



# WESTERN AUSTRALIA.

ANNO QUARTO & QUINTO

VICTORIÆ REGINÆ,

No. 17.

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## An Act to provide for the Construction and Management of Roads and other Internal Communications in the Colony of Western Australia.

**W**HEREAS it is expedient that the establishment and maintenance of the lines of Internal Communication within this colony should be vested chiefly in the hands of the most influential landed proprietors; Be it therefore enacted by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that from and after the passing of this Act, the right of property in all Roads, Canals, Bridges, Towing-paths, Ferries, and other public lines of communication not laid out by the authority of the Governor as streets in any Townsite in the maps and plans of the Surveyor General's Department; and in all soil, timber, and other materials within such lines of communication,

Preamble.  
Right of property in Loads, &c., to be vested in Magistrates and Proprietors of 320 acres.

so long as the same shall continue to be used for the purposes of this Act, as well as in all funds arising therefrom, or applicable thereto, together with the management, control, and superintendence of the same, shall be vested in the General Road Trust of this colony, consisting of all Justices of the Peace of the said Territory, and all Proprietors in fee-simple of not less than three hundred and twenty acres of Land within the said territory; and all such persons are hereby declared to be Trustees of the same for the purposes of this Act.

Right of entry to lay out Roads, &c.

II. AND be it enacted, that it shall be lawful for the said Trustees, by themselves or their agents, at any time to enter upon any lands within the said colony, and to lay out and mark any lines of Communication which they may deem advisable; and to declare such lines to be the public lines of Communication; And all such lines so declared to be public lines as aforesaid, shall be taken to be public lines of communication within the meaning of this Act. Provided that one month's notice in the Government Gazette, or other public journal, shall be given of every meeting, to be held under this Act, for the purpose of determining upon any line of communication, and in which notice such line shall be described as minutely as circumstances may admit.

Chairman to send in Report of Roads, &c., laid out.

III. AND be it enacted, that whensoever and as soon as any line of communication shall have been laid out and marked as aforesaid, a report, containing a description of such line, and signed by the Chairman of the Trust, shall be laid by such Chairman before the Governor in Council, and shall then be published in three successive Gazettes.

Compensation for damage to improved lands.

IV. Provided always, and be it enacted, that when any line of Road shall be laid out and declared a public line of Communication as aforesaid, which shall pass through or over any lands which shall have been, previously to the laying out of such Road, bonâ fide improved by tillage or building, or enclosed by a good and sufficient fence, the Owner and Occupier of the Lands so improved and enclosed shall severally be entitled to such compensation for any actual damage thereby occasioned to the property, other than the loss of the land taken for such road, or to his, her, or their estate or interest therein, as a Jury may award in an action on the case by such owner or occupier against the public Officer for the time being of such Trust.

Trustees to divide Roads, &c., into Districts.

V. AND be it enacted, that the said Trustees shall have power to divide Roads, and other lines of Communication, into Districts, for the purposes of this Act, and to name Directors and Committees of

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their Members for the more immediate direction and management thereof; and to give such Directors and Committees such powers and such instructions as they shall from time to time think fit and expedient.

VI. AND be it enacted, that previous to any person acting as such Trustee as aforesaid, he shall make a Declaration to the following effect (that is to say)—“I, A B, do hereby declare that I am duly qualified to act as a Trustee, under an Act passed in the fourth and fifth years of the reign of Queen Victoria, intituled ‘An Act to provide for the Construction and Management of Roads and other Internal Communications in the Colony of Western Australia,’ and that I will faithfully, impartially and honestly exercise the powers and trusts reposed in me as a Trustee by virtue of the said Act, to the best of my knowledge and ability, for the purposes in the said Act mentioned.” And a form of this declaration shall be entered in the Journal and signed by each Trustee.

Trustees to make and subscribe Declaration of qualification.

VII. AND be it enacted, that the said Trustees shall hold four General Meetings within each year,—namely, on the first Wednesday in January, the first Wednesday in April, the first Wednesday in July, and the first Wednesday in October; and also Special Meetings, upon the requisition of any three or more Members of their body; provided that due notice of such Special Meeting shall previously have been given either by publication in two successive Gazettes or by such other sufficient means as the circumstances of the case will admit of; and further that no business shall be entered upon at any General or Special Meeting unless at least seven Trustees be present.

Trustees to hold four General Meetings; and also Special Meetings on requisition of three or more Members.

VIII. AND be it enacted, that at the General Meeting of the said Trustees, which shall take place in January in each year, the following Officers shall be appointed by ballot,—namely, a Chairman, and a Committee of five from the body of Trustees; also Treasurers, Collectors, Clerks, Surveyors, or other requisite Officers. Provided always, that if at such General Meeting, either from the non-attendance of Members, or from any other unforeseen cause, it shall be found impossible to elect the Officers aforesaid, or if at any time any vacancy by death, resignation, or otherwise, shall occur in any of the said Offices, it shall be lawful for the Chairman or Senior Member of Committee to summon a Special Meeting for the purpose of appointing such Officers or filling up such vacancies as aforesaid.

Officers to be appointed.

IX. AND be it enacted, that as soon as may be after the election of such Officers, or filling up such vacancies, the Chairman shall report the same to the Governor.

Chairman to report list of Officers to the Governor.

Directors of Districts to deliver reports to Chairman, and Quarterly Accounts as herein.

X. And be it enacted, that the Directors of the several Districts shall, at least seven days previous to each General Meeting, deliver to the Chairman Reports on the state of the several lines and modes of communication in their respective Districts; also Quarterly Accounts of Expenditure, accompanied by vouchers, under authority of a General Meeting; also an account of the works required to be executed in their several Districts, with distinct Plans, Specifications, and Estimates, drawn by the proper Surveyor, or otherwise made and prepared in a satisfactory manner; also, an estimate of the funds which may be expected to be realized within their respective Districts from any of the sources hereinafter mentioned and discribed.

Chairman to lay before the Meeting abstracts of all reports, &c.

XI. AND be it enacted, that the Chairman shall lay correct abstracts of all Reports, Accounts, and Estimates, before each General Meeting, and that immediately after these have been duly read and considered, and in whole or in part approved of by the Meeting, Estimates of the probable ways and means for the ensuing Quarter shall be drawn up, together with statements of the works, whether general or local, which the meeting, or its majority, may think fit to undertake,—having a due regard to the total amount of the Funds available for such purposes, and to such a just, wise and equitable apportionment of those funds as the general interests of the settlement, and the wants of each particular District, may be deemed to require.

Chairman to preserve order and take the sense of the Meeting.

XII. AND be it enacted, that the Chairman shall preserve order at the several meetings, and take the sense thereof, and superintend and be responsible for the proper regulation of business before the meetings, and regulate the proceedings of the Clerk in the care, custody and preparation of Books, Papers and Accounts. Provided always, that in the absence of the Chairman the Senior Member of Committee present shall act as Chairman.

Clerk to enter in a book Minutes of Proceedings, and Account of Receipts and Disbursements.

XIII. AND be it enacted, that the Clerk shall keep a Book or Books, in which shall be entered minutes of all proceedings and transactions, and an account of Receipts and Disbursements, and the Chairman at each meeting shall see the entry of the proceedings thereat duly made, and shall subscribe the same with his own hand, and the names of the Trustees present at every meeting shall be entered; and every Book containing such entries or accounts shall at all reasonable times be open to the inspection of the Public, and it shall be lawful for any person to peruse and make extracts from the same without fee or reward.

Book to be open to inspection.

Reports and statements to be laid by ex-Chairman before Governor.

XIV. AND be it enacted, that as soon as may be after the expi-

ration of his Office, Reports and Statements of the Proceedings and Accounts of the Trustees for the preceding year shall be laid by the Chairman of such year before the Governor.

XV. AND be it enacted, that the Funds available for the purposes of this Act shall be such as may accrue from any of the following sources, viz. : <sup>Nature of available funds.</sup>

- 1.—Tolls payable at any Ferries, not being the property of any Town Trust, which the Trustees are hereby empowered to let in the manner provided for by the Act 4th William IV, No. 1, intituled “An Act to regulate the establishment and management of Ferries, and the Collection of Tolls thereat.”
- 2.—All Leases of Tolls or Compositions to be paid in lieu thereof.
- 3.—All Tolls, Ratés, Dues, or Charges, which may hereafter be made payable at or by reason of the use of any lines or modes of communication ; which Tolls, Rates, Dues, or Charges, the Governor is hereby empowered to establish by proclamation, provided that the amount so established shall not, in any case, exceed the amount recommended by the Trustees.
- 4.—Voluntary Subscriptions of Money or Labour for local or general objects.
- 5.—The amount of any Sums which may from time to time be conceded by the Governor for special or general purposes under this Act.
- 6.—Loans raised as hereinafter provided on the credit of Tolls, Leases, or other property connected with the aforesaid lines and modes of communication.

XVI. AND be it enacted, that it shall be lawful for the said Trustees, by and with the consent of the Governor in Council, to borrow and take up at interest on the credit of Tolls, Dues or Charges arising or to arise from any Road, Bridge, Ferry or other work of the like nature, any such sum of money as they shall think proper from time to time respectively, and to assign the Tolls on such Road, or any part thereof, or on such Bridge, Ferry, or other work of the like nature as a security to any person or persons who shall advance such sum of money (for such a period of time as may be sufficient) for the repayment of the principal sum borrowed, together with interest at a rate not exceeding Ten per centum per annum. <sup>Trustees may borrow money at interest on credit of Tolls, &c., and assign Tolls as a security for repayment.</sup>

XVII. AND be it enacted, that Assignments of Tolls or Charges shall be in the words or to the effect following, viz.:—“By virtue of <sup>Assignment of Tolls, &c., how to be made.</sup> an Act passed in the fourth and fifth years of the reign of Queen Victoria, intituled ‘An Act to provide for the construction and management of Roads and other Internal Communications in the

“ colony of Western Australia, we, the Chairman and Committee of  
 “ the General Road Trust, in consideration of the sum of  
 advanced and paid to the Treasurer of the said Trustees, do  
 “ hereby grant and assign unto A B, his Executors and Assigns  
 “ (here specify the matter assigned) to be held from this  
 “ day of , in the year of our Lord , until the  
 “ said sum of , with interest at the rate of ‘per  
 “ centum per annum, shall be paid and discharged.” And copies of  
 such Assignments shall be entered by the Clerk in the Book of Pro-  
 ceedings, and such Assignments shall be transferable by Indorsation  
 to any other person whatsoever, which Indorsation shall be in the  
 words, or to the effect, following, viz.:—“ I, A B, do hereby transfer  
 “ all my right to the within written Assignment of  
 to and his Executors and Assigns.” And all  
 persons to whom any such Assignment or Indorsation shall be made  
 as aforesaid, shall, in proportion to the sum of money thereby se-  
 cured, be creditors on the Tolls or Charges so assigned, in equal  
 degree one with another in respect to payment of the Interest on such  
 sum, or in such order or manner, and at such time with respect to  
 payment of the principal sum, as shall be agreed upon and stipulated  
 by the said Trustees at the time of the advance of their respective  
 sums of money.

Transferable by Indorsation.

Holders of such assignments to be creditors on Tolls in equal degree, or as arranged.

Penalties for damage to property of Trustees.

XVIII. AND be it enacted, that any person who shall wilfully injure, damage or destroy any Road, Pathway, Ferry, Bridge, Ferry-Boat, Jetty, Quay, Well, Spring, Gate, Fence, Post, Rail or Paling, or any article or material, matter or thing, employed for the purposes of this Act, or in charge of the Trustees under this Act,—or shall upon any way used, or appointed to be used as a footway only, drive any cart or carriage, except directly across on necessary occasions,—or shall lead, ride or drive any horse or other beast on any such footway, except directly across the same, as aforesaid,—or shall suffer to stand or shall tie or fasten any horse or other beast on or across the same,—or shall do or commit any act, or shall leave or place or set up any material or thing whatsoever, which shall cause or create any impediment, obstruction, nuisance, damage or annoyance in or to the free passage of any such lines of Communication as aforesaid, shall forfeit and pay a sum not exceeding Five pounds, over and above the amount of any damages occasioned thereby; and the amount of such damages shall be handed over to the Treasurer appointed by such Trustees. Provided, that if the property damaged be that of a private Individual, the amount of such damage shall be paid to such Individual, notwithstanding that such Individual may have been examined as a witness.

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XIX. AND be it enacted, that the Trustees under this Act may <sup>Trustees to sue and be sued in name of Public Officer.</sup> sue and be sued in the name of their Chairman, Treasurer, or Clerk, for the time being; and that no proceedings by or against the said Trustees shall abate by reason of the death or removal of such Public Officer; and that in any proceedings, Civil, Criminal, or otherwise, by or against any of the Trustees under this Act, he or they shall be sufficiently described as a Trustee or Trustees appointed by virtue of this Act.

XX. AND be it enacted, that the said Trustees shall not be held <sup>Trustees not personally liable, &c.</sup> to have rendered themselves personally liable for the repayment of any money borrowed, or Interest thereof, by reason of having signed any securities in pursuance of this Act, but such securities shall be held and considered as granted upon the sole credit and security of the Tolls; nor shall any Trustee be held personally liable for the payment of any sum, or performance of any contract, for which he shall not have bound himself personally, independent of his office as Trustee under this Act.

XXI. Provided always and be it enacted, that <sup>Appointments and proceedings under former Act to be valid.</sup> all appointments of Officers, and all other proceedings whatsoever which may have been done by the General Trust of the colony under or by virtue of the Act of the first year of Her present Majesty number 2, now repealed, shall be deemed and taken to have the same force and validity, and shall and may be acted upon as if the same had been done under or by virtue of this Act.

XXII. AND be it enacted, that where any person shall be <sup>Jurisdiction by one Justice.</sup> charged, on the oath of a credible witness, before any Justice of the Peace, with any offence against the provisions of this Act, the Justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode) the Justice may either proceed to hear and determine the case ex parte, or issue his warrant for apprehending such person, and bringing him before himself or some other Justice of the Peace; or the Justice before whom the charge shall be made, may if he shall so think fit, without any previous summons, issue such warrant, and the Justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

XXIII. AND be it enacted that in every case of a summary <sup>Recovery of penalties.</sup> conviction under this Act, where the sum shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty

by the Justice, shall not be paid, either immediately after the conviction, or within such period as the Justice shall, at the time of the conviction, appoint, it shall be lawful for the convicting Justice to commit the offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the Justice, for any term not exceeding three calendar months; the commitment to be determinable upon payment of the amount and costs.

Limitation of proceedings  
against officers, &c.

XXIV. AND be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be commenced within three calendar months after the fact committed, and not otherwise. And notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action. And in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon. And no Plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought. or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of Defendant. And if a verdict shall pass for the Defendant, or the Plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the Plaintiff, the Defendant shall recover his full costs as between Attorney and Client, and have the like remedy for the same as any Defendant hath by Law in other cases; and though a verdict shall be given for the Plaintiff in any such action, such Plaintiff shall not have costs against the Defendant unless the Judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon.

Limitation of Prosecu-  
tions.

XXV. AND be it enacted, that all Prosecutions for Offences against the provisions of this Act shall be commenced within three calendar months after the commission of the offence, and not otherwise.

Appropriation of fines.

XXVI. AND be it enacted, that all Fines and Forfeitures recovered under this Act shall be divided, paid and applied as follows, --that is to say, after deducting charges of prosecution and sale from the produce thereof, one moiety shall be paid to the Chairman of the General Road Trust, to be appropriated towards the purposes of this Act, and the other moiety to the party or parties informing.



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XXVII. AND be it enacted, that this Act may be altered, amended, or repealed by any Act to be passed during the present session.

JOHN HUTT,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council }  
23rd Sept., 1841. }*

EDWARD C. SOUPER,  
Acting Clerk of the Council.