



ANNO TRICESIMO NONO ET QUADRAGESIMO

VICTORIÆ REGINÆ.

A.D. 1876.

No. 32.

An Act to consolidate in one Act certain provisions with regard to the Construction of Railways at the public expense.

[Assented to, 20th September, 1876.]

WHEREAS it is in contemplation to seek the authority of Preamble. Parliament to make, construct, and maintain, at the public expense, certain lines of Railway: And whereas it is expedient to comprise in one General Act certain provisions with regard to the construction of such railways, and any other railways which may hereafter be authorized by Parliament to be constructed at the public expense, and that, as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings, as for securing greater uniformity in the provisions themselves—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. This Act may be cited for all purposes as “The Railways Short title. Clauses Act, 1876.”

2. This Act shall apply to every railway which shall by any Act of this present or any future Session of Parliament be authorized to be constructed at the public expense, and this Act shall be incorporated with such Act and all the clauses and provisions hereof, save so far as they shall be expressly varied or excepted by any Act, shall apply to the railway authorized thereby so far as the same shall be applicable to such railway, and shall, Act to apply to all railways constructed at public expense.

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as well as the clauses and provisions of every other Act which shall be incorporated therewith, form part of such Act, and be construed together therewith as forming one Act.

Commissioner may enter upon lands, and shall have certain powers, &c.

3. The Commissioner of Railways (hereafter called "the said Commissioner") may, for the purpose of constructing, making, and maintaining any line of railway so authorized to be constructed as aforesaid, enter upon, use, and take such lands as shall be, or be deemed necessary, and shall also have and exercise the like powers and authorities as are conferred upon him by "The Railway Commissioners Act," No. 11 of 1859, in respect to the undertakings therein mentioned: And the said Commissioner shall be deemed to be the "Promoters of the Undertaking" mentioned in "The Lands Clauses Consolidation Act," and shall and may have and exercise all the powers and authorities by such Ordinance vested in "The Promoters of the Undertaking;" but the provisions in such Ordinance limiting a time for the compulsory purchase or taking of land shall not be applicable to any Act authorizing the construction of any line of railway, as aforesaid, and the said Commissioner shall be deemed to be "The Company" mentioned in "The Railways Clauses Consolidation Act," and shall and may have and exercise all the powers and authorities by such Ordinance vested in the Company; but nothing in such Ordinance contained shall be held to limit or restrict the power to make deviations herein contained, or to impose limits of deviation whether lateral or as to level, and the said Commissioner shall not be liable to any penalty imposed by either of the said Ordinances; and the said Commissioner shall, with respect to all roads shown upon the plans and books of reference of any line of railway, have all the duties, powers, and privileges of the Commissioner of Main Roads, under the "Main Roads Act, 1874," and any Act hereafter amending the same.

Commissioner, &c., may enter lands to survey same.

4. The said Commissioner, and all surveyors employed by him, and all persons acting under the directions of the said Commissioner or such surveyors, may, for the purpose of surveying any line of railway, for the making of which it may be contemplated to obtain Parliamentary sanction, enter and remain for a reasonable time upon any land in the said Province, and may drive and leave pegs in, and make and leave other survey marks on, such land.

Compensation to be made and how ascertained.

5. The owner or occupier of any land so entered upon as aforesaid shall be entitled to compensation for any damage or injury sustained in exercise of the powers conferred by the last preceding clause, and such compensation shall be ascertained in the same manner as compensation is directed to be ascertained under the Lands Clauses Consolidation Act.

If not exceeding £50 compensation may be assessed by nearest Local Court of Full Jurisdiction.

6. If the compensation claimed under the last preceding clause shall not exceed the sum of Fifty Pounds, the same, at the option of the said Commissioner, or of the person entitled thereto, may be assessed

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assessed by and before the Local Court of Full Jurisdiction nearest the land in respect of which such compensation shall be payable: Provided that each party shall have at least fourteen days' notice in writing of such intended assessment, and may appear by himself or by agent or counsel, and examine and cross-examine witnesses upon the said assessment.

7. No civil or criminal proceeding shall be instituted or proceeded with against the said Commissioner, or any surveyor employed by him, or any person acting under the directions of the said Commissioner or such surveyor, in respect of any alleged trespass connected with the making of any surveys connected with railways authorized to be made or contemplated to be made as aforesaid.

No action in respect of any alleged trespass for survey purposes.

8. If any person shall wilfully, without the written permission of the said Commissioner, pull up, remove, destroy, or injure any peg or other survey mark heretofore or hereafter driven, made, or put up by or under the direction of the said Commissioner, or of any surveyor employed by him, or of any person acting under the directions of the said Commissioner, or such surveyor, in connexion with any line of railway authorized to be constructed, or the construction of which may be contemplated as aforesaid, such person shall for every such offence be liable to forfeit and pay a sum not exceeding Fifty Pounds, at the discretion of the Justices before whom the complaint shall be heard, to be recovered in a summary way before any two or more Justices of the Peace, or to be imprisoned for a term not exceeding six calendar months with hard labor, at the discretion of the said Justices.

Punishment for pulling up, &c., survey marks.

9. In all or any cases where easier gradients may be obtained, or where public convenience may be better served, the said Commissioner of Railways may make such deviations from the line of railway which may from time to time be by any Act authorized to be constructed as he may deem expedient for obtaining such easier gradients or better serving the public convenience; but previously to making any such deviations the said Commissioner shall cause such deviations to be delineated in plans and books of reference to be deposited in the office of the Surveyor-General, at Adelaide, and signed by the said Commissioner and by the Engineer-in-Chief of the said Province for the time being, and shall also cause copies of such plans and books of reference to be laid before both Houses of Parliament for the space of twenty days at least: Provided that nothing herein contained shall empower the said Commissioner to alter any terminus of any line of railway so authorized to be constructed as aforesaid.

Commissioner may make deviation to be delineated in plans, but no terminus to be altered.

10. The said Commissioner, in the construction of any line of railway so authorized to be constructed as aforesaid, may carry the same on the level across such roads as he may think fit, and it shall not be incumbent to make the ditches at level crossings required by Act No. 6 of 1858, on any part of the said line of railway

Commissioner may carry railway on level crossings.

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Commissioner may stop and close roads.

railway which the said Commissioner is not bound to fence; and the said Commissioner may stop and close, either wholly or in part, any road at the point of intersection by any line of railway so authorized to be constructed as aforesaid, as he may from time to time deem expedient: Provided that the owners of all lands which shall abut upon any road so stopped or closed shall be entitled to receive full compensation in respect of any loss or damage to be occasioned by such stoppage or closing.

Commissioner may convey roads stopped or closed.

11. When any road shall have been stopped or closed in whole or in part, by virtue of the powers herein given, it shall be lawful for the said Commissioner to convey such roads, so far as the same may be stopped or closed, or any part thereof, to the owner of the land upon which such road or part of a road may abut.

Commissioner not bound to fence or make compensation when railway abuts on Crown lands.

12. The said Commissioner shall not be bound to fence or to make any compensation in respect of the fencing of any of the lines of railway so authorized to be constructed as aforesaid, where the same abut upon waste or other lands of the Crown, whether unoccupied, or leased for pastoral, or mining, or other purposes, or upon any waste or other lands of the Crown which may be granted or leased, after the passing of this Act.

Compensation to be paid by Commissioner for land taken, &c.

13. The compensation to be paid by the said Commissioner in respect of any land entered upon, taken, or injuriously affected, for the purposes or in the execution of any Act authorizing the construction of any line of railway, shall, unless otherwise fixed by agreement, be computed in the following manner—

- I. With respect to land alienated from the Crown in fee-simple, and granted before the passing of the Act authorizing the construction of the line of railway, in respect of which such lands shall be entered upon, taken, or injuriously affected, the compensation payable under "The Lands Clauses Consolidation Act" and "The Railways Clauses Consolidation Act," but not exceeding what would have been payable if the value of such land had been assessed six months before the entering upon and taking of the said land for the construction of the said last-mentioned line of railway:
- II. With respect to land alienated or contracted to be alienated in fee-simple from the Crown, after the passing of the Act authorizing the construction of the line of railway in respect of which such lands shall be entered upon, taken, or injuriously affected, the same rate per acre as was paid or contracted to be paid when the same was alienated or contracted to be alienated from the Crown, with an addition of Ten Pounds per centum thereon, together with the value of the buildings and improvements, if any, on such lands. The compensation in respect of any land which shall be under contract for sale from the Crown shall be deducted from

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from the purchase-money on the completion of the purchase thereof.

14. In the construction of the twelfth section of "The Immigration Act, 1872," the words "Colonial industry" shall include the railways which may be so authorized to be constructed as aforesaid, and any other public works authorized, or the funds for the construction whereof may be voted by Parliament; and the provisions of the said section shall apply to the wives and families of emigrants therein mentioned, and the approval thereby required may be given by any immigration agent on the arrival of such emigrants in South Australia, as well as by any Emigration Agent in Europe; and the residence until death or for two years continuously within the said Province by any person or persons under the privileges conferred by the said section, shall be deemed and is hereby declared to be a sufficient compliance with the conditions of the seventh section of the said Act.

Construction of section 12 of "The Immigration Act, 1872."

15. Land Orders under the powers of section 5 of "The Immigration Act, 1872," may be issued to any person who may arrive in the said Province, notwithstanding the ship in which such person may arrive had not, or has not, been approved by any Emigration Agent; and notwithstanding such person has not been approved as suitable by some such Emigration Agent before sailing: Provided always that such ship shall have sailed direct from Europe for the said Province, and that no such immigrant shall avail himself of the privileges of this Act if he shall have previously resided in the said Province, nor unless he shall have paid the full costs of passage of himself or of some other person, nor unless such immigrant shall have been examined at Port Adelaide, and approved by the Immigration Officer there as a person suitable for an emigrant within the terms of the regulations in force at the time such emigrant left Europe.

Issue of Land Orders under 29 of 1872. (Immigration Act.)

16. Nothing in this Act contained shall alter, vary, limit, or affect the provisions of "The Immigration Act, 1872," so far as regards the terms and conditions upon which Land Orders issued under the said Act or under this Act are held.

Immigration Act, 29 of 1872, not varied hereby.

17. In all legal proceedings the production of a document purporting to be signed by the Commissioner of Railways, and to be a correct copy of any by-law made by him, shall be *prima facie* evidence that such by-law has been duly and properly made, and that such by-law is valid and binding for all intents and purposes.

Production of By-Laws.

18. The clause numbered CXI. of "The Railways Clauses Consolidation Act" shall be and the same is hereby repealed.

Repeal of Clause CXI. of "The Railways Clauses Consolidation Act."

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

A. MUSGRAVE, Governor.