twenty pounds, and to a further penalty not exceeding Five pounds for each day during which any such failure continues after the first day on which such penalty is incurred.

Repair of part of road where tramway is laid

21. The promoters shall, at their own expense, at all times maintain and keep in good condition and repair, with such materials and in such manner as the road authority shall direct, and to their satisfaction, so much of any road whereon any tramway belonging to them is laid, as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each

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side of any such tramway. If the promoters abandon their undertaking, or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consent in writing) fill in the ground and make good the surface, and to the satisfaction of the road authority restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work, and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched and properly lighted at night, in the same manner as prescribed in Clause 20 of this Act.

Provided always, that if the promoters fail to comply with the provisions of this section, the road authority may themselves, if they think fit, at any time after seven days' notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned, and the expense incurred by the road authority in so doing shall be repaid to them by the promoters.

22. Before laying down a tramway in a road in which any mains, or pipes, tubes, wires, or apparatus, may be laid, the promoters shall, whether they contemplate altering the position of any such mains, or pipes, wires, or apparatus, or not, give seven days' notice to the company, person, or persons to whom such mains, or pipes, tubes, wires, or apparatus may belong or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or person that the construction of the tramway as proposed would endanger any such main, or pipe, tube, wire, or apparatus, or interfere with, or impede the supply of water, gas, or electricity, or other communication, such company or person (as the case may be) may give notice to the promoters to alter the position of the said main, or pipe, tube, wire, or apparatus in such a manner as may be considered necessary, and any difference as to the necessity of any such alteration shall be settled in manner provided by this Act for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains, or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit, and under the superintendence of such company or person or of their engineer or surveyor if they or he think fit to attend after receiving not less than forty-eight hours' notice for that purpose, which notice the promoters are hereby required to give.

Provision as to  
gas and water  
companies, &c.

And in no case shall the promoters remove or displace or in any way interfere with any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or any other works belonging to or controlled by any corporation, company, person or persons, without the consent of such corporation, company, person or persons, or in any other manner than such corporation, company, person or persons shall

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approve, or until good and sufficient mains or pipes, valves, syphons, plugs, tubes, wires or apparatus, and other works necessary or proper for continuing the supply, communication, or service as sufficiently as the same was supplied by the mains or pipes, valves, syphons, plugs, tubes, wires or apparatus proposed to be displaced or removed shall at the expense of the promoters have first been made and laid down in lieu thereof and ready for use to the satisfaction of the corporation, company, person or persons respectively, or in case of disagreement between the promoters and such corporation, company, person or persons as the Commissioner of Railways or an agent appointed by him for the purpose shall direct.

The promoters shall make good all damage done by them to property belonging to or controlled by any such corporation, company, person or persons, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property, or with the private service pipes, wires or drains of any person.

If by any such operations as aforesaid the promoters interrupt the supply of water, gas, or electricity in or through any main, main pipe or wire, they shall be liable to a penalty not exceeding Twenty pounds for every day upon which such supply shall be interrupted.

For protection  
of sewers, &c.

**23.** Where in any district any tramway or any work connected therewith interferes with any sewer, drain, water-course, sub-way, defence or work in such district, or in any way affects the sewerage or drainage of such district, the promoters shall not commence any tramway or work until the proper authority shall have signified their approval to the same, unless such authority do not signify their approval, disapproval, or other directions within fourteen days after service of the proper notice and particulars as to the proposed works; and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted works in such manner as such authority shall reasonably require for the proper protection of and for preventing injury or impediment to the sewers or works hereinbefore referred to, by or by reason of the tramways, and shall save harmless the said authority against all and every expense to be occasioned thereby: and all new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed under the direction of the authority at the cost, charges, and expenses in all respects of the promoters, under the provisions of this Act, and the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority, and be maintained by them as any sewers or works.

Rights of  
authorities, &c.,  
to open roads

**24.** Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is made, or any other power vested in any local authority for any of the purposes for which such authority is constituted or in any company, body or person, for the purpose of laying down, repairing, removing, or altering any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, or any sewer, drain, water-course, sub-way or defence in such district: but in the exercise of



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such power every such local authority, company, body or person shall be subject to the following restrictions:—

- (1) They shall cause as little detriment or inconvenience to the promoters or lessees as circumstances admit.
- (2) Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees notice of their intention to commence such work, specifying the time at which they will begin to do so and the probable duration of the work; such notice to be given at least eighteen hours before the commencement of such work.
- (3) They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid.
- (4) Whenever for the purpose of enabling them to execute such work the local authority shall so require, the promoters or lessees shall either stop the traffic on the tramway to which the notice shall refer, where it would either otherwise interfere with such work or be dangerous to the safety of the public, or secure the same at their own risk and cost during the execution of the work there.

25. If any difference arises between the promoters or lessees on the one hand, and any local authority or any gas or water company, or any corporation, company, person or persons, to whom any sewer, drain, tube, main, wire, or apparatus may belong, or any other company, on the other hand, with respect to any interference or control exercised or claimed to be exercised by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of the local authority, body, company or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, body, corporation, company or person concerned, or with respect to any other subject or thing regulated by or comprised in this Act, the matter in difference shall (unless otherwise specially provided by this Act) be settled by the Commissioner of Railways, or by some person nominated by him, and the expenses of the reference shall be borne and paid as the said Commissioner of Railways may direct.

Difference between promoters and local authority, &c.

26. The promoters of tramways authorised by special Act and their lessees may use on their tramways cars or carriages with flanged wheels or wheels suitable only to run on the rail prescribed by such Act: and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their

Power for promoters to use flanged wheeled carriages on tramways

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tramways for carriages with flanged wheels or other wheels suitable only to run on the prescribed rail.

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only.

No carriage used on any tramway which is hereafter authorised by special Act shall be worked until it shall have been examined and approved by the Commissioner of Railways, or an officer appointed by him for the purpose.

No engine, motor, or mechanical appliance for the haulage of cars or carriages on any tramway which is hereafter authorised by special Act shall be used until it shall have been examined and approved by the Commissioner of Railways or an officer appointed by him for the purpose; and further, at all times the said Commissioner or his agents shall have free access to any of the depôts, sheds, workshops, &c., of the promoters or lessees, to examine or inspect any engine, motor, mechanical appliance, carriage or cars, used on the tramways; and any that he may consider unfit or likely to endanger the safety of the public shall be altered or renewed as he may think fit, but his failure to do so shall in nowise remove or lessen any responsibility of the promoters or lessees for any accident that may happen or occur.

Tramways to be removed in certain cases

27. If at any time after the opening of any tramway in any district for traffic the promoters discontinue the working of such tramway, or of any part thereof, for the space of two calendar months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Commissioner of Railways, the Governor may, if he think fit, by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall from the date of such order be at an end, and thereupon the said powers of the promoters shall cease and determine unless the same are purchased by the local authority.

Where any such order has been made the local authority of such district may at any time after the expiration of two months from the date of such order, under the authority of a certificate to that effect by the Commissioner of Railways, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to the local authority the cost of such removal and of the road by the local authority, such cost to be certified by the clerk for the time being or by some other authorised officer of the local authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the local authority may without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount) sell and dispose of the materials of the tramway or part of tramway removed, either by public auction or private sale, and for such sum or sums, and to such person or persons as the local authority may think fit, and

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may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid, and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the local authority to the promoters.

28. If at any time after the opening of the tramway in any district for traffic, it appears to the local authority of such district that the promoters of such tramway are insolvent, so that they are unable to maintain such tramway or work the same with advantage to the public, and such local authority makes a representation to that effect to the Governor, the Governor may direct an inquiry by the Commissioner of Railways into the truth of the representation, and if the Commissioner shall find that the promoters are insolvent as aforesaid, the Governor may declare that the powers of the promoters shall at the expiration of six calendar months from the making of the order be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period unless the same are purchased by the local authority: and thereupon such local authority may sell the tramway as a whole, either by auction or by private sale, or may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal in every respect as in cases of removal under the next preceding section.

Proceedings in case of insolvency of promoters

29. The promoters shall in no case mortgage, sell, or transfer the tramway, or any part thereof, without the consent of the Governor. Where any tramway in any district has been opened for traffic for a period of six months the promoters may, with the consent of the Governor, sell their undertaking to any person, persons, corporation, or to the local authority of the district: and where any such sale has been made, all the rights, powers, authorities, obligations and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by and shall attach to the person, persons, corporation, company, or local authority to whom the same has been sold, in like manner as if such tramway was constructed by such person, persons, corporation, company or local authority under the powers conferred upon them by special Act, and in reference to the same they shall be deemed to be the promoters.

Power of sale

30. If at any future time the Government shall construct, erect, or authorise the construction or erection of any line or lines of tramway or railway, the construction or erection of which may or may be supposed to injuriously affect, whether by competition or otherwise, the lines of tramway authorised by any special Act, the promoters or lessees shall not be entitled to receive or claim any compensation from the Government by reason of such damage or injury.

Government not bound to compensate

31. The promoters or lessees of a tramway authorised by a special Act may demand and take, in respect of such tramway, tolls and charges not exceeding the sums specified in such special Act, subject and according to the regulations therein specified. A list of all the tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways.

Tolls, &c.

32. The promoters or lessees shall once in every year at the least cause to be prepared an account, in such a form or manner as may be

Accounts to be annually trans-

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mitted to Com-  
missioner of  
Railways

prescribed by the Commissioner of Railways and duly signed by a responsible officer or agent, showing amounts realised from all tolls, charges, and other payments, and also of all outgoings, debts, expenses, and liabilities incurred by or on behalf of the promoters for the past year, under the several and distinct heads of receipts and expenditure, together with an account showing the number of miles run by the cars and passengers carried, the number of cars and vehicles, horses and other property of the promoters or lessees, used or required for the purposes of the tramway, and any other information which the Commissioner may require.

And the promoters or lessees shall cause to be transmitted three copies of such accounts to the Commissioner of Railways on or before the thirty-first day of January in every year.

And in the event of the promoters or lessees not forwarding such an account at the time hereinbefore provided, they shall forfeit and pay a sum or penalty of Ten shillings for every day during which the said account is withheld from the said Commissioner.

By-laws by local  
authority

33. Subject to the provisions of the special Act authorising any tramway and this Act, the local authority of any district in which the same is laid down may from time to time make regulations as to the following matters:—

The rate of speed to be observed in travelling upon the tramway;

The distances at which the cars using the tramway shall be allowed to follow after the other;

The stopping of cars using the tramway;

The traffic on the road in which the tramway is laid.

Promoters may  
make certain  
regulations

34. The promoters of any tramway and their lessees may from time to time make regulations:—

For preventing the commission of any nuisance in or upon any car, or in or against any premises belonging to them;

For regulating the travelling in or upon any carriage belonging to them;

and for better enforcing the observance of all or any of such regulations, it shall be lawful for such local authority and promoters respectively to make by-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such by-laws and make new by-laws; provided that such by-laws be not repugnant to the laws of the Colony.

No such by-law shall have any force or effect until it be approved and sanctioned by the Governor and has been signed by the Commissioner of Railways.

Penalties may be  
imposed in by-  
laws

35. Any such by-law may impose reasonable penalties for offences against the same, not exceeding Forty shillings for each offence, with or without further penalties for continuing offences; but all by-laws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid.

Power to local  
authority to

36. The local authority shall have the like power of making and enforcing rules and regulations and of granting licenses with respect

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to all cars using the tramways, and to all drivers, conductors, and other persons having charge of or using the same. license drivers, conductors, &c.

37. If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing or renewing a tramway, or defaces or destroys any mark made for the purpose of setting out the line of the tramway, or damages or destroys any property of any promoters, lessees, or licensees, he shall for every such offence be liable to a penalty not exceeding Five pounds. Penalty for obstruction of promoters in laying out tramway

38. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things, namely:— Penalties for wilful injury or obstruction to tramways, &c.

Interferes with, removes, or alters any part of a tramway, or of the works connected therewith;

Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway;

Does or causes to be done anything in such manner as to obstruct any carriage or car using a tramway, or to endanger the lives of persons therein or thereon;

Or knowingly aids or assists in the doing of any such thing:

he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding Five pounds.

39. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall for every such offence be liable to a penalty not exceeding Forty shillings. Penalty on passengers practising frauds on the promoters

40. It shall be lawful for any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant, until such person can be conveniently taken before a Justice, or until he be otherwise discharged by due course of law. Transient offenders

41. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature; and if any person send by any tramway 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 with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding Twenty pounds for every such offence; and it shall be lawful for such promoters or lessees to refuse to take any parcel that they 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 tramway

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Penalty for persons using tramways with carriages with flanged wheels

42. If any person, except under a lease from or by agreement with the promoters or under license from the Commissioner of Railways as hereafter provided under this Act, uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding Twenty pounds.

Promoters or lessees to be responsible for all damages

43. The promoters or lessees, as the case may be, shall be answerable for all accident, damages and injuries happening through their act or default, or through the act or default of any person in their employment, by reason or in consequence of any of their works or carriages, and shall save harmless all local authorities, companies or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries.

Recovery of tolls, penalties, &c.

44. All tolls, penalties and charges under this Act or under any by-law made in pursuance of this Act may be recovered and enforced before two Justices of the Peace.

Right of user only

45. Notwithstanding anything in this Act contained, the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway.

Arrangements between local authorities and trustees and promoters

46. The local authority and the promoters of any tramway proposed to be laid may, with the approval of the Governor, enter into agreements with each other for the payment of a composition to such local authority in respect to the user of the road or roads for such tramway and the conveyance of traffic thereon, and may with the same approval alter such agreements from time to time.

Reserving powers of local authorities to widen, &c., roads

47. Nothing in this Act shall take away or affect any power which any local authority or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation.

Power for local or police authorities to regulate traffic on roads

48. Nothing in this Act shall limit the powers of the local authority or police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters or of lessees as to the traffic of other persons.

Reservation of right of public to use roads

49. Nothing in this Act, or in any by-law made under this Act, shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flanged wheels or wheels suitable only to run on the rail of the tramway.

All accidents entailing loss of life to be reported to the Commissioner of Railways

50. All accidents entailing loss of life or serious personal injury to any person on the tramway, either caused by the promoters, or lessees, or their servants, or without their fault, shall be fully reported to the Commissioner of Railways within twenty-four hours of its occurrence; and the Commissioner of Railways may then, if he deem fit, hold or cause to be held an inquiry into the same. If the promoters or lessees

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shall fail to report as aforesaid, they shall be liable to a penalty not exceeding Twenty pounds.

51. Every inquiry which the Commissioner of Railways shall by this Act make or direct to be made shall be made in accordance with the following provisions:—

Regulating in-  
quiries before  
the Commis-  
sioner of Rail-  
ways or his sub-  
stitute

- (1) The inquiry shall be made in public, before the Commissioner of Railways, or an officer appointed on his behalf, and whose appointment shall be by writing, which shall specify all the matters referred to him.
- (2) A week's notice at the least shall be given by the Commissioner of Railways to the parties upon whose representation the Commissioner of Railways shall have directed the inquiry, of the time and place at which the inquiry is to be commenced.
- (3) The inquiry shall be commenced at the time and place so appointed, and may be adjourned from time to time as may be necessary, to such time or place as the Commissioner of Railways or the person holding the inquiry for him shall think fit.
- (4) The Commissioner of Railways or the officer appointed by him for this purpose shall by summons, on the application of any party interested in the inquiry, require the attendance, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend and answer all questions touching the matter to be inquired into; and any person who wilfully disobeys any such summons or refuses to answer any question put to him by the Commissioner of Railways, or the officer appointed by him for the purpose of such inquiry, shall be liable to a penalty not exceeding Five pounds: Provided always that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, or unless he be in the employment of the promoters or lessees of the tramway.
- (5) The Commissioner of Railways or the officer appointed by him to make the inquiry may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a Court of Justice, to any person tendered or summoned as a witness on the inquiry: And any person who upon oath or affirmation wilfully gives false evidence before the Commissioner of Railways, or the officer appointed by him, shall be deemed guilty of perjury.

52. The Commissioner of Railways may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters:—

Rules for carrying  
Act into effect

- (1) The proceedings to be had before him under this Act;
- (2) The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the

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investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits ;

- (3) The plans, sections, or drawings of any works, or any document to be deposited by promoters under this Act ;
- (4) As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution ;

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Reservation of  
Crown rights

53. Nothing in this Act contained shall affect any right, title, or interest of Her Majesty, Her Heirs or Successors.

F. NAPIER BROOME,  
GOVERNOR.

## SCHEDULES

## SCHEDULE A

*Approval of Application by local authority for a Provisional Order*

The approval of any intended application for a provisional order by a local authority shall be in the manner following ; that is to say :—

A resolution approving of the intention to make such application shall be passed at a Special Meeting of the members constituting such local authority.

Such Special Meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given.

Such resolution shall not be passed unless two-thirds of the members constituting such local authority are present and vote at such Special Meeting, and a majority of those present and voting concur in the resolution.

## SCHEDULE B

*Advertisement of intended Application*

Every advertisement is to contain the following particulars :—

- 1. The object of the intended application.
- 2. A general description of the nature of the proposed works.

The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

- 3. The advertisement is to be inserted once at least in two successive weeks in some one of the local newspapers if there be any ; and once at least in the 'Government Gazette.'

## SCHEDULE C

On making their application to the Commissioner of Railways, the promoters are to deposit :—

- 1. A copy of the advertisement published by them in accordance with Schedule B.



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2. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Commissioner of Railways, and praying for a provisional order.
3. A printed draft of the provisional order, as proposed by the promoters, with any schedule referred to therein.
4. A general plan, to a scale of at least 25 chains to the inch, of the district, with the route of the proposed tramway shown in red.
5. A detailed plan of the proposed works on tracing cloth, to the scale of ten feet to the inch, showing the roads, with the properties abutting on them, the footpaths, gas and water mains if any, sewers, drains, watercourses, &c., the proposed sidings, branches, &c., and the radius of any curve of a less radius than two chains.
6. A section of the proposed line to a scale of ten feet to an inch, with all the gradients marked thereon.
7. Cross sections, to a scale of five feet to an inch, at least every hundred feet or where any difficult part of the proposed line may occur; such cross sections to show the water and gas pipes, sewers, &c.
8. A detailed drawing of the permanent way proposed to be laid, to a scale of one inch to the foot, with all dimensions figured thereon, and a full-sized drawing of the section of the rail proposed.
9. An estimate of the expense of the proposed works, signed by the persons making the same.

Copies of these documents are to be deposited at the office of the local authority or authorities of every district through which any such undertaking is proposed to be made.

## SCHEDULE D

*Deposit and Advertisement of Provisional Order when made*

The promoters are to deposit printed copies of the provisional order, when settled and made, with the clerk of the local authority.

They are also to deposit a sufficient number of such printed copies at the office selected by them, such copies to be there furnished to all persons applying for them, at the price of not more than one shilling each.

They are also to publish the provisional order as an advertisement once at least in the local newspaper in which the original advertisement of the intended application was published, or, in case the same shall no longer be published, in some other newspaper published in the district, if such exist, and once in the 'Government Gazette.'

## SCHEDULE E

*Notice and deposit of lease by local authority*

One month before any lease is submitted to the Commissioner of Railways, notice of the intention to make such lease shall be given by advertisement.

Every advertisement is to contain:—

1. The term of the lease.
2. The rent reserved.
3. A general description of the covenants and conditions contained therein.
4. The place where the same is deposited for public inspection.

The advertisement is to be inserted once at least in each two successive weeks in some one and the same newspaper in the district affected by the proposed lease, and once at least in the 'Government Gazette.'