



WESTERN AUSTRALIA.

ANNO TRICESIMO SEPTIMO

VICTORIÆ REGINÆ.

No. XX.

AN ACT to make provision for the construction and maintenance of Railways authorised by any Act of the Legislature.

[Assented to, 22nd November, 1873.]

WHEREAS it is expedient to make provision for the construction and maintenance of such Railways as may be authorised by any Act of the Legislature; Be it therefore 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:—

Preamble.

1 THIS Act may be cited as "The Railways Act, 1873." Short Title.

2 The term "Railway" used in this Act shall include a tramway. Interpretations in this Act. "Railway."

The expression "The Special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed, authorising the construction of a railway. "The Special Act."

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This Act incorporated with any Special Acts.

3 THIS Act shall be deemed to be incorporated with and to form part of the Special Act.

Interpretations in this and the Special Act.

4 THE following words and expressions, both in this and the Special Act, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, (that is to say):—

“Land.”

The word “Land” shall include messuages, land, tenements, and hereditaments.

“Owner.”

The word “Owner,” shall include any person having any estate or interest, legal or equitable.

“Person.”

The word “Person” shall include corporations.

“Managing body.”

The words “Managing Body” shall mean the person authorised by the Special Act to construct the railway.

“The Railway.”

The expression “the Railway” shall mean the railway and works by the Special Act authorised to be constructed.

Governor to be managing body of any railway made at public expense.

5 WHENEVER by the Special Act the railway is to be constructed out of the public funds of the Colony, the Governor shall be deemed to be the managing body thereof.

6 WHEN by the Special Act the railway is authorised to be constructed along a line laid down and described therein, it shall be lawful to deviate from such line at a distance of one mile on either side thereof.

To remove materials, &c.,

7 IT SHALL be lawful for the managing body of the railway, or any person acting under its authority, with its or his servants and workmen, to enter upon and take for the purpose of the railway any such land along the line, or within any lawful deviation from such line, over which the railway is authorised to be constructed, as may be necessary for the purpose; and also to enter upon any land adjoining or contiguous to the land taken as aforesaid and take from thence any timber, earth, stone, sand, gravel, or other material that may be necessary for constructing or repairing such railway, and also from time to time to shoot upon and leave on such adjoining land any timber, earth, stone, sand, gravel, or other stuff that it may be necessary for the persons engaged in constructing or repair-

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ing such railway to get rid of; and also to make or construct in, upon, across, under, or over any lands, streets, hills, valleys, roads, rivers, brooks, streams, or other waters along the line or within any lawful deviation from such line over which such railway may be authorised to be constructed such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, piers, drains, arches, cuttings, and fences as the persons aforesaid shall think proper; and also to alter the course of any rivers, not being navigable streams or watercourses, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and 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, and to make drains or conduits into, through, or under any lands adjoining such railway, for the purpose of conveying water from or to such railway; and also in or upon such railway, or any lands adjoining or near thereto, to erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharves, engines, machinery, apparatus, and other works and conveniences as may be deemed 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 such railway shall pass through any plantation, woodlands, or forests, it shall be lawful for the persons aforesaid to fell or remove any trees standing thereon within the distance of a hundred yards from either side of such railway, and generally to do all other acts necessary for making, maintaining, altering, repairing, or using such railway; Provided, always, that in the exercise of the powers by this Act granted as little damage as may be shall be done. Provided, also, that nothing in this section contained shall be deemed to apply to the waste lands of the Crown, or to in any way affect any right, as to any land heretofore granted or otherwise disposed of by the Crown, reserved to Her Majesty the Queen, her heirs and successors, or any person or persons acting in that behalf by her or their authority, to do any of the acts or things by this section authorised to be done; and nothing shall be deemed to be done in pursuance of the powers by this section conferred which, if this Act had not been passed, might lawfully have been done by Her Majesty the Queen, her heirs and successors, or any person or persons acting in that behalf by her or their authority, under any such reservation as aforesaid.

to construct inclined planes, tunnels, &c.,

alter the course of rivers,

and of roads, &c.,

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

This section not to apply to waste lands of the Crown, or to affect any right in the Crown to resume land.

or to apply where the Act in question may otherwise lawfully be done.

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Compensation to be made.

8 IN all cases in which any land is taken, or anything is done in or upon any land in pursuance of the powers by the preceding section conferred, whereby such land is injuriously affected, full compensation shall be made to the owner or owners of such land.

How compensation to be assessed.

17 Vict., No. 6.

9 IN all cases in which any land is resumed for the purpose of the railway or any other work of public utility and convenience (the same not being land to which the provisions of an Ordinance passed in the seventeenth year of the reign of Her present Majesty, intituled “An Ordinance to regulate the mode of awarding compensations for town lands resumed by the Governor on behalf of the Crown,” are applicable) in pursuance of a reservation of a right by the deed of grant relating thereto reserved to Her Majesty the Queen her heirs or successors or any person acting in that behalf by Her or their authority to resume the same, then if the owner or owners of such land be entitled to compensation in respect of the land so taken as aforesaid, such notice shall be given and such proceedings had thereupon for assessing and determining the compensation to be paid (in case the compensation first offered be refused) and otherwise as are respectively to be given and had in the case of lands to which the said Ordinance is applicable, pursuant to the provisions thereof; and if such land may be lawfully entered upon and taken for the purpose aforesaid without any compensation being made to the owner or owners thereof, it shall be sufficient to give the notice in the said Ordinance provided, omitting so much of the same as relates to the giving of compensation.

Mode of procedure when land &c., taken without offer of compensation.

10 WHENEVER, under the powers conferred by the seventh section of this Act, any land is taken or anything is done upon any land for the purpose of the railway, whereby such land is injuriously affected, the owner of such land shall send in a written claim, addressed to the managing body, stating the amount of compensation claimed by him; and if such managing body shall be willing to concede that some compensation is due, but consider the amount claimed excessive, then the said managing body shall tender to such owner such sum as may be deemed sufficient; and if such owner shall refuse the same the said managing body shall nominate and appoint one commissioner and the said owner shall appoint a second, and these two shall choose and name a third, which three commissioners shall constitute a board, the award of a majority of whom shall be final; and all the provisions of the said recited Ordinance applicable to a board constituted under the fourth section thereof, shall be applicable to such board as near as may be, except that, where the Governor is not the managing body, the managing

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body or its representative shall take the place of the Crown Solicitor or other person appointed on behalf of the Government, and the award of such board, duly signed, shall be sent to the managing body instead of the Colonial Secretary, and the said managing body shall pay the amount of the award and of the costs which by the said Ordinance are to be defrayed by the Government; and if the said managing body repudiate such claim to compensation altogether, the person making such claims shall be left to his ordinary remedy at law.

11 WHENEVER any land is once actually taken for the purpose of the railway (such land being along the line over which the railway is authorised to be constructed or within any lawful deviation from the same), such land shall not be recoverable by the owner thereof, but the estate of the owner thereof shall, although such taking may not have been according to law, be deemed to have been divested by such taking, and to have vested in the managing body of the railway by whom or by whose authority such land has been taken.

Land taken for the railway not to be recovered.

12 NO railway shall be opened for public traffic until the Commissioner of Crown Lands has certified, by notice to that effect in the *Government Gazette*, that such railway may safely be used for public traffic.

No railway to be opened until certified.

13 FROM and after the publication of the certificate aforesaid, it shall be lawful for the managing body, or other person duly authorised by it in that behalf, to run steam engines, trucks, waggons, carriages, and other rolling stock over and along the railway, and to carry passengers, goods, horses, cattle, and other animals thereon and to cause fares and tolls to be levied from and upon persons and things carried on the railway, according to a scale to be fixed by the said managing body, or other person as aforesaid, and approved of by the Governor in Council (which scale may from time to time be revised and altered by the said body, or other person as aforesaid, with the like consent) and published as hereinafter mentioned; and it shall be lawful for the said managing body, or other person as aforesaid, subject to the like approval, to make by-laws for the regulation of the traffic on the railway, and for the preservation of order thereon, and at the stations and other buildings in connection therewith, which by-laws, when published, shall have the force of law, and the breach thereof shall be punishable in a summary manner before two Justices of the Peace, by a penalty not exceeding Ten pounds; and it shall be

After publication of certificate, managing body may open the line for traffic.

levy tolls.

make by-laws.

Penalty Ten pounds.

lawful for the managing body, or other person as aforesaid, to do all other acts and things which may be necessary to be done in order to insure the safe working of the traffic on the railway.

What to be deemed a sufficient publication of by-laws, &c.,

14 ANY matter or thing which by the next preceding section is required to be published, shall be deemed to have been duly published if it has been set forth in the *Government Gazette*, and at the stations on the line of railway. The production of a copy of the *Government Gazette* containing any such matter or thing shall, if such matter or thing purport on the face of it to have been duly performed or done, be sufficient evidence of such matter or thing having been duly performed or done, and proof of publication at one station shall be *prima facie* proof of publication at all.

Managing body to be deemed common carriers.

15 FROM and after the time that the managing body, or other person duly authorised by it in that behalf, shall have commenced traffic on the line as aforesaid, it or he shall be deemed to be a common carrier, and, except as hereinafter otherwise provided, shall be subject to the obligations and entitled to the privileges of such carriers.

Limitation of liability as common carriers.

16 THE liability of any managing body, or other person as aforesaid, as a common carrier shall be limited as follows: (that is to say) that no greater damage shall be recoverable for the loss of or injury done to any animal carried on any such railway beyond the sums hereinafter mentioned (that is to say), for any horse, Fifty pounds; for any neat cattle, per head, Twenty pounds; for any sheep, pig, or other small animal, per head, Twenty shillings; unless the person sending or delivering the same shall at the time of such delivery have declared them to be respectively of higher value than as above mentioned, in which case it shall be lawful for the persons authorised to take fares and tolls on the line of railway to demand and receive by way of compensation for the extra risk and excess of care thereby occasioned a reasonable percentage (according to a scale to be fixed in the same way as the list of fares and tolls, and published therewith) upon the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge. Provided, always, that the proof of the value of such animals and the amount of injury done thereto shall in all cases lie upon the person claiming compensation for such loss or injury. Provided, also, that the said managing body, as such common carrier as aforesaid, shall not be liable for the loss of or injury to any article or articles of property of the descriptions following; (that is to say)

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gold or silver coin, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets, bills, bank-notes, orders, notes or securities for payment of money, English or Foreign stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials, furs, or lace, or any of them, contained in any parcel or package which shall have been delivered either to be carried for hire or to accompany the person of any passenger on the said railway, when the value of such article or articles of property aforesaid contained in such parcel or package shall exceed the sum of Ten pounds, unless at the time of the delivery thereof to the person authorised to receive the same to be carried on the said line of railway, or, in case the same accompanies the person of any passenger, before such person commences his journey on the said line of railway, the value and nature of such article or articles of property shall have been declared by the person sending or delivering or accompanying the same, and such increased charge, by way of compensation for the extra risk and excess of care involved by the carriage of such article or articles, be paid to the person authorised to receive the same, according to a scale to be fixed in that behalf in the same way as the list of fares and tolls, and published therewith.

17 WHEN any goods shall be delivered to be carried along or upon any railway, and the same shall have been carried safely to the place to which the managing body, or other person authorised as aforesaid, shall have contracted to carry the same, and shall have been duly discharged from the truck in which they were carried, the said managing body, or other person as aforesaid, shall be responsible only as bailees for custody in respect of any damage or loss that may arise or accrue with reference to such goods until the removal of the same by the consignees thereof, and if such goods shall not be removed from the premises of the said managing body within forty-eight hours of the time of such discharge, the said managing body, or other person as aforesaid, may charge a reasonable sum for the warehousing thereof, and recover the amount so charged from the person liable to pay or who shall have paid for the carriage of such goods.

Liability for loss after transit restricted.

18 NO person shall be entitled to require any single article of goods to be conveyed upon or along the railway the weight of which, exclusive of the carriage, exceeds four tons or, including the

Goods of excessive weight or bulk not to be carried.

carriage, exceeds six tons, or which from its excessive bulk would be inconvenient to transport, but no objection on account of its weight or bulk shall be taken to the carriage of any boiler or single piece of machinery if the same can be transported on any single truck or carriage, or upon two or more trucks or carriages joined together, and if it be offered for transport at least twenty-four hours before the time fixed for starting.

Dangerous goods not to be carried.

19 NO person shall be entitled to carry or to require to be carried upon or along any railway any aquafortis, oil of vitriol, gunpowder, lucifer matches, or other goods which in the judgment of the person or persons appointed to superintend and manage the line may be of a dangerous nature, and the said person or persons may refuse to take any parcel suspected to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact; but nothing herein contained shall prevent the persons from carrying such goods if and when they shall see fit.

Actions may be brought in certain cases against the Colonial Secretary, as nominal defendant.

20 AND whereas it is convenient, in cases where the Governor is the managing body of the railway, to appoint some person against whom actions may be brought by parties aggrieved, in respect of any breach of duty as a carrier, whether of persons, animals, or goods, of which such managing body may be guilty, Be it enacted, that, for the purpose of dealing with any such question that may arise, the Colonial Secretary for the time being shall be deemed to be the managing body, so that any suit, action or proceeding which might, if such managing body were a private person, be brought against such person, either in respect of negligence in working such railway or in respect of any default in duty as a common carrier or otherwise, may be brought against the Colonial Secretary as nominal defendant; provided always, that the person for the time being holding the office of Colonial Secretary shall be in this respect under no personal liability whatsoever, but any judgment in any such action, suit, or proceeding, together with all costs incurred in relation thereto, shall be satisfied out of the public revenues of the Colony.

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

21 IF, on demand, any person fail to pay the tolls, rates, or charges due in respect of any animals or goods, the managing body, or other person authorised as aforesaid, may either recover the same in any Court of competent jurisdiction, or may detain and sell all or any of such animals or goods, or if the same have been removed from the premises may detain and sell any other animal or goods within such premises belonging to the person liable to pay such tolls,

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rates, or charges, and out of the monies arising from such sale may retain the tolls, rates, or charges so payable, and all charges and expenses of such detention and sale, rendering the overplus (if any) of such monies and the unsold animals or goods to the person entitled thereto.

22 IT shall be lawful for any officer or agent of the managing body, or other person authorised as aforesaid, 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, or of the by-laws made under the authority hereof, and whose name and residence shall be unknown to such officer or agent, and give him in charge to a police constable, who shall convey him with all convenient despatch before some Justice of the Peace without any warrant or other authority than this Act; and such Justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Power to seize certain persons without warrant.

23 WHEN passengers are booked at any intermediate station for any train, the condition that there is room in such train shall in all cases be implied; and when there is not sufficient room for all such passengers, those booked for the longest distance shall have the preference, and those booked for the same distance shall have priority according to the order in which they are booked.

Booking at intermediate stations conditional.

24 IT shall be lawful for the managing body, or other person authorised as aforesaid, to devote a convenient place at each station on the railway to the purposes of a refreshment room, and to let the same to some fit and proper person to use the same for the supply and sale of spirituous and other liquors and refreshments; and it shall not be competent to the licensing Magistrates for the district within which any such refreshment room is situate to refuse to grant or transfer to any person to whom any managing body, or other person as aforesaid, may with the approval of the Governor let any such refreshment room, any of the licenses mentioned in the fourth section of “The Wines, Beer, and Spirit Sale Act, 1873,” for which such person may apply.

Refreshment rooms.

In the name and on behalf of the Queen I hereby assent to this Act.

FRED. A. WELD, Governor.