

1905.
NEW ZEALAND.

“THE STATUTES COMPILATION ACT, 1902.”

MEMORANDUM BY THE SOLICITOR-GENERAL ON THE COMPILATION OF THE PUBLIC WORKS ACTS.

Presented to both Houses of the General Assembly by Act.

MEMORANDUM.

PURSUANT to section 2 of “The Statutes Compilation Act Amendment Act, 1903,” the Solicitor-General submits the following memorandum directing attention to the consequential and other alterations in, additions to, and omissions from the text of the Acts compiled, with a statement where necessary of the reasons therefor:—

“The Public Works Act, 1894,” No. 42:—

Section 2: Effect has been given to the various amending sections noted in the margin of the section. “Compiled Acts” is defined. “City Council” is inserted in the definition of “Local authority.” In this section and elsewhere throughout the compiled Acts references to “Her Majesty” are altered to references to “His Majesty.”

Section 10: Effect is given to section 3 of the Act of 1900.

Section 11 omitted (repealed by section 13 of the Act of 1903).

Section 13: Subsection (3) of the Act is divided into subclauses (3) and (4) of the compilation, and in subclause (5) “the last preceding subsection” is consequentially altered to “subsection three hereof.”

Section 21: “Any of the compiled Acts or under any Act thereby repealed” is substituted for “Act hereby repealed.”

Section 23: Subclause (5) is inserted to give effect to section 11 of the Act of 1904, No. 33.

Section 36: “Any of the compiled Acts or any Act thereby repealed” is substituted for “Act repealed by this Act.” In subsection (2) “this Act” is altered to “The Public Works Act, 1894,” and slight verbal alterations are made.

Section 60: Effect is given to section 4 of the Act of 1900, and the section is recast to secure accuracy of expression without affecting the meaning.

Section 85: Effect is given to section 5 of the Act of 1900, and the section is slightly recast but without affecting the meaning; “or transferred” is omitted from the proviso as unnecessary.

Section 88: “The following provisions shall apply” is added at end of second line.

Section 90: “The following provisions shall apply” is added at the end of third line, and the last part of paragraph (4), relating to interest, has been recast.

Section 91: In paragraph (1) “formerly” is substituted for “heretofore,” and “or any Act passed in amendment thereof or substitution therefor” is added at end of that paragraph to accord with the same words in section 94, (a).

Section 92: “Or by ‘The Native Land Court Act, 1894,’” is inserted in third line after “Act, 1886.”

Section 99: Subclause (2) is inserted to save the repealing provisions of section 433 of “The Municipal Corporations Act, 1900,” and at the same time to prevent those provisions raising the presumption that sections which are not so repealed do apply to boroughs.

Section 100: Paragraph (4) is altered to give effect to section 7 of the Act of 1903.

Section 102: Effect is given to section 6 of the Act of 1900 and section 8 of the Act of 1903. In subsection (1) “not a Government road” is substituted for “a district or county road,” and subsection (4) is recast to give effect to such sections. The new term “town district road” is used to distinguish the roads which are placed under the control of a Town Board.

Section 103: “Except within the limits of a borough” is omitted as unnecessary, and slight verbal alterations are made in paragraphs (1) and (2).

- Section 104 : " Subject to the provisions of any Order in Council made under section 103 hereof " is added at beginning of section, and " unless declared under section 102 to be Government roads " is omitted from paragraph (1).
- Section 105 : Paragraph (c) is added to give full effect to section 8 of the Act of 1903 (clause 103, (5), of the compilation).
- Section 107 : Verbal alterations are made in subsections (1) and (2), and " or of any Act repealing or amending the same " is omitted from subsection (3) as unnecessary.
- Section 108 omitted (repealed by section 7 of the Act of 1900).
- Section 112 : This section is recast in part for clearness and to secure accuracy of expression, but without affecting the meaning.
- Section 113 : In paragraph (h) " subsection four " is altered to " subsection nine " to correct a manifest error (see 1889, No. 19, section 15).
- Section 114 : " Proclamation " is altered to " warrant " so as to make the section uniform with the preceding section. In subsection (12) " any of the compiled Acts or " is added.
- Section 120 : In subsection (1) " where a gate is " is substituted for " in which a gate shall be or has been, " and " or the corresponding provisions of any of the compiled Acts or of any Act thereby repealed " is added after " sections. " In subsections (1) and (3) verbal alterations are made for uniformity of expression.
- Section 122 : " Under the control of a Road Board " is inserted after " No road " to secure accuracy of expression.
- Section 130 : Effect is given to section 2, (1), of the Act of 1895 and section 10 of the Act of 1904 ; and " except as specially provided in paragraph (b) of the next succeeding section hereof " is inserted in paragraph (m) to prevent conflict with section 5 of the Act of 1903. In subsection (5) " shall " is substituted for " to " before " limit. "
- Section 134 : Effect is given to section 2, (2), of the Act of 1895 in this and succeeding sections ; " having the control of a road " is inserted in the second line for clearness, and consequential verbal alterations are made.
- Section 135 : Effect is given to section 14 of the Act of 1900 ; " under its control " is inserted in line 3, and references to a street are omitted as the section is repealed as to boroughs.
- Section 136 : " New Zealand " is substituted for " the colony " in two places.
- Section 137 : " Having control of the road " is inserted for clearness.
- Section 138 : Effect is given to section 11 of the Act of 1904.
- Section 139 : " Local authority having control of the road " is substituted for " Road Board " in paragraph (7), and " person or animal " is inserted in paragraph (13).
- Section 141 : " Having control of the road " is inserted for clearness.
- Section 142 : " Having control of a road " is inserted, and " any district road " altered to " such road. "
- Section 146 : In paragraph (d) a reference to the other sections altering tolls is inserted to remedy an omission.
- Section 151 : Effect is given to section 10 of the Act of 1903.
- Section 160 : A slight verbal rearrangement of the language is made.
- Section 161 : " In its district " is inserted for clearness.
- Sections 162 and 163 : The expression " river, stream, or watercourse " is used for uniformity with sections 161 and 164.
- Section 163 : " Of the diverted road " is substituted for " thereof " for clearness.
- Section 167 : Effect is given to section 24 of the Act of 1900 and section 11 of the Act of 1903.
- Section 169 : The second paragraph of subsection (1) is transferred to end of section as subsection (2).
- Section 175 omitted (repealed by 1900, No. 27).
- Section 176 : In subsection (2) " sewer " is omitted as not before referred to.
- Sections 182 and 185 : Effect is given to partial repeal by sections 30 and 45 of 1900, No. 27.
- Sections 187 to 221 omitted (repealed by 1900, No. 27).
- Section 223 : " Sections two hundred and ten to two hundred and nineteen hereof " is substituted for " the following provisions respecting the regulation and inspection of railways. "
- Sections 227 to 230 : These sections have been recast and effect given to section 2 of the Act of 1904, but without affecting the existing law.
- Section 231 : Effect is given to section 3 of the Act of 1904.
- Sections 232, 233, 236, and 239 : Verbal alterations have been made in these sections for clearness and uniformity.
- Section 243 : " New Zealand " is substituted for " the colony " for uniformity.
- Section 251 : " Within the county " is inserted in line 2.
- Section 273 : In paragraph (7) " or business license " is omitted as unnecessary.
- Sections 275, 276, and 278 : References to a county or counties are altered to references to a corporation or corporations as being the correct expressions, and other verbal alterations are made for clearness and uniformity.
- Section 280 : " Repealed Act relating to public works " is substituted for " Act hereby repealed. "
- Section 282 : Verbal alterations are made for uniformity, and " or extended " is inserted after " ordinary " in subsection (1).

Section 285: The reference to section 190 is omitted, as that section is repealed.

Section 288: "The Public Works Act, 1894," is substituted for "this Act," and the proviso is omitted as spent.

Section 289, (2), is omitted as spent.

Section 290, (2), is altered to suit the compilation. The rest of the section is omitted as spent.

Sections 291 and 292: References to the compiled Acts are inserted.

"The Public Works and Government Railways Acts Amendment Act, 1895," No. 47:—

Section 2: Effect is given to subsection (1) in clause 139 of the compilation, and to subsection (2) in clauses 145, 147, 148, 149, 155, 156, and 160. Subsections (3) and (4) are omitted as repealed, and subsection (5) as spent.

Section 3 omitted (repealed by 1900, No. 27).

Section 4: "Of the compiled Acts or any Act thereby repealed" is substituted for "Act repealed by the said Act."

"The Public Works Acts Amendment Act, 1900," No. 47:—

Section 2: Effect is given to this section in clause 2 of the compilation.

Section 3: Effect is given to this section in clause 10 of the compilation.

Section 4: Effect is given to this section in clause 61 of the compilation.

Section 5: Effect is given to this section in clause 86 of the compilation.

Section 6: This section, with the necessary alterations, appears as subclause (4) of clause 103 of the compilation.

Section 7: The section is made subclause (1) of clause 110 of the compilation, and subclause (2) is added to save the operation of sections 213 to 217 of "The Municipal Corporations Act, 1900."

Section 8: "Or districts" is inserted after "latter district" for uniformity, and effect is given to section 4 of the Act of 1903.

Section 9: "By the Chairman of the Town Board in the case of town district roads" is inserted in subsection (3) to provide for amendment made by 1903, No. 93, section 8.

Section 11: Effect is given to section 9 of the Act of 1903, references to the compiled Acts are inserted, and slight verbal alterations are made.

Section 13: Effect is given to section 5 of the Act of 1903.

Section 14: Effect is given to this section in clause 147, (3), of the compilation.

Section 16: "Watercourse" is inserted after "canal" in the proviso, to accord with the previous part of the section.

Section 18: A cross-heading is inserted over this section for clearness.

Sections 20 and 21 omitted (repealed by 1903, No. 93).

Section 22: "Powers" is substituted for "provisions" to correct an obvious mistake.

Section 24: Effect is given to this section in paragraph (e) of clause 188 of the compilation.

Section 26: Effect is given to this section in clause 2 of the compilation.

"The Water-power Act, 1903," No. 26:—

Section 5: "In this Part of this Act" is substituted for "herein."

Section 6: "This Part of" is inserted, and the date of the coming into operation of the Act is substituted for "existing."

"The Public Works Act, 1903," No. 93:—

Section 2: Effect is given to sections 5 and 14 of the Act of 1904.

Section 3: Effect is given to section 5 of the Act of 1904, and subsection (6) is omitted as spent.

Section 4: Effect is given to this section in clause 109 of the compilation.

Section 6: Effect is given to this section in clause 2 of the compilation.

Section 7: Effect is given to this section in clause 101, (d), of the compilation.

Section 8: "Or street" is omitted as not applicable to a town district; "and in such case the road shall be deemed to be a town district road" is added at end.

Section 9: Effect is given to this section in clause 118, (4), of the compilation.

Section 10: Effect is given to this section in clause 165 of the compilation.

Section 11: Effect is given to this section in clause 188, (e), of the compilation.

Section 12: "Or River Board" and "or the last preceding" are inserted in subsection (2) to remove an ambiguity.

Section 14: "Railway" is substituted for "private railway or tramway" to agree with definition in clause 209 of the compilation.

Section 17 omitted as exhausted.

"The Public Works Amendment Act, 1904," No. 46:—

Section 2: Effect is given to this section in clause 214, (c), of the compilation, with verbal alterations.

Section 3: Effect is given to this section in clause 216, (1), of the compilation.

Section 5: The date of the passing of the Act of 1900 is inserted.

Section 10: Effect is given to this section in clause 139, (k), of the compilation.

Section 11: Effect is given to this section in clause 150 of the compilation.

Section 12: "Under its control" is inserted after "injury to a road" for clearness of expression.

Section 14: Effect is given to this section in clause 116, (2), of the compilation.

General as to all the Acts compiled :—

Proper cross-references have been made throughout the compilation.

The Long and Short Titles of the compilation take the place of the corresponding titles to the Acts compiled, and a reference is made to such Acts in subsection (2) of clause 1 of the compilation.

In every case where an Act quoted has been repealed by a later Act the later Act is substituted.

The term "penalties" in the earlier Acts is altered to "fines" for uniformity of expression.

A schedule is attached hereto showing how each section of the Acts compiled is disposed of in the compilation.

Subject to the alterations above referred to, I hereby certify that the annexed compilation, intituled "The Public Works Act, 1905," is a true and correct compilation of the respective Acts specified in the First Schedule thereto.

FRED. FITCHETT, Solicitor-General.

Crown Law Offices, Wellington, 6th October, 1905.

PUBLIC WORKS ACTS COMPILATION.

SCHEDULE SHOWING HOW THE SECTIONS OF THE COMPILED ACTS ARE DISPOSED OF IN THE COMPILATION.

1894, No. 42.—“ The Public Works Act, 1894 ” :—

Repealed Act.		Compiled Act.		Repealed Act.		Compiled Act.	
Section	1	Section	1	Section	61	Section	62
"	2	"	2	"	62	"	63
"	3	"	3	"	63	"	64
"	4	"	4	"	64	"	65
"	5	"	5	"	65	"	66
"	6	"	6	"	66	"	67
"	7	"	7	"	67	"	68
"	8	"	8	"	68	"	69
"	9	"	9	"	69	"	70
"	10	"	10	"	70	"	71
"	11	"	(b)	"	71	"	72
"	12	Section	12	"	72	"	73
"	13	"	13	"	73	"	74
"	14	"	15	"	74	"	75
"	15	"	16	"	75	"	76
"	16	"	17	"	76	"	77
"	17	"	18	"	77	"	78
"	18	"	19	"	78	"	79
"	19	"	20	"	79	"	80
"	20	"	21	"	80	"	81
"	21	"	22	"	81	"	82
"	22	"	23	"	82	"	83
"	23	"	24	"	83	"	84
"	24	"	25	"	84	"	85
"	25	"	26	"	85	"	86
"	26	"	27	"	86	"	87
"	27	"	28	"	87	"	88
"	28	"	29	"	88	"	89
"	29	"	30	"	89	"	90
"	30	"	31	"	90	"	91
"	31	"	32	"	91	"	92
"	32	"	33	"	92	"	93
"	33	"	34	"	93	"	94
"	34	"	35	"	94	"	95
"	35	"	36	"	95	"	96
"	36	"	37	"	96	"	97
"	37	"	38	"	97	"	98
"	38	"	39	"	98	"	99
"	39	"	40	"	99	"	100
"	40	"	41	"	100	"	101
"	41	"	42	"	101	"	102
"	42	"	43	"	102	"	103
"	43	"	44	"	103	"	104
"	44	"	45	"	104	"	105
"	45	"	46	"	105	"	106 (1)
"	46	"	47	"	106	"	107
"	47	"	48	"	107	"	108
"	48	"	49	"	108	"	(c)
"	49	"	50	"	109	Section	111
"	50	"	51	"	110	"	112
"	51	"	52	"	111	"	114
"	52	"	53	"	112	"	115
"	53	"	54	"	113	"	118
"	54	"	55	"	114	"	119
"	55	"	56	"	115	"	120
"	56	"	57	"	116	"	123
"	57	"	58	"	117	"	124
"	58	"	59	"	118	"	125
"	59	"	60	"	119	"	126
"	60	"	61	"	120	"	127

1894, No. 42.—“The Public Works Act, 1894”—*continued*.

Repealed Act. Section	121	Compiled Act. Section	129	Repealed Act. Section	225	Compiled Act. Section	211
"	122	"	130	"	226	"	212
"	123	"	131	"	227	"	213
"	124	"	132	"	228-9	"	214
"	125	"	134	"	230	"	215
"	126	"	135	"	231	"	216
"	127	"	136	"	232	"	218
"	128	"	137	"	233	"	220
"	129	"	138	"	234	"	221
"	130	"	139	"	235	"	222
"	131	"	141	"	236	"	223
"	132	"	143	"	237	"	224
"	133	"	144	"	238	"	226
"	134	"	145	"	239	"	227
"	135	"	147	"	240	"	228
"	136	"	148	"	241	"	229
"	137	"	149	"	242	"	230
"	138	"	150	"	243	"	231
"	139	"	153	"	244	"	232
"	140	"	154	"	245	"	233
"	141	"	155	"	246	"	234
"	142	"	156	"	247	"	235
"	143	"	157	"	248	"	236
"	144	"	158	"	249	"	237
"	145	"	159	"	250	"	238
"	146	"	160	"	251	"	239
"	147	"	161	"	252	"	240
"	148	"	162	"	253	"	241
"	149	"	163	"	254	"	242
"	150	"	164	"	255	"	243
"	151	"	165	"	256	"	244 (1)
"	152	"	166	"	257	"	245
"	153	"	167	"	258	"	246
"	154	"	168	"	259	"	247
"	155	"	169	"	260	"	248
"	156	"	170	"	261	"	250
"	157	"	172	"	262	"	251
"	158	"	174	"	263	"	252
"	159	"	175	"	264	"	253
"	160	"	176	"	265	"	254
"	161	"	177	"	266	"	255 (1)
"	162	"	181	"	267	"	255 (2)
"	163	"	182	"	268	"	256
"	164	"	183	"	269	"	257
"	165	"	185	"	270	"	258
"	166	"	186	"	271	"	259
"	167	"	188	"	272	"	260
"	168	"	189	"	273	"	261
"	169	"	190	"	274	"	262
"	170	"	191	"	275	"	263
"	171	"	192	"	276	"	264
"	172	"	193	"	277	"	265
"	173	"	194	"	278	"	266
"	174	"	195	"	279	"	272
"	175	"	(d)	"	280	"	273
"	176	Section	196	"	281	"	274
"	177	"	197	"	282	"	275
"	178	"	198	"	283	"	276
"	179	"	199	"	284	"	277
"	180	"	200	"	285	"	278
"	181	"	201	"	286	"	279
"	182	"	202	"	287	"	280
"	183	"	203	"	288	"	281 (1)
"	184	"	204	"	289	"	281 (2)
"	185	"	205	"	290	"	286
"	186	"	206	"	291	"	282
"	187-221	"	(d)	"	292	"	283
"	222	Section	208	"	293	"	284
"	223	"	209	"	294	"	287
"	224	"	210				

1895, No. 47.—“The Public Works and Government Railways Acts Amendment Act, 1895” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 4	Section 285
" 2	Section 139, 145, 147—	" 5	" 207
" 3	149, 155, 156, 160	" 6	" (d)
	(d)		

1900, No. 47.—“The Public Works Acts Amendment Act, 1900” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 14	Section 147 (3)
" 2	Section 2	" 15	" 146
" 3	" 10 (1)	" 16	" 179
" 4	" 61	" 17	" 180
" 5	" 86	" 18	" 184
" 6	" 103 (4)	" 19	" 122
" 7	" 110	" 20, 21	" (b)
" 8	" 109	" 22	Section 173
" 9	" 113	" 23	" 187
" 10	" 128	" 24	" 188
" 11	" 118 (4)	" 25	" 249
" 12	" 133	" 26	" 2
" 13	" 140		

1903, No. 26.—“The Water-power Act, 1903” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 4	Section 269
" 2	Section 267	" 5	" 270
" 3	" 268	" 6	" 271

1903, No. 93.—“The Public Works Act, 1903” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 10	Section 165
" 2	Section 116	" 11	" 188
" 3	" 117	" 12	" 178
" 4	" 109	" 13	" 11
" 5	" 140 (b)	" 14	" 219
" 6	" 2	" 15	" 225
" 7	" 101	" 16	" 14 (1)
" 8	" 103 (5)	" 17	" (e)
" 9	" 118 (4)		

1904, No. 33.—“The Mining Act Amendment Act, 1904,” Section 11 :—

Repealed Act.	Compiled Act.
Section 11	Section 24 (5)

1904, No. 46.—“The Public Works Amendment Act, 1904” :—

Repealed Act.	Compiled Act.	Repealed Act.	Compiled Act.
Section 1	(a)	Section 8	Section 14 (2)
" 2	Section 214	" 9	" 288
" 3	" 216	" 10	" 139 (k)
" 4	" 217	" 11	" 150
" 5	" 116(7), 117(5)	" 12	" 151, 152
" 6	" 121	" 13	" 142
" 7	" 106 (2)	" 14	" 116 (2)

(a) Omitted; not necessary. (b) Repealed; 1903, No. 93. (c) Repealed; 1900, No. 47. (d) Repealed; 1900, No. 27. (e) Omitted; exhausted.

PUBLIC WORKS.

ANALYSIS.

- | | |
|---|---|
| <p>Title.</p> <p>1. Short Title.</p> <p style="text-align: center;">PART I.
PRELIMINARY.</p> <p>2. Interpretation.</p> <p>3. Of notices.</p> <p>4. Governor may make regulations for conduct of officers. To be laid before Parliament.</p> <p>5. Minister for Public Works. Interest in contracts, &c., of Minister to devolve on his successor.</p> <p>6. Appointment of engineers and other officers.</p> <p>7. Annual estimates. When moneys voted for railways, Appropriation Act to contain Schedule of same.</p> <p>8. Annual accounts and expenditure to be certified by Auditor-General.</p> <p>9. Contracts for Government works to be in the name of His Majesty. Of contracts for local works.</p> <p style="text-align: center;">PART II.
TAKING LANDS FOR PUBLIC WORKS.</p> <p>10. Application of Part II.</p> <p style="text-align: center;"><i>Power to take.</i></p> <p>11. Empowering the taking of land.</p> <p style="text-align: center;"><i>What may and what may not be taken.</i></p> <p>12. Crown lands, public reserves, &c., roads and streets.</p> <p>13. Water or land for supply of water to public work. Entry on land to lay pipes and examine or repair waterworks.</p> <p>14. Forest plantations and preservation of scenery "public works." Paddocks for driven cattle.</p> <p>15. Certain lands, &c., not to be entered on without consent.</p> <p>16. Mines and minerals excluded from land taken for public works.</p> <p>17. As to Crown mineral leaseholds.</p> <p style="text-align: center;"><i>Procedure for taking.</i></p> <p>18. Procedure for taking lands. Surveys and plans to be deposited in road district. Notice that objections to proposed works will be heard. Notice to be served on owners and occupiers. How objections to be heard.</p> <p>19. Upon recommendation by Minister, or memorial by local authority, lands to be taken by Proclamation. Declaration by local authority to be accepted as sufficient that public work is authorised.</p> <p>20. Proclamation taking land not to issue until Governor is satisfied that compensation has been provided for.</p> <p>21. Setting apart Crown land for public work.</p> <p>22. Proclamations not to take effect until gazetted.</p> | <p>23. Proclamations taking land may be cancelled for error or misdescription.</p> <p>24. Map and Proclamation to be registered. If land not under Land Transfer Act. If land under Land Transfer Act. Compensation not payable until certificate of title delivered up.</p> <p>25. Where Proclamation not registerable to be lodged with Surveyor-General.</p> <p style="text-align: center;"><i>Severed Land.</i></p> <p>26. Owner may require small parcel of land severed to be taken.</p> <p style="text-align: center;"><i>Agreements for Taking or Purchase.</i></p> <p>27. Contracts to take or purchase land required for public works may be made, and Proclamation issued, without preliminaries or conveyances taken.</p> <p style="text-align: center;"><i>Fencing.</i></p> <p>28. Protective fences to be made before boundary-fences removed.</p> <p style="text-align: center;"><i>Taking Additional Lands.</i></p> <p>29. Land may be taken for any public work after such public work has been completed.</p> <p style="text-align: center;"><i>Dealings with Taken Lands.</i></p> <p>30. Land not wanted may be sold, &c. Governor may sell or grant to Education Board.</p> <p>31. Application of purchase-money.</p> <p>32. Order in Council to constitute transfer of title.</p> <p>33. Lands not wanted for immediate use may be let.</p> <p>34. His Majesty or the local authority may grant easements over lands acquired for public work.</p> <p style="text-align: center;">PART III.
COMPENSATION.</p> <p style="text-align: center;"><i>For what and when it may be claimed.</i></p> <p>35. All persons suffering damage entitled to compensation.</p> <p>36. On resumption of land, no compensation payable otherwise than as provided in enabling Act.</p> <p>37. Compensation not to be claimed after five years from taking, or one year from other damage suffered.</p> <p style="text-align: center;"><i>The Claim.</i></p> <p>38. By whom compensation may be claimed.</p> <p>39. Public Trustee to be guardian, &c., in certain cases.</p> <p>40. Public Trustee may claim in respect of Native reserves.</p> <p>41. Procedure in unrepresented absentee claims.</p> <p>42. Claimant and respondent.</p> |
|---|---|

43. Particulars to be inserted in claim for compensation. Place where claim to be lodged.
44. Court may compel claimant to state particulars.
45. Claims, if notice of non-admission not given within sixty days, may be filed in the Supreme Court.
46. Respondent may make an offer; if refused, the claimant may require claim to be settled in Compensation Court and appoint Assessor. Court for filing the claim.
47. Respondent to appoint Assessor within twenty-one days.
48. Respondent similarly may require to have claim heard and determined by a Compensation Court.
49. Consent of Assessor to act.

The Court.

50. Claims to be determined by Compensation Court.
51. If not more than £250 claimed, Magistrate and two Assessors to constitute Court. Parties may dispense with Assessors.
52. If more than £250 claimed, Judge and two Assessors to constitute Court.
53. When claim not more than £1,000, District Court Judge or Magistrate may be deputy.
54. Deputy may be objected to.
55. When claim exceeds £1,000, Judge with consent of parties may appoint a District Court Judge or Magistrate to preside.
56. Parties may agree on a single person to constitute the Court.
57. Court may hear other claims by consent.
58. Assessors may be objected to.
59. Liability to pay rates not to be deemed interest in a case.
60. If Judge interested, Governor to appoint another Judge.
61. Case of member of Court dying, resigning, refusing or unable to act.

The Hearing.

62. Sittings of Court.
63. Hearing to proceed in absence of parties.
64. Court may adjourn.
65. Court to examine witnesses, &c.
66. Questions to be determined by majority.
67. If Court unable to agree.
68. When questions of law alone to be determined, President may sit alone and determine the same.

The Award.

69. How compensation to be estimated.
70. Value of land taken to be assessed at its value when first entered upon.
71. Anything done by claimant to make execution of work more costly to be taken into account.
72. Gross sum, or separate sums, may be awarded, and conditions attached.
73. Fees to Assessors hearing claims.
74. Costs.
75. Costs may be deducted from compensation awarded.
76. Award not void for informality.
77. Award to be in writing. And final as to amount, but not as to title. When and how enforced.

Title to and Application of Compensation and Purchase Money.

78. When title doubtful, compensation or purchase-money to be paid into the Public Trust Office. Procedure when purchase-money paid into Public Trust Office. Order as to costs.
79. How compensation in case of limited interests to be dealt with. Saving as to partial interests of an absolute character.

80. Public Trustee may invest compensation-money.
81. Case of mortgaged lands taken.
82. Case of lands subject to rent-charge.
83. Case of lands on which rent is payable.

Payment and other Satisfaction of Compensation and Purchase Money.

84. Minister may agree to grant easements in lieu of compensation or purchase money.
85. Court may award easements in lieu of compensation.
86. Governor may grant surplus land in lieu of compensation.
87. Out of what funds compensation to be paid.

PART IV.

NATIVE LANDS.

Taking for Public Works.

88. Power to take.
89. Taking for work other than railway or defence work. Title not derived from Crown. Title derived from Crown.
90. Taking for railway or defence work.

Compensation.

91. Compensation to Native owners and others to be ascertained by Native Land Court in all cases.

Roads.

92. Procedure for taking roads. No compensation payable.
93. Over what lands roads may be laid off. Limit of quantity.
94. Exception of cultivations, &c.
95. Within what time right must be exercised.
96. Laying-off of roads by Surveyor-General.

PART V.

SURVEYS.

97. Powers of entry on lands, &c., for survey purposes.
98. Penalty for destroying survey marks.
99. Native cultivations protected.

PART VI.

ROADS AND RIVERS.

Construction and Maintenance of Roads.

100. Interpretation. Certain provisions of "The Municipal Corporations Act, 1900," saved. Proviso.
101. Definition of road.
102. Roads vested in the Crown.
103. Governor may make roads. And declare Government, county, district, and town district roads and streets.
104. County Council may make county roads, and declare county and district roads.
105. Roads in outlying districts.
106. Powers of Governor and County Councils over Government and county roads.
107. Roads to be under control of Road Boards.
108. County Council may vest control of road or part of road in local authority. Governor to exercise powers in certain cases.
109. Apportionment of cost where road used principally by traffic from another district.
110. Control and cost of road on boundary of borough.
111. Roads on boundaries of counties.
112. Powers of a Road Board over district roads. Subject to compensation for injury done, &c.
113. Power to remove gravel, &c., from Native lands and unoccupied land.
114. Level of road on boundary of district to be as agreed on.

115. Access to land to which there is no road. If private land adjoining, how land for road to be acquired. Refund by local authority.
116. Where land sold, road to give access to be dedicated to public use.
117. Where land fronts road or street of less width than 66 ft., frontage to be set back.

Bridges, Ferries, and Fords.

118. Local authorities benefiting by construction of bridge, ferry, &c., may be compelled to contribute thereto.
119. Governor may vest control of bridge, ferry, or ford in local authority, and apportion cost of maintenance. Revenues to be considered in apportioning maintenance. Governor may refer certain questions to Commissioners. Cost of exercising powers to be paid by local authority. Power to Minister to maintain bridge, &c., in case of refusal by local authority, and recover cost. Proclamation may be varied, altered, or revoked.
120. Local authority may let ferry for three years.

Other Provisions.

121. Expenditure of thirds and fourths.
122. Local authority may sell stone, &c.

Gates across Roads.

123. Local authority may permit swing-gates to be placed on roads in sparsely populated districts.
124. Local authority may agree as to gates on roads taken through private lands by agreement.
125. Permission to erect swing-gate not to be granted until after notice published in newspaper.
126. Gates across roads registered under section 101.
127. Regulations as to gates and fences. Damage to gates and fences.
128. Removal of fences and other obstructions on roads.

Stopping of Roads.

129. Road not to be stopped, except a way is left to land in the vicinity.
130. Mode of stopping a road.
131. Procedure for altering course of roads when landowners consent.
132. Where Counties Act suspended.
133. Further provision as to closing roads.
134. How the land of stopped road to be disposed of.
135. Exchange of land for roads. Conveyance to be free of stamp duty.
136. If road stopped for benefit of private person, to be at his sole expense.
137. Governor may sell stopped roads not required for public use.
138. Where land of stopped road sold or exchanged, Governor may perfect sale or exchange.

By-laws as to Use of Roads.

139. Definition of heavy traffic. Power to Minister and local authorities to make by-laws. Fines, &c., to be expended on repair of roads, &c. Copy of every by-law to be sent to Minister, who may disallow same.
140. Extended powers to make by-laws in respect of heavy traffic.
141. Road Boards may make by-laws.
142. Grass-seed on road or street.
143. Proof of by-laws.
144. By-laws not to relieve offenders from other proceedings.

Injuries to and Nuisances on Roads.

145. Penalties for injuries to roads, or for allowing tailings, &c., to flow on to road or into public drain.
146. Removal or lowering of trees overshadowing road.
147. Removal of gorse, &c., from roads.
148. Notice to clear gorse, &c.
149. Trimmings of hedges, &c., not to be thrown on roads.
150. Local authority may recover expenses for repairs to roads damaged by excessive weights. Proviso.
151. Power to make by-laws forbidding certain traffic.
152. Penalty for breach of such by-laws.

Offences on Roads.

153. Penalties for offences on roads.
154. Penalty for being drunk in charge of vehicle or cattle.
155. Cattle straying on roads may be impounded.

Tolls.

156. Toll-gates, &c., may be placed on roads, and tolls collected.
157. Conditions under which tolls may be taken.
158. Persons exempt from tolls.
159. Penalties for falsely claiming exemption from tolls.
160. Tolls may be let on certain conditions.
161. Collector may distrain goods of persons refusing to pay toll.
162. Collector may recover toll and compensation instead of distraining.
163. Penalty for evading a toll.
164. Penalty for forcible evasion of toll.
165. Penalty for plying for hire across a stream near a bridge or ferry.
166. Penalties for offences by toll-collectors.
167. Toll-gates in different districts may be made to clear one another.
168. Notice of gates cleared to be painted on toll-board.
169. Toll tickets.
170. Penalty on transferring, &c., a toll ticket.
171. County Council or Governor in Council, in certain cases, may abolish toll-gate or diminish tolls.
172. When Governor may act.
173. Governor may abolish toll-gates.
174. Compensation if tolls not levied.
175. Existing tolls to be tolls under this Act.

Rivers.

176. Removal of gorse, &c., from river-beds.
177. Removal of driftwood, timber, weeds, &c., from river-bed.
178. Removal of obstacles from river-beds.
179. Obstructing watercourse.
180. Magistrate's order thereon.
181. Removal of obstructions in river outside of district.
182. When damage to a road by a river, River Board may contribute to purchase land for diversion of road.
183. Power to alter or divert rivers, streams, and watercourses, when desirable for the safety or maintenance of any public work.

Roads or Tramways for Removal of Timber.

184. Provision to allow timber to be brought over private lands.

PART VII.

RAILWAYS.

185. Definition of railway. Land purchased for a railway to be deemed part of the railway.

Construction and Maintenance.

- 186. Railways to be made only under special Act.
- 187. Midland Railway.
- 188. Procedure for making railway. Governor to proclaim limits within which railway is to be made. Plans and maps to be made and copies deposited in Supreme Court. After Proclamation, land may be occupied. Governor may take land or close road for railway. Before or after the time of taking land notice to be given to person whose land is taken. Proclamation to be indefeasible. Sheriff may deliver possession of lands. Costs. Provisions as to notices of objections not to apply.
- 189. Area of Crown land or reserves used or set apart to be deemed to be of two chains width. Land not used to revert as Crown land or reserve. Road, street, or land previously disposed of not to be interfered with.
- 190. Powers to make railways and railway-stations, &c.
- 191. Rights of way and traffic where railway made along or across road on a level.
- 192. Compensation where road interfered with or wholly closed.
- 193. Government to make crossings to give access to lands.
- 194. Road or street wholly closed before passing of Act to be deemed lawfully closed.
- 195. Application of four preceding sections to railway owned by company.
- 196. Alterations in roads, drains, pipes, &c., to be made without detriment to the public or to owners. Plan of alteration to be submitted to owners. Governor to settle objections. Notice to be given of intention to make repairs. In case of emergency works may be carried out forthwith.
- 197. Governor may declare land taken for railway to be road or street, and vest it in local authority.
- 198. Local authority may agree with Minister as to conversion of railway bridge into one for combined traffic.
- 199. Right of way on joint railway and common bridges.
- 200. Land may be occupied temporarily. Twenty-one days' notice of occupation to be given. Justices to decide if occupation necessary, and to settle conditions.
- 201. Owner may require land to be permanently taken.
- 202. Tree dangerous to railway to be removed.
- 203. Penalties for trespassing on railway in course of construction.
- 204. Crown may elect to erect fences along boundaries of railways.
- 205. Railway servants may impound trespassing cattle.
- 206. Railway buildings exempted from local building regulations.
- 207. Officer of Railway Department may appear in proceedings in inferior Court.

PART VIII.

RAILWAYS AND TRAMWAYS REGULATION AND INSPECTION.

Government Railways.

- 208. Inspection of railways.

Private Railways and Tramways.

- 209. Definition of railway, proprietors, and telegraph.

Regulation of Private Railways and Tramways.

- 210. General Manager to be appointed for every railway.
 - 211. Mails to be conveyed free of charge. Railway at Governor's disposal in time of war.
 - 212. Governor may construct telegraphs on any line.
- Inspection of Private Railways and Tramways.*
- 213. No railway to be open for traffic except on certificate of Inspector. Penalty for obstructing Inspector.
 - 214. Notice of intended opening of railway. Penalty for opening without notice.
 - 215. Governor empowered to postpone the opening or working of a railway. Penalty for breach of order to postpone opening or discontinue working.
 - 216. General Manager to give notice of accidents to the Minister.
 - 217. Inquiry as to accidents.
 - 218. Governor may direct returns of accidents to be supplied.
 - 219. Width of carriages and rolling-stock.

PART IX.

DEFENCE.

Defence Works.

- 220. Definition of fortification and obstruction.
- 221. Minister may construct fortifications.
- 222. And may close roads and streets, and require land to be freed from obstruction.
- 223. Manner of taking, &c.
- 224. Section 28 not to apply.
- 225. Taking land for parade or camping grounds or rifle ranges.
- 226. Refusing to give up possession of land, or obstructing Minister.
- 227. Compensation, when payable.
- 228. Penalty for destroying, altering, &c., fortifications.

PART X.

DRAINAGE BY PUBLIC BODIES.

- 229. Definition of drain and public drain.
- 230. Public drains under the control of County Council.
- 231. Minister may make Government drains. All drains upon railway land to be Government drains.
- 232. In case of Government drains, Minister to have powers of County Council.
- 233. Drainage map of county. Datum plane. Datum plane to be fixed by appointed engineer. Drainage map to be open for inspection.
- 234. Powers of County Council to drain.
- 235. County Council may place drains under Road Board.
- 236. Where a drain runs through two counties, Minister to construct it.
- 237. Cost to be recovered from the County Councils.
- 238. If any money provided by Parliament, only balance of cost to be recovered.
- 239. County Council may delegate to Road Boards power to make new drains.
- 240. Penalties for destroying drains.
- 241. Railways not to be interfered with.
- 242. Saving of "Christchurch District Drainage Act, 1875," and other Acts.

PART XI.

SUPPLY OF WATER FOR MINING DISTRICTS.

- 243. Definition of water-race and mining district.

244. Governor may proclaim water-races, and take any stream to supply water-race.
 245. Map to be deposited in Warden's Court.
 246. Governor may alter the course of any water-race.
 247. On unsurveyed land, Proclamation to be in general terms, but line to be pegged out.
 248. How and when limits of land for water-race and streams taken therefor shall be determined.
 249. Governor may revoke Proclamation as to water-race.
 250. Water-races vested in the Crown.
 251. Powers of Minister to construct or purchase water-races.
 252. Water-races subject to Mining Regulations.
 253. Minister may make regulations for using water-races.
 254. Penalty for taking water from proclaimed water-race or stream.
 255. Penalty for damaging water-race. Penalty for using water-race without paying charges.
 256. Governor may lease water-race.
 257. Governor may contract for making water-race on certain conditions.
 258. Such water-race to be under this Act, but to vest in contractors.
 259. Moneys accruing from water-races to be part of Consolidated Fund.
 260. Moneys payable to be voted by Parliament.

Water-races, &c., held under Mining Acts.

261. Special provisions relating to water-races and works within mining districts.

Transfer of Water-races to Counties.

262. Governor may, with their consent, transfer water-races to counties.
 263. Powers, &c., thereupon to vest in County Councils.
 264. County Councils to keep water-races in repair.
 265. County Councils may purchase water-race or make new water-races.
 266. Revenue of water-races to be paid to County Fund.

PART XII.

WATER-POWER.

267. Use of water in lakes, &c., for electrical purposes to vest in the Crown. Acquisition of existing rights or lands.
 268. Delegation of powers to local authority.
 269. Power to grant rights for certain purposes.
 270. Use of water for mining purposes.
 271. Rights under certain Acts reserved.

PART XIII.

GENERAL PROVISIONS.

272. Governor may execute instruments.
 273. Moneys due by local authority may be deducted from moneys payable to it by Government.
 274. Power of local authorities to settle claims.
 275. Recovery of possession of land from persons holding illegal possession thereof.
 276. Penalty for obstructing workmen, or destroying fences, marks, &c.
 277. Penalty for destroying buildings or bridges.
 278. Fines recoverable in a summary way.
 279. Powers of Magistrate.
 280. Making by-laws by local authority.
 281. Validation of Orders in Council and Proclamations.
 282. Works authorised or anything commenced under repealed enactments may be completed under those enactments, or may be completed under this Act. Proviso.
 283. Railways and public works, &c., under previous Acts to be deemed constructed under this Act. Existing Proclamations, Orders, regulations, &c., to remain in force.
 284. Saving of Acts.
 285. References to repealed Act to apply to this Act.
 286. Certain enactments continued in force.
 287. Tailings not to be discharged within five chains of a bridge.
 288. Powers of Borough Councils to acquire land.
 Schedules.

AN ACT to compile certain Acts relating to Public Works.

Title

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) The Short Title of this Act is "The Public Works Act, Short Title.
 5 1905."

(2.) This Act is a compilation of the Acts mentioned in the *First* Schedule hereto.

(3.) This Act is divided into the several Parts, as follows:—

1894, No. 42, sec. 1

- PART I.—Preliminary.
 10 PART II.—Taking Lands for Public Works.
 PART III.—Compensation.
 PART IV.—Native Lands.
 PART V.—Surveys.
 PART VI.—Roads and Rivers.
 15 PART VII.—Railways.
 PART VIII.—Railways and Tramways Regulation and Inspection.
 PART IX.—Defence.
 PART X.—Drainage by Public Bodies.
 PART XI.—Supply of Water for Mining Districts.
 20 PART XII.—Water-power.
 PART XIII.—General Provisions.

PART I.

PRELIMINARY.

Interpretation.

1894, No. 42, sec. 2

1900, No. 47, sec. 2

1903, No. 93, sec. 6

2. In this Act, if not inconsistent with the context,—

“Authorised surveyor” means a surveyor holding a certificate of competency from the Surveyor-General: 5

“Cattle” includes any horse, mare, gelding, colt, filly, or foal; any bull, cow, ox, steer, heifer, or calf; any ram, ewe, wether, or lamb; and any ass, mule, goat, boar, sow, or other pig:

A suckling of any species under six months old and its mother are, for the purpose of this Act, to be considered as one animal: 10

“Compiled Acts” means the Acts mentioned in the *First* Schedule hereto:

“Crown land” means and includes all lands included within that term in “The Land Act, 1892,” except lands held or occupied by any person under the Crown on deferred payment, occupation with right of purchase, perpetual lease, lease in perpetuity, or under any other kind of lease or license, or for any other estate or interest: 15

“Government work” means a work constructed or intended to be constructed by or under the control of His Majesty, or the Governor, or the Government of the colony, or any Minister of the Crown: 20

“Judge” and “Registrar” of the Supreme Court mean respectively the Judge and Registrar or Deputy Registrar of the Supreme Court acting in or for the Supreme Court District in which any matter arises; and “Supreme Court” means the Supreme Court in such district: 25

“Local authority” means and includes any City Council, Borough Council, County Council, Town Board, Road Board, River Board, Harbour Board, Education Board, and other Board, Commissioners, trustees, or other persons or body however designated, having authority, under any Act of the General Assembly or Provincial Ordinance, to undertake the construction of any public work: 30

“Local work” means a work constructed or intended to be constructed by or under the control of a local authority: 35

“Magistrate” means a Stipendiary Magistrate appointed under “The Magistrates’ Courts Act, 1893”:

“Minister” means the Minister for Public Works appointed under this Act: 40

“Native” means an aboriginal native of New Zealand, and includes half-castes and their descendants by Natives:

“Native land” means land held by Natives under their customs or usages, whether the ownership thereof has been determined by the Native Land Court or not: 45

“Notice” means a statement conveying the general effect of a matter or thing done or intended to be done:

“Outlying district” means any part of a county which is not included in a road district or town district: 50

“Person” includes a corporation, and also a company whether incorporated or not, and any partnership :

“Public domain” has in this Act the same meaning as in “The Public Domains Act, 1881” :

“Public notice” means a notice as herein defined published in some newspaper circulating in the district in which the matter of the notice arises, or to which it relates ; and, if there be no such newspaper, then by a printed or written placard posted in some conspicuous place on the land or works affected by such notice or to which it relates :

“Publicly notified” means notified by public notice :

“Public reserve” has in this Act the same meaning as in “The Public Reserves Act, 1881” :

“Public work” and “work” mean and include—

(1.) Every work which His Majesty, or the Governor, or the Government of the colony, or any Minister of the Crown, or any local authority is authorised to undertake under this or any other Act of the General Assembly or Provincial Ordinance, or for the construction or undertaking of which money is appropriated by Parliament ; and in particular—

(2.) Any survey, railway, tramway, road, street, gravel-pit, quarry, bridge, drain, harbour, dock, canal, river-work, water-work, and mining-work (including therein the deposit of tailings, or the construction of sludge channels or tailings-channels in connection with mining operations) ;

(3.) Any lunatic asylum or hospital, including lands that may be necessary for the use, convenience, or enjoyment of any such asylum or hospital, or for any work or purpose in connection therewith ;

(4.) Any public school within the meaning of “The Education Act, 1904,” or any Native school, including lands that may be necessary for playgrounds or teachers’ residences, or for any other purpose in connection with such school ;

(5.) Any electric telegraph, fortification, rifle range, artillery range, lighthouse, or any building or structure required for any public purpose or use, including lands that may be necessary for the use, convenience, or enjoyment of the same ;

(6.) All Ministerial residences and other public buildings ; and the Minister may acquire any land adjoining any such Ministerial residence or other public building for the purpose of securing the same from fire or any other purpose : 1900, No. 47, sec. 26

“Public Works Acts” means and includes this and all other Acts relating to public works, and all Proclamations, Orders in Council, and regulations made under any such Acts :

“Special Act” means any Act of the General Assembly with which this Act or any part of this Act is incorporated authorising the construction of a public work :

“Stopping” of roads includes “diverting” :

“Surveyor” means any authorised surveyor appointed by the

Of notices.

1894, No. 42, sec. 3

Governor may make regulations for conduct of officers.

Ibid, sec. 4

To be laid before Parliament.

Minister for Public Works.

Ibid, sec. 5

Interest in contracts, &c., of Minister to devolve on his successor.

Appointment of engineers and other officers.

Ibid, sec. 6

Annual estimates.

Ibid, sec. 7

When moneys voted for railways, Appropriation Act to contain Schedule of same.

Minister for Public Works or the Minister of Lands, or by any local authority, and authorised to make any survey.

3. (1.) A notice required by this Act to be sent to any person may be sent to the last known place of abode or business of such person by messenger or by post.

(2.) If such person is absent from the colony, the notice may be sent to his agent.

(3.) If such person is not known, or has no known agent in the colony, the notice shall be publicly notified.

(4.) A notice required to be sent to the Minister must be sent to the Public Works Office at Wellington, or to the office of such person, either at Wellington or elsewhere in the colony, as the Minister authorises by public notice to receive notices on his behalf.

(5.) A notice required to be sent to a local authority must be sent to the office of such authority.

(6.) Where a notice is sent by post it must be sent so as to arrive in the due course of post on or before the last day on which such notice is required to be served.

4. (1.) The Governor in Council may from time to time make regulations for the conduct of all persons employed by the Government under this Act, or in or about any works which may be constructed by the Government under the authority thereof.

(2.) A copy of all regulations made under the authority of this Act shall be laid before Parliament within ten days after the issue thereof if Parliament be sitting, but, if not, then within ten days after the commencement of the next sitting thereof.

5. (1.) The Governor shall appoint some member of the Executive Council to be the Minister for Public Works, who shall be charged with the administration of this Act, and with the execution of all Government works, except as provided in Part VI. hereof.

(2.) The Minister for Public Works holding office at the commencement of this Act shall be deemed to be appointed under this Act.

(3.) Where the Minister is authorised to enter into any contract or agreement, or make any lease, under this or any other Act all the rights and liabilities in respect thereof, and all benefit and advantage thereunder, or interest therein, shall vest in his successor or successors in office without the necessity of any transfer or assignment whatsoever.

6. The Governor may from time to time create such offices, and appoint such engineers, managers, clerks, and other officers and persons, as may be necessary for the administration of this Act, and for the execution of all Government works; and may from time to time assign such functions as he shall think fit to such persons respectively, all of whom shall hold office at the Governor's pleasure, and shall receive such salaries as the General Assembly determines.

7. (1.) The Minister shall, as soon as conveniently may be after the opening of each session, lay before Parliament full and detailed estimates of the expenditure proposed to be made upon all Government works during the financial year; and no such works shall be undertaken unless Parliament appropriates money for the execution thereof.

(2.) When moneys are proposed to be voted in any session for the construction of railways, the Minister shall insert in the Appropriation Bill of such session a schedule in the form of the *Second* Schedule hereto.

5

10

15

20

25

30

35

40

45

50

8. (1.) The Minister shall, as soon as conveniently may be after the opening of each session, lay before Parliament a full report of the works carried out by the Government under the authority of this Act during the preceding financial year; also a full and correct statement of the expenditure during such year on all the works and services chargeable to the Public Works Fund.

Annual accounts and expenditure to be certified by Auditor-General.
1894, No. 42, sec. 8

(2.) A copy of such statement of accounts shall be sent to the Controller and Auditor-General, who shall certify to the correctness of the same; and his certificate, together with any remarks by him appended thereto, shall be laid before Parliament by the Minister.

9. (1.) Every contract for the execution of Government works shall be entered into in the name of His Majesty, and may be executed by the Governor on his behalf.

Contracts for Government works to be in the name of His Majesty.

(2.) Every contract for the execution of local works shall be made in such manner as the local authority making the same is authorised by law to make and execute its contracts.

Ibid, sec. 9
Of contracts for local works.

(3.) All such contracts may be varied and discharged in the same manner respectively.

PART II.

TAKING LANDS FOR PUBLIC WORKS.

10. (1.) The provisions of sections *eighteen* and *nineteen* hereof do not, except as hereinafter specially provided, apply to the taking of lands for railway or defence purposes, or for roads in connection with such purposes, or to the taking of Native land for any public work.

Application of Part II.
Ibid, sec. 10
1900, No. 47, sec. 3

(2.) All the other provisions of this Part of this Act apply to the taking of any lands and to all lands taken for any public work whatever, except as hereinafter specially provided.

Power to take.

11. Land required for any public work may be taken under the provisions of this Act—

Empowering the taking of land.
1903, No. 93, sec. 13

- (a.) If for a Government work, by the Minister; or
- (b.) If for a local work, by the local authority.

What may and what may not be taken.

12. Whenever power is given to take land for any public work under the provisions of this Act, such power, except where otherwise specially provided,—

Crown lands, public reserves, &c., roads and streets.
1894, No. 42, sec. 12

- (a.) Includes the power to set apart or procure the setting-apart of Crown land for such purpose, and also the power to take or set apart any part of any public reserve or public domain, or of any land vested in any local authority for any purpose whatsoever, or of any land vested in trustees for any public purpose whatever, whether local or general; but

- (b.) Does not include the power to take any part of any road or street.

13. (1.) The Minister may from time to time impound, divert, and take away any water from any stream or running water, or may purchase or acquire any right or interest therein, for the purpose of

Water or land for supply of water to public work.
Ibid, sec. 13

supplying water for the use of any railway or other public work and the engines or machinery used thereon or connected therewith, or for the purposes of any wharf, building, or premises connected with such railway or other public work, whether such railway or other public work is situated on land entitled to the use of such water or not, and also may in like manner take, purchase, or acquire any land which shall be necessary for the purposes of this enactment. 5

(2.) Any water so impounded, diverted, or taken away, and any land taken, purchased, or acquired as aforesaid, and any right or interest therein respectively, and all pipes, machinery, appliances, and works used in connection with or for the purposes of such water-supply, is and are hereinafter included in the expression "waterworks"; and all waterworks already constructed or acquired, or that may hereafter be constructed or acquired, for all or any such purposes as aforesaid, shall be deemed to have been and to be constructed or acquired under the provisions of this Act, and to form a part of the railway or other public work for the use of which they have been constructed or acquired. 10 15

Entry on land to lay pipes and examine or repair water-works.

(3.) The Minister, and all officers, workmen, and others by his direction, may enter on any land in the daytime, with or without carts or other vehicles, for the purpose of laying or erecting waterworks in or on such land, and also may from time to time in like manner enter thereon for the purpose of examining or repairing such waterworks when necessary. 20

(4.) At least twelve hours' previous notice in writing shall be given by or on behalf of the Minister to the owner or occupier of such land, if resident thereon, before any entry for the purpose of laying or erecting waterworks, and, if such owner or occupier is not so resident, then by posting such notice in a conspicuous place on such land; but no notice shall be necessary in cases where the entry is made for the purpose of examination or to execute repairs. 25 30

(5.) In exercise of the powers conferred by subsection *three* hereof the Minister, his officers, workmen, or others, shall do as little damage as possible, and any damage or loss done or occasioned by the exercise of such powers shall from time to time be ascertained and settled in the manner provided by any agreement made by the Minister under the authority of this Act, or, if no such agreement be made, then in the manner provided by Part III. thereof. 35

Forest plantations and preservation of scenery "public works."

1903, No. 93, sec. 16

Paddocks for driven cattle.

1904, No. 46, sec. 8

Certain lands, &c., not to be entered on without consent.

1894, No. 42, sec. 14

14. (1.) Land may be taken under this Act for forest plantations, or recreation-grounds, or for the preservation of scenery as if such purposes were public works within the meaning of this Act. 40

(2.) Land may be taken under this Act by any local authority for the purpose of paddocking driven cattle as if such purpose were a public work.

15. Except for the purpose of a railway or for defence purposes, or for the purposes of any other work to be made under the authority of a special Act, nothing in this Act contained shall authorise— 45

(a.) The taking of any stone or other material from any quarry, brickfield, or like place commonly used for the taking material therefrom for sale, without the consent in writing of the owner first obtained; or

(b.) The taking of any land occupied by any building, yard, garden, orchard, or vineyard, or in *bonâ fide* occupation as an orna- 50

mental park or pleasure-ground, without the previous consent of the Governor in Council or the consent in writing of the owner first obtained.

16. (1.) When any land is or has been taken at any time by the Governor or by any local authority under the authority of any Act or Provincial Ordinance for the construction of any public works, the Governor or such local authority shall not thereby be deemed to have acquired or to acquire any right to any mines of coal or other minerals whatsoever under any land so taken, except only such parts thereof as are necessary for the proper and effectual construction, support, and maintenance of such works.

Mines and minerals excluded from land taken for public works.

1894, No. 42, sec. 15

(2.) And all such mines and minerals (excepting as aforesaid) shall be deemed to be and to have been excepted out of the Proclamation or other instrument under the authority whereof the land is, or has been, or may be taken.

17. In case any of the land so taken as last aforesaid is leasehold land of the Crown, held under lease granted under the provisions of "The Westland and Nelson Coalfields Administration Act, 1877," or any other Act relating to the granting of leases of land or licenses to hold land for mining purposes, then and in such case the lessee or licensee or lessees or licensees of such land shall not be entitled to claim compensation in respect of any land so taken, but shall only be entitled to claim compensation for actual loss sustained through damage to his or their mine, or the works connected therewith, by reason of the taking of such land.

As to Crown mineral leaseholds.

Ibid, sec. 16

Procedure for taking.

18. Subject to the provisions of section *ten* hereof, whenever lands (other than Crown lands) are required to be taken for any public work, the Minister in the case of Government works, and the local authority in the case of local works,—

Procedure for taking lands.

Ibid, sec. 17

(a.) Shall cause a survey to be made and a plan to be prepared showing the lands required to be taken for the same (if any), together with the names of the owners and occupiers of such lands so far as they can be ascertained : and

(b.) (i.) Shall cause a copy of such plan to be deposited in some place in the road district in which such lands are, or, if such lands are not within a road district, in such other convenient place as the Minister or local authority respectively may direct ; and

Surveys and plans to be deposited in road district.

(ii.) Such plan shall be open to inspection by all persons at all reasonable hours ; and

(iii.) Any person having custody thereof, and refusing or obstructing such inspection, shall for every such offence be liable to a fine not exceeding five pounds : and

(c.) (i.) Shall cause a notice to be gazetted, and to be twice publicly notified, stating the place where such plan is open for inspection, with a general description of the works proposed to be executed, and of the lands required to be taken ;

Notice that objections to proposed works will be heard.

(ii.) And in such notice shall call upon all persons affected to set forth in writing any well-grounded objections to the execution of such works or to the taking of such

lands, and to send such writing within forty days from the first publication of such notice to the Minister or to the local authority, as the case may be ; and

(iii.) No objection as to the amount or payment of compensation in respect of the execution of such works shall be deemed a well-grounded objection within the meaning of this section : and

5

Notice to be served on owners and occupiers.

(d.) Shall also cause a copy of such notice and description to be served upon the said owners and occupiers, and any other person having an interest in the land, so far as they can be ascertained : and

10

How objections to be heard.

(e.) Shall, upon receiving any such well-grounded objection as aforesaid, appoint a time and place within the colony at which the objector may appear (in the case of Government works) before the Minister or some person appointed by him, and (in the case of local works) before the local authority, and support the objection by such evidence as the objector thinks fit.

15

Upon recommendation by Minister, or memorial by local authority, lands to be taken by Proclamation.
1894, No. 42, sec. 18

19. If within the said forty days no objection is made, or if, after due consideration of all objections, the Minister or the local authority, as the case may be, is of opinion that it is expedient that the proposed works should be executed, and that no private injury will be done thereby for which due compensation is not provided by this Act, the land proposed to be taken shall be taken in the following manner :—

20

(a.) (i.) A map shall be prepared in duplicate, showing accurately the position and extent of the lands proposed to be taken ; and

25

(ii.) Such map shall be signed by the Surveyor-General, or some authorised surveyor appointed by him to certify plans for the purpose of any Act relating to the conveyance or transfer of land, as evidence of the accuracy thereof :

30

(b.) In the case of any Government work, the Minister shall recommend the Governor to issue a Proclamation taking the land : or

(c.) In the case of any local work,—

35

(i.) The local authority shall lay before the Governor a memorial containing a list of the lands proposed to be taken, together with the aforesaid map in duplicate ;

(ii.) Every such memorial shall be signed by two members of the local authority, and need not be under seal ;

40

Declaration by local authority to be accepted as sufficient that public work is authorised.

(iii.) A statutory declaration, duly stamped with the proper stamp fee, by the Chairman, Mayor, or other chief executive officer of the local authority, that the local authority is authorised by law to undertake the work for which the land described in the memorial is required, that all the provisions of this Act as to taking such land have been complied with, and that the local authority is of opinion that the proposed works should be executed, and that no private injury will be done for which due compensation is not provided by this Act, may be accepted by the Governor as sufficient without making further inquiry :

45

50

(d.) The Governor may thereupon, if he thinks fit, by Proclamation publicly notified, declare that the said lands, a list whereof shall be contained in or annexed to the Proclamation, are taken for the public work therein mentioned :

- 5 And, from and after a day to be named in the said Proclamation, the lands therein specified shall, unless otherwise specially provided in this Act or in any special Act, become absolutely vested in fee-simple in His Majesty, or in the local authority, or the corporate body represented by it, as the case may require, discharged from all mortgages, charges, claims, estates, or interests of what kind soever, for the public use named
10 in the said Proclamation.

20. Whenever it shall be made to appear to the satisfaction of the Governor that any local authority has not made provision for the payment of the compensation which would probably be awarded for the
15 land proposed to be taken, the Governor shall not issue the Proclamation taking such land until such time as he is satisfied that the local authority has made provision for the payment of such compensation.

21. Whenever any Crown land is required to be set apart for any public work, the Governor may at any time, by Proclamation duly
20 gazetted, set the same apart for such public work without complying with any of the provisions of this Act in respect to the taking or setting-apart of other lands for such purpose, and every such Proclamation shall have the effect of and shall be deemed to be a Proclamation under section
nineteen hereof.

22. A Proclamation issued under this Act or under any of the compiled Acts or under any Act thereby repealed shall not be held or deemed to have taken or to take effect until such Proclamation was or
25 is gazetted.

23. (1.) In any case where a Proclamation has been issued taking
30 land for any public work, and where, before such Proclamation has been registered by the District Land Registrar under the following section, it is found that such Proclamation incorrectly describes the land purporting to be taken, or that any other error in form or substance exists in or in relation to such Proclamation, or the making or gazetting thereof,
35 the Governor may by a subsequent Proclamation cancel and annul such Proclamation or any part thereof, and such first Proclamation or such part thereof shall, from the date of the subsequent Proclamation, be absolutely void and of none effect as from the date of the same, and shall not be deemed to have vested the land mentioned therein in His
40 Majesty, or in the local authority, or in the corporate body represented by such local authority, or to have discharged such land from any mortgages, charges, claims, estates, or interests of what kind soever existing in respect of such land, anything to the contrary in this or any other Act notwithstanding.

- 45 (2.) But nothing herein contained shall limit the power of the Governor to take by any subsequent Proclamation the whole or any part of the land mentioned or described in any Proclamation so cancelled in whole or in part.

24. (1.) Except in a case under the following section, the Minister
50 shall cause a copy of every Proclamation taking or setting apart land, and of the map referred to therein, to be deposited without fee in the District Land Registry Office for the district in which such land is.

Proclamation taking land not to issue until Governor is satisfied that compensation has been provided for.
1894, No. 42, sec. 19

Setting apart Crown land for public work.
Ibid, sec. 20

Proclamations not to take effect until gazetted.
Ibid, sec. 21

Proclamations taking land may be cancelled for error or misdescription.
Ibid, sec. 22

Map and Proclamation to be registered.
Ibid, sec. 23

If land not under
Land Transfer Act.

(2.) If such land was not theretofore subject to the provisions of
“The Land Transfer Act, 1885,”—

(a.) The District Land Registrar shall cause an entry of such Proclamation and map to be made under the proper head or title in the index-book of the Deeds Registry Office ; and

(b.) Upon such deposit such land shall thereupon become subject to the provisions of “The Land Transfer Act, 1885.”

If land under Land
Transfer Act.

(3.) If the said land was theretofore subject to the provisions of
“The Land Transfer Act, 1885,”—

(a.) The District Land Registrar shall register such Proclamation and map against such land ; or, if no Crown grant, certificate of title, or other instrument evidencing the title to such land has been issued, shall make a provisional registration of such Proclamation and map against the said land :

(b.) Any person in possession of the Crown grant, certificate of title, or other instrument evidencing the title to such land shall, upon receiving notice from the District Land Registrar in that behalf, deliver up to him such grant, certificate of title, or other instrument to be wholly or partially cancelled as the case may require ; and any person refusing or neglecting so to deliver up any such instrument shall be liable to a penalty not exceeding fifty pounds :

(c.) The District Land Registrar shall retain every such instrument, and shall, when required by the registered proprietor of the land not taken, issue to him free of charge a certificate of title for such land, unless no Crown grant has been issued for the same.

Compensation not
payable until
certificate of title
delivered up.

(4.) No person having in his possession such Crown grant, certificate of title, or other instrument shall be entitled to claim or receive any compensation under this Act until such certificate is delivered up to the District Land Registrar.

1904, No. 33, sec. 11

(5.) Where the land is within a mining district a copy of the Proclamation shall be deposited with the Mining Registrar for registration, and the Registrar shall register the same as on the hour and date of its being so deposited.

Where Proclamation not registerable to be lodged with Surveyor-General.
1894, No. 42, sec. 24

25. In the case of a Proclamation setting apart or taking any lands which are not subject to the provisions of “The Land Transfer Act, 1885,” and dealings with which are not registerable under the provisions of “The Deeds Registration Act, 1868,” the Minister shall cause a copy of the same and of the map referred to therein to be lodged in the office of the Surveyor-General, and the Surveyor-General shall cause the land included in such Proclamation to be shown upon the proper maps and records of the district affected by such Proclamation in such manner as to prevent such land being disposed of in any manner at variance with such Proclamation.

Severed Land.

Owner may require small parcel of land severed to be taken.
Ibid, sec. 25

26. (1.) If any land, not situate in a town or built upon, is so divided by the land taken for any work as to leave on either side thereof a less quantity of land than half a statute acre, the Minister or local authority, as the case may be, shall, if so required by the owners of

such small parcel of land, and except as hereafter provided, take such parcel together with the other land taken for such work.

(2.) But if such owner has other land adjoining into which such small portion may be conveniently thrown, the Minister or local authority, as the case may be, may, instead of taking such small parcel of land, throw the same into such adjoining land, by removing the fences and levelling and soiling the sites in a sufficient and workmanlike manner.

Agreements for Taking or Purchase.

27. (1.) Notwithstanding anything contained in this Act, the Minister or local authority may enter into agreements to take the estate and interest of any person in any land required for public works without complying with the provisions of section *eighteen* or of subparagraph (iii.) of paragraph (c) of section *nineteen* hereof, or to purchase any such estate or interest, upon such terms and conditions as he or it thinks fit.

Contracts to take or purchase land required for public works may be made, and Proclamation issued, without preliminaries or conveyances taken. 1894, No. 42, sec. 26

(2.) Where an estate or interest is taken by agreement the compensation to be paid may be either agreed upon or left to be determined under Part III. of this Act.

(3.) In any case the compensation or purchase-money shall be paid,—

(a.) If payable by the Minister, out of moneys appropriated by Parliament for the works in respect of which the land is purchased;

(b.) If payable by a local authority, out of the ordinary funds of such authority available for such purposes:

but neither the Minister nor any member of a local authority shall be personally liable for any compensation or purchase-money which may become payable under this Act.

(4.) Where an agreement for the taking of an estate or interest has been entered into, the Governor, upon being satisfied of the sufficiency of the agreement, may forthwith issue a Proclamation taking such estate or interest under section *nineteen* hereof without complying with any of the provisions of section *eighteen* or of subparagraph (iii.) of paragraph (c) of section *nineteen* hereof.

(5.) Where an agreement for the purchase of an estate or interest has been entered into, such estate and interest shall be conveyed or surrendered to His Majesty, or (except in the case of roads) to the body corporate represented by such local authority, or (if not incorporated) to some person on behalf of such local authority, as the case may be.

(6.) An estate or interest purchased and conveyed or surrendered hereunder shall be deemed land taken under the authority of this Act, but the provisions of this Act respecting compensation shall not be applicable in any such case except as specially provided.

Fencing.

28. Except where an agreement has been made as provided in section one hundred and twenty-four hereof, nothing in this Act shall authorise the removal of any fencing upon any lands until fences have been first made so that all lands adjacent to land taken or works executed under this Act shall be as effectually protected against damage by trespass as before the commencement of such works.

Protective fences to be made before boundary-fences removed. Ibid, sec. 27

Taking Additional Lands.

Land may be taken
for any public work
after such public
work has been
completed.
1894, No. 42, sec. 28

29. (1.) If any public work has been or is executed, and after the execution thereof it is found that any person has any estate or interest in any land occupied by such work, or that any land required therefor has not been taken in the manner required by law, or that the provisions relating to the taking of such land have not been fulfilled; or 5

(2.) If it is found desirable for the use, convenience, or enjoyment of any public work executed or in course of execution to take, purchase, or acquire other land—

(3.) Such land, or the estate or interest of any person therein, may be taken, purchased, or acquired in the manner provided by this Act in respect of the taking, purchasing, or acquiring of lands required for such public work in the first instance. 10

(4.) All the provisions of this Act relating to the taking, purchasing, or acquiring of land, and to payment of compensation or purchase-money therefor, shall apply, except that in such cases— 15

(a.) Section *eighteen*, in cases to which it applies, shall be read as if the words “of the works proposed to be executed, and” and the words “to the execution of such works, or” were omitted therefrom; 20

(b.) And section *one hundred and eighty-eight*, in cases to which it applies, shall be read as if paragraphs (a), (b), (c), and (d) of subsection one, and the words “after the deposit of such maps and plans” in paragraph (e) of that subsection, were omitted therefrom: 25

Provided that if any person has received payment or been awarded compensation for such land, or by reason of his being injuriously affected by such public works, such person, and all persons claiming by, through, under, or in trust for him, shall not be entitled to any further payment or compensation. 30

(5.) The provisions of this section shall be deemed to apply, *mutatis mutandis*, to the closing of any road or street and to the exercise of any power over any land, road, or street after the execution of any public work for the purposes of which a road or street might have been closed or any such power exercised in the first instance. 35

(6.) Nothing in this section shall be deemed to in any way interfere with the operation of section ten of “The Public Works Acts Amendment Act, 1889,” set forth in the *Seventh* Schedule of this Act, or of any other provision of this or any other Act validating or confirming the taking of any land for any public work. 40

Dealings with Taken Lands.

Land not wanted
may be sold, &c.
Ibid, sec. 29

30. If it is found that any land held, taken, purchased, or acquired at any time under this or any other Act or Provincial Ordinance, or otherwise howsoever, for any public work is not required for such public work, the Governor may, by an Order in Council publicly notified and gazetted, cause the same to be sold under the following conditions:— 45

(a.) A recommendation or memorial, as the case may be, as provided by section *nineteen* hereof, shall be laid before the Governor by the Minister or local authority at whose instance the land was taken, describing so much of the said lands as are not required for such public work, accompanied by a 50

map thereof, certified by the Surveyor-General or an authorised surveyor appointed by him in that behalf, and setting forth the reasons for disposing of the same.

(b.) The Minister or local authority, as the case may be, shall cause the land proposed to be sold to be valued by one or more competent valuers, and shall offer such land at the price fixed by such valuation—first, to the person then entitled to the land from which such land was originally taken; and, if he refuse it, or cannot after due inquiry be found, then to the owner of the adjacent lands, or, if there be more than one such owner, then to each of such owners in such order as the Minister or local authority thinks fit; and, if no such owner accepts such offer, may cause the land to be sold by public auction:

Provided, however, that the Governor may, without complying with any of the last foregoing provisions, sell by private contract or grant to any Education Board any lands taken for Government works, and may execute such grants, conveyances, and assurances as may be necessary to give effect to such sale or grant.

Governor may sell or grant to Education Board.

31. The purchase-money of land so sold shall be paid into the Public Account or the ordinary fund of the local authority, as the case may be, and shall form part of the fund appropriated to the execution of the works in respect of which the said lands were taken under this Act.

Application of purchase-money. 1894, No. 42, sec. 30

32. (1.) Upon the payment of the purchase-money, the Minister or local authority, as the case may be, shall file in the District Land Registry Office for the district in which such land is situate a copy of the Order in Council directing the sale of the said lands, together with a copy of the certified map thereof, and also a certificate of the payment of the purchase-money, with the name and address of the purchaser.

Order in Council to constitute transfer of title. Ibid, sec. 31

(2.) Such Order in Council and certificate shall be deemed to be a memorandum of transfer of such land to such purchaser within the meaning of "The Land Transfer Act, 1885," and the Registrar shall register the same and deal therewith in the manner in the said Act provided.

33. If any land at any time taken for public works under this or any other Act or Provincial Ordinance is not required for immediate use, the Minister or local authority by whom the land was taken may let the same upon such terms as he or it may respectively think fit for any period not exceeding twenty-one years, and the rents and profits thereof shall be paid into the Public Account or the ordinary fund of the local authority, as the case may require.

Lands not wanted for immediate use may be let. Ibid, sec. 32

34. (1.) His Majesty or the local authority, as the case may be, but in the case of a local authority subject to the provisions of subsection two hereof, may from time to time grant to any person any easement in, upon, through, over, or under any land taken or acquired for a public work, subject to such conditions and payment of rent as His Majesty or the local authority thinks fit, and subject to revocation without compensation at any time when the service of the public requires it, and subject also to immediate revocation in case of the breach of any conditions under which such easement was granted.

His Majesty or the local authority may grant easements over lands acquired for public work. Ibid, sec. 33

(2.) The power given by the *last* subsection shall not be exercised by a local authority without the consent of the Minister ; and no instrument executed by or on behalf of a local authority granting or purporting to grant such an easement shall have any effect whatever unless and until the consent of the Minister has been indorsed thereon.

5

PART III.

COMPENSATION.

For what and when it may be claimed.

All persons suffering damage entitled to compensation.
1894, No. 42, sec. 34

35. (1.) Every person having any estate or interest in any lands taken under this Act for any public works, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby given, shall be entitled to full compensation for the same from the Minister or local authority, as the case may be, by whose authority such works may be executed or power exercised.

10

(2.) No compensation shall be payable in respect of—

15

(a.) Any land taken for a road or railway under this Act the right to make a road over which is otherwise reserved to the Crown, and has not lapsed or become barred ;

(b.) Any Crown lands taken or set apart for any public work.

On resumption of land, no compensation payable otherwise than as provided in enabling Act.
Ibid, sec. 35

36. In any case where His Majesty or the Governor may have been or may hereafter be entitled to resume or take possession of land under the authority of any Act of the General Assembly, then, notwithstanding the issue of a Proclamation under this or any Act of a like tenor at any time heretofore in force taking such land for any public purpose, and notwithstanding that any special provisions contained in such authorising Act as to the resumption or taking of such land may not have been complied with, no compensation shall be paid or payable in respect thereof otherwise than as may be specially provided in the Act by virtue of which His Majesty or the Governor, or any person on behalf of His Majesty or the Governor, is entitled to resume or take possession as aforesaid, provided such Proclamation shall have been issued during the currency of such authority.

20

25

30

Compensation not to be claimed after five years from taking, or one year from other damage suffered.
Ibid, sec. 36

37. (1.) No claim for compensation under this Act, or any of the compiled Acts, or any Act thereby repealed shall be made (in respect of any lands taken) after a period of five years after the date of the Proclamation taking the said lands, or (in respect of any damage done) after a period of twelve months after the execution of the works out of which such claim has arisen or may hereafter arise ; and all right and title to any compensation in respect of such lands or for damage arising out of the execution of such works, as the case may be, shall after such respective periods absolutely cease.

35

40

(2.) The provisions of this section shall also extend and apply to all claims for compensation of any kind which arose before the passing of " The Public Works Act, 1882," or which arose or may arise under that Act or any Act thereby repealed, after the passing of " The Public Works Act, 1894," so far as such Acts or any of them were or are capable of having effect.

45

The Claim.

By whom compensation may be claimed.
Ibid, sec. 37

38. A claim for compensation may be made by any person seised, possessed of, or entitled to such lands, or to any estate or interest therein, whether such person has or has not the power to sell and convey the

50

same, or by any executor or administrator; and any such claim on behalf of *cestuis que trustent*, wards, lunatics, or idiots may be made by their trustees, guardians, or committees respectively.

39. In the case of any person being an infant, lunatic, or idiot, or *cestui que trust*, not having a guardian, committee, or trustee within the colony, the Public Trustee shall, for the purposes of this Act, be deemed to be the legal guardian, committee, or trustee of such person.

Public Trustee to be guardian, &c., in certain cases. 1894, No. 42, sec. 38

40. A claim for compensation for lands taken out of any Native reserve may be made by the Public Trustee on behalf of those interested in such reserve.

Public Trustee may claim in respect of Native reserves. Ibid, sec. 39

41. (1.) Upon the application of the Minister to the Judge of the Supreme Court, accompanied by an offer of the amount of compensation in the matter, and upon such proof as is satisfactory to such Judge that any person who has any right or title to prefer a claim for compensation is absent from the colony, or is not known, or has no known agent in the colony, such Judge shall direct such claim to be heard by a Compensation Court under this Act, and shall appoint an Assessor to act in such Court on behalf of such person.

Procedure in unrepresented absentee claims. Ibid, sec. 40

(2.) Thereupon such Court may proceed in the examination of such claim as in ordinary cases where the claimant is present.

(3.) In every such case the Public Trustee shall represent the claimant, and may act in his behalf in all matters incident to the claim or the hearing thereof; and the moneys payable as compensation shall be paid into the Public Trust Office, and shall there remain subject to the provisions of section seventy-eight hereof.

42. Any person so claiming compensation is hereinafter called "the claimant"; and the Minister in the case of Government works, and the local authority in the case of local works, is hereinafter called "the respondent."

Claimant and respondent. Ibid, sec. 41

43. (1.) In order to obtain compensation the claimant shall serve upon the respondent a claim in writing, in one of the forms in the *Third* Schedule hereto, stating—

Particulars to be inserted in claim for compensation. Ibid, sec. 42

(a.) The several areas and descriptions of the lands taken or injuriously affected in respect of which he makes his claim, and the nature and particulars of his interest therein; and if he claim as owner, and the land is encumbered, leased, or subject to any easement, he shall give particulars of such encumbrance, lease, or easement:

(b.) Each matter on account of which he claims compensation, with full particulars of the nature and extent of the claim:

(c.) The amount which he claims respectively for land taken or for land injuriously affected, giving in both cases the amount for each item of such claim separately:

(d.) The total amount claimed:

(e.) His full Christian name and surname, together with his address, which address shall be deemed to be the last known place of abode or business of the claimant within the meaning of section *three* hereof, unless and until special notice in writing of a change of address is delivered to the respondent.

(2.) Such claim shall be served, in the case of the Minister, by being delivered at the Public Works Office at Wellington or by being sent by registered letter addressed to the Minister at such office, and,

Place where claim to be lodged.

in the case of the local authority, by being left at its office or sent by registered letter to its office ; and the claimant shall be entitled to receive from the officer for the time being in charge of any such office a receipt stating the day on which such claim was delivered or received ; and any officer refusing to give such receipt on demand shall be liable to a fine not exceeding *five* pounds. 5

(3.) In order to prove the service of any claim as aforesaid it shall be necessary to produce the receipt of the officer receiving the same.

Court may compel claimant to state particulars.

1894, No. 42, sec. 43

44. If the claimant does not give full particulars of such claims, or does not specify in his claim the amount claimed for each matter on account of which he claims compensation, the respondent may, by notice in writing, require him to furnish such particulars ; and if such particulars are not supplied at least twenty-one days before the date appointed for the sitting of the Court to hear the claim, that Court may, if it think fit, upon the application of the respondent made before or at the hearing, order the claimant to furnish such particulars, and may adjourn the further hearing of the claim until such particulars are supplied, and until the respondent has had reasonable time to consider the same, and may order that the costs occasioned by such adjournment shall be borne by the claimant. 10 15 20

Claims, if notice of non-admission not given within sixty days, may be filed in the Supreme Court.

Ibid, sec. 44

45. If the respondent does not, within sixty days after receiving such claim, give notice in writing to the claimant that he does not admit it, the claimant may file a copy of his claim, together with the receipt for the service thereof, in the Supreme Court ; and such claim, when so filed, shall be deemed to be and shall have the effect of an award filed in the Supreme Court, and may be enforced in the manner provided in section seventy-seven hereof. 25

Respondent may make an offer ; if refused, the claimant may require claim to be settled in Compensation Court and appoint Assessor.

Ibid, sec. 45

46. (1.) If the respondent gives notice in writing within the said sixty days that he does not admit the claim, he may, within ninety days after receiving the claim, by notice in writing, make the claimant an offer of the sum which he is willing to pay in lieu of the amount claimed and may file a copy of such notice in the Court or office prescribed in subsection *four* of this section. 30

(2.) If the respondent gives notice in writing within the said sixty days that he does not admit the claim, but makes no such offer, or if the claimant does not accept the offer so made, the claimant may file a copy of his claim in the Court or office prescribed in subsection four of this section, together with a notice in the form in the *Fourth* Schedule hereto that he requires such claim to be heard by a Compensation Court ; and he shall, in such notice, state the name and address of some person whom he thereby appoints to act as Assessor in such Court, and shall give notice in writing to the respondent of the appointment of such Assessor. 35 40

(3.) If the claimant does not file such notice as aforesaid within thirty days after the time limited for the respondent to make an offer as hereinbefore provided, the claimant shall be deemed to have abandoned the proceedings in respect of his claim, and shall not be entitled to prosecute the same further, except with the leave of the Court in which the claim might have been filed within such time, to be granted upon such terms and conditions as to the time and mode of procedure, and as to the costs of the application for such leave, as that Court thinks fit. 45 50

(4.) The Court or office in which the claim and notices aforesaid may be filed shall, if the amount claimed be not more than two hundred and fifty pounds, be the Magistrate's Court Office nearest to the land or work in respect of which the claim arises within the Magistrate's Court District within which such land or work is situated, and in all other cases shall be the office of the Supreme Court nearest to such land or work within the Supreme Court District within which such land or work is situated. Such Court or office is hereinafter referred to as "the Court for filing the claim."

Court for filing the claim.

47. The respondent shall, within twenty-one days after receiving notice of the appointment of the Assessor by the claimant, also appoint an Assessor, and shall give notice in writing of such appointment to the Registrar or Clerk of the Court for filing the claim and to the claimant; and if the respondent fails within the said twenty-one days to make such appointment, the Registrar of the Supreme Court shall forthwith appoint an Assessor on behalf of the respondent, and give notice thereof to the claimant.

Respondent to appoint Assessor within twenty-one days.
1894, No. 42, sec. 46

48. (1.) In any claim or matter arising for compensation for any land taken or to be taken, where a written offer on behalf of the respondent has been made therefor to the claimant not less than thirty days previously, and the same has not been accepted, the respondent shall have the same right to require such claim to be heard by a Compensation Court as is given to a claimant by section forty-six hereof.

Respondent similarly may require to have claim heard and determined by a Compensation Court.
Ibid, sec. 47

(2.) And, at any time after the respondent has filed a copy of his notice as in the aforesaid section forty-six mentioned, he may give notice in the form or to the effect contained in the *Fourth* Schedule hereto, requiring such claim to be heard.

49. No appointment of any person to be an Assessor shall be valid unless such person signs the consent and declaration in the form contained in the *Fifth* Schedule hereto; and every such consent and declaration shall be appended to the notice of appointment of such Assessor, and shall be filed in the Court for filing the claim.

Consent of Assessor to Act.
Ibid, sec. 48

The Court.

50. All claims for compensation shall, except where express provision is otherwise made, be determined by a Compensation Court constituted as hereinafter provided, and hereinafter called "the Court."

Claims to be determined by Compensation Court.
Ibid, sec. 49

51. If the amount claimed be not more than two hundred and fifty pounds, then—

If not more than £250 claimed, Magistrate and two Assessors to constitute Court.
Ibid, sec. 50

(a.) The Magistrate for the Magistrate's Court District within which is situated the land or work in respect of which the claim arises shall be the President of the Court if he has extended jurisdiction under "The Magistrates' Courts Act, 1893," and is not interested in the case.

(b.) If such last-mentioned Magistrate has not such extended jurisdiction as aforesaid, or is interested in the case, the Judge of the Supreme Court shall, on the application of either party, appoint some other Magistrate having such extended jurisdiction, and who is not interested, to be the President of the Court.

(c.) Such Magistrate as aforesaid, and the two Assessors appointed as provided in sections forty-six and forty-seven hereof, shall constitute the Court.

Parties may
dispense with
Assessors.

If more than
£250 claimed,
Judge and two
Assessors to
constitute Court.
1894, No. 42, sec. 51
When claim not
more than £1,000,
District Court Judge
or Magistrate may
be deputy.
Ibid, sec. 52
Deputy may be
objected to.
Ibid, sec. 53

When claim exceeds
£1,000, Judge with
consent of parties
may appoint a
District Court
Judge or Magistrate
to preside.
Ibid, sec. 54

Parties may agree
on a single person
to constitute the
Court.
Ibid, sec. 55

Court may hear
other claims by
consent.
Ibid, sec. 56

Assessors may be
objected to.
Ibid, sec. 57

Liability to pay
rates not to be
deemed interest in
a case.
Ibid, sec. 58
If Judge interested,
Governor to appoint
another Judge.
Ibid, sec. 59

Provided that if before the first sitting of the Court to hear the claim the claimant and respondent execute and file (in the Court for filing the claim) an agreement in writing that the claim shall be heard and determined by such Magistrate without Assessors, then such Magistrate alone shall constitute the Court, and shall hear and determine the claim accordingly. 5

52. If the amount claimed be more than two hundred and fifty pounds, the Judge of the Supreme Court and the two Assessors so appointed as aforesaid shall, except as hereinafter provided, constitute the Compensation Court, and the Judge shall be the President thereof. 10

53. If the amount claimed be more than two hundred and fifty pounds, and not more than one thousand pounds, the Judge may appoint a Judge of a District Court or Magistrate to be a member of and to preside in the Court in his stead. 15

54. If either the claimant or respondent objects to the person appointed under the *last preceding* section, the Judge shall, unless he considers such objection to be frivolous or unreasonable, cancel such appointment, and preside in the Court himself.

55. If the amount claimed exceeds one thousand pounds, and the claimant and respondent consent in writing that the claim should be heard before a Judge of a District Court or Magistrate, the Judge of the Supreme Court may order that such claim shall be heard accordingly, and may appoint a Judge of a District Court or Magistrate, as the case may be, to preside in the Court instead of the Judge of the Supreme Court. 20 25

56. (1.) If, before the first sitting of the Court to hear any claim as hereinbefore provided, the claimant and the respondent make and execute an agreement in writing to the effect that the claim in question shall be heard and determined by one person named in such agreement, such agreement shall also state the fee (if any) to be paid such person for his services, and shall be filed in the Court for filing the claim. 30

(2.) The person so named shall be deemed to be the Compensation Court; and shall appoint a time and place for the sitting thereof, and shall hear and determine the claim accordingly. 35

57. A Court constituted to hear any claim under this Act may, by consent in writing of the claimant and respondent in any other claim, in respect of the same or of any other land, hear and determine such last-mentioned claim as though the Court had been constituted to hear and determine the same. 40

58. If either party, before the first sitting of the Court, objects to the appointment of any Assessor, the President may, upon the application of such party, unless the objection appears to be frivolous or unreasonable, order the Assessor so objected to to be discharged, and the person having appointed him shall, within twenty-one days after such order, in like manner appoint another in his stead, failing which the Registrar of the Supreme Court shall forthwith appoint one in his stead. 45

59. No member of the Court shall be deemed to be interested in any case solely on account of his liability to pay rates on which the compensation awarded may become a charge. 50

60. If the Judge is interested in the claim to be heard, the Governor shall appoint some other Judge of the Supreme Court to act in his stead.

61. (1.) If, before the award is given, any member of the Court dies or becomes incapable of acting, or (being an Assessor) resigns or refuses to act, the following provisions shall apply :—

Case of member of Court dying, resigning, refusing or unable to act.
1894, No. 42, sec. 60
1900, No. 47, sec. 4

- 5 (a.) If such member is the President (being a Judge of the Supreme Court), then, in his place, the Governor shall forthwith appoint some other Judge of the Supreme Court.
- (b.) If such member is the President (not being a Judge of the Supreme Court), then, in his place, the Judge shall forthwith appoint some other Judge of the District Court or Magistrate, as the case may be ; and
- 10 (c.) If such member is an Assessor, then, in his place, the person who made the appointment shall forthwith, or, if he fails to do so, the President shall, appoint a fresh Assessor.
- (2.) But the inquiry before the Court shall proceed as if no such
15 change in its members had taken place.

The Hearing.

62. The President shall appoint the time and place for the first sitting of the Court, and shall, not less than twenty-one days before such sitting, cause a notice of such time and place to be served on each
20 Assessor and upon the claimant and respondent severally.

Sittings of Court.
1894, No. 42, sec. 61

63. (1.) If the claimant or respondent fails to appear before the Court at the time and place appointed, the Court may, upon proof of the service of the notice of such sitting, proceed to hear and determine the claim in his absence.

Hearing to proceed in absence of parties.
Ibid, sec. 62

25 (2.) Any person entitled under section thirty-eight hereof to make a claim for compensation shall be entitled to appear before the Court in the same manner as a claimant may do.

(3.) Either party may appear either personally, or by his counsel or solicitor, or by any agent appointed in writing in that behalf.

30 64. The Court, or, in the absence of the President or either of the Assessors, the member or members of the Court present, may adjourn its sittings so often as is necessary to a future day, of which the President or such member or members, as the case may be, shall give notice in open Court ; and no further notice of such future sitting shall be necessary.

Court may adjourn.
Ibid, sec. 63

35 65. (1.) The Court shall have power to summon all persons required by either party or by the Court to give evidence before it, and may examine all such persons upon oath, and may require the production of any documents, plans, or other papers in the custody or control of either party.

Court to examine witnesses, &c.
Ibid, sec. 64

40 (2.) The claimant and respondent, and their counsel, solicitors, witnesses, and all other persons attending the Court, shall have the same rights and privileges, and shall be subject to the same obligations, fines, and penalties, as in the trial of an action at law in the Court for filing the claim.

45 (3.) The Court shall, until it has made its award, have all the powers of the Court for filing the claim so far as may be necessary for inquiring into and determining the claim referred to it.

(4.) The Court may receive such evidence as it thinks fit, whether the same is strictly legal evidence or not.

50 66. Every question before the Court shall be determined by a majority of the members thereof, but the determination of the majority shall be deemed to be the award of the whole Court.

Questions to be determined by majority.
Ibid, sec. 65

If Court unable to agree.
1894, No. 42, sec. 66

67. If the Court is unable by a majority to agree upon an award, the President shall discharge the Assessors, and cause notice thereof to be given to the claimant and respondent; and a fresh Court shall be constituted in the manner provided by this Act, which shall hear the case *de novo*.

5

When questions of law alone to be determined, President may sit alone and determine the same.
Ibid, sec. 67

68. (1.) In any case brought before a Compensation Court, where any question of law arises, the President may hear and determine the same without the Assessors; or he may, if he think fit, state a case for the decision of the Supreme Court thereon.

(2.) Such determination or decision shall be followed by the Compensation Court on making its award.

10

The Award.

How compensation to be estimated.
Ibid, sec. 68

69. In determining the amount of compensation to be awarded the Court shall take into account severally the value of the land or interests in land (including riparian rights) taken, and the extent to which any lands in which the claimant has an interest are or are likely to be injuriously affected, either by severance or by the nature of the works in question, and shall also take into account, by way of deduction from the amount of compensation to be awarded, any increase in the value of such lands likely to be caused by the execution of such works.

20

Value of land taken to be assessed at its value when first entered upon.
Ibid, sec. 69

70. The value of land taken or injuriously affected shall be assessed for the purpose of ascertaining the amount of compensation, if any, at its value at the time when it was first entered upon for the purpose of constructing or carrying out a public work thereon.

Anything done by claimant to make execution of work more costly to be taken into account.
Ibid, sec. 70

71. (1.) If the Court is of opinion that the claimant in respect of any land taken for a public work has, at any time after the date prescribed in subsection *two* hereof, done anything upon or under such land with the purpose and effect of rendering the execution of such work more difficult or costly, the Court shall take into account, by way of deduction from the amount of compensation to be awarded, any increase in the cost of executing such work caused or likely to be caused thereby; and if, in the opinion of the Court, such increase in cost exceeds the value of the land taken, the award shall be for the payment by the claimant to the respondent of the amount of such excess and the costs of the inquiry.

35

(2.) The date mentioned in subsection one hereof shall be, in the case of a railway, the date of the first gazetting of the Proclamation defining the middle line thereof; and, in the case of any other work, the date of the first publication of the notice mentioned in paragraph (c) of section *eighteen* hereof.

40

Gross sum, or separate sums, may be awarded, and conditions attached.
Ibid, sec. 71

72. The Court may award one gross sum as the compensation to be paid to the claimant on all accounts, or it may award a particular sum in respect of any one or more of the items of the claim, and subject respectively to such conditions as it may think equitable, or it may determine that no compensation is payable in respect of the whole claim or any particular item or items thereof.

45

Fees to Assessors hearing claims.
Ibid, sec. 72

73. Every Assessor shall be entitled to a fee for every day upon which he attends a sitting of the Court in respect of each claim heard therein, the amount of such fee to be fixed by the President in each case, regard being had to the length of the sitting and the importance of the case.

50

74. (1.) The Court shall fix and determine the amount of the costs of the inquiry as between party and party, and shall include the same in its award, and shall direct by whom such costs shall be paid.

(2.) But if the compensation awarded does not exceed one-half of the amount claimed, the claimant shall not be entitled to recover any costs.

(3.) The Court may in any case declare that no costs shall be awarded, and the fact shall be stated in the award.

75. Costs payable by the claimant may be deducted from the compensation payable to the claimant under the award; and if such costs exceed the compensation payable, the award shall be for the payment by the claimant of the amount of such excess.

Costs may be deducted from compensation awarded.
Ibid, sec. 74

76. No award of a Compensation Court shall be void through any error or omission in matter of form.

Award not void for informality.

77. (1.) The Court shall make its award in writing, which shall be drawn up and signed by the President as soon as conveniently may be after the making thereof; and the President shall deliver or transmit the same to the Registrar of the Supreme Court, to be by him filed in the said Court.

Ibid, sec. 75
Award to be in writing.
Ibid, sec. 76

(2.) The Court may, within one month after making the award, reverse, alter, or modify the same; and may hear such evidence and make such order as to costs or otherwise as the Court may deem just.

(3.) Such award shall be final as regards the amount awarded, but shall not be deemed to be final as regards the right or title of the claimant or any other person to receive the same or any part thereof.

And final as to amount, but not as to title.

(4.) But if the sum awarded is not paid into the Public Trust Office, under paragraph (a) of section seventy-eight hereof, within sixty days after the filing of the award in the Supreme Court, the award so made and filed shall have the effect of a judgment of the Supreme Court, and may be enforced accordingly, subject, however, to the provisions of this Act.

When and how enforced.

Title to and Application of Compensation and Purchase-money.

78. If any doubt or dispute arise as to the right or title of any person to receive any compensation awarded under this Act, or any purchase-money or compensation agreed to be paid by the Minister or a local authority under this Act,—

When title doubtful, compensation or purchase money to be paid into the Public Trust Office.
Ibid, sec. 77

(a.) In the case of compensation awarded by the Court, the respondent may, within the period of sixty days after the award has been filed in the Supreme Court, cause the sum awarded to be paid into the Public Trust Office; and the Public Trustee shall deal with and apply such moneys in such manner and shall pay the same to such persons as the Supreme Court, upon the application of any of the parties interested, may order.

(b.) In the case of purchase-money or compensation agreed to be paid, the Minister or local authority respectively may pay the same into the Public Trust Office; and the Supreme Court may make such order in relation thereto, upon the application of any of the parties interested, as it thinks just and proper; and the Public Trustee shall deal with and pay

Procedure when purchase-money paid into Public Trust Office.

such purchase-money or compensation in accordance with such order.

Order as to costs.

- (c.) In any case which may be heard or disposed of by the Supreme Court under the preceding provisions of this section, such Court may order that all or any costs which may have been incurred in or in relation to such case, either before the Compensation Court or the Supreme Court, shall be paid by such of the parties, whether claimant, respondent, or a person interested as aforesaid, or that such costs be apportioned between such parties in such manner respectively as the Supreme Court may order; and such Court may vary or revoke any order previously made by a Compensation Court as to costs. 5 10

How compensation in case of limited interests to be dealt with.

1894, No. 42, sec. 78

79. (1.) If compensation is awarded or has been agreed to be paid as last aforesaid in respect of lands or any interest therein taken from any person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same, or in respect of any permanent injury done to such lands, such compensation shall be dealt with as follows, that is to say :— 15

- (a.) If the compensation amounts to two hundred pounds or upwards it shall be paid into the Public Trust Office, and the Public Trustee shall apply the same, upon an order of the Supreme Court made on the petition of any person claiming any estate or interest in the same, to one or more of the following purposes, that is to say :— 20 25

(i.) To the discharge of any debt or encumbrance affecting the said lands, or affecting any of the lands settled therewith, or to the same or like uses, trusts, or purposes ;

(ii.) In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, or purposes ; 30

(iii.) In removing any buildings on the said land, or substituting others in their stead ;

(iv.) In the purchase of such securities as the Supreme Court may direct, to be settled in the same manner as the said lands ; 35

(v.) In payment to any party becoming absolutely entitled thereto.

- (b.) If the compensation is more than twenty but less than two hundred pounds it shall be paid into the Public Trust Office, and the Public Trustee may apply the same to any of the above-mentioned purposes; but no order of the Supreme Court shall be necessary. 40

- (c.) If the compensation is not more than twenty pounds it shall be paid to the parties entitled to the rents and profits of the said lands; or, in case of the disability or incapacity of such parties, to their respective husbands, guardians, committees, or trustees, as the case may be. 45

Saving as to partial interests of an absolute character.

(2.) But the provisions of this section shall not be deemed to prevent any person who has a partial or other qualified interest in land to which interest he is solely entitled, and which he may absolutely sell or dispose of, from receiving any compensation in respect of such interest 50

to which he may be declared entitled under any award, or which has been agreed to be paid to him as aforesaid.

80. Until any compensation deposited in the Public Trust Office under this Act is applied as provided by the *last preceding* section hereof, the Public Trustee shall invest the same upon investments upon which any moneys in the Public Trust Office may by law be invested, and shall pay the annual proceeds thereof to the party for the time being entitled to the rents and profits of the lands in respect of which such compensation was awarded.

Public Trustee may invest compensation-money.
1894, No. 42, sec. 79

10 81. (1.) If the land in respect of which compensation is awarded is subject to a mortgage, such compensation, or so much thereof as is required for the purpose, shall, upon the application of the mortgagee, be paid in discharge of the mortgage debt, or of part thereof, so far as the compensation will go; and if such land is a part of lands subject
15 to a mortgage debt, and the mortgagee requires a part of such debt to be discharged, the Court shall determine what part of the compensation shall be paid in discharge of part of the mortgage debt, so that the remaining part of the mortgaged lands shall constitute as good security as theretofore for the part of the mortgage debt remaining undischarged.

Case of mortgaged lands taken.
Ibid, sec. 80

20 (2.) The words "mortgage debt" in this section shall include the interest payable on such mortgage up to six months beyond the day on which notice was received by the mortgagee of the lands affected being taken under this Act.

25 82. (1.) If the said land is subject to any rent-charge, the Court shall determine what part of such compensation shall be paid to the party entitled to such rent-charge in redemption thereof; and if the said land is part of land subject to any rent-charge, the Court shall determine what part of such rent-charge shall be redeemed and what part of such compensation shall be paid in the redemption thereof, so that the remain-
30 ing part of the lands subject to such rent-charge shall be as good security as theretofore for the part of the rent-charge remaining unredeemed.

Case of lands subject to rent-charge.
Ibid, sec. 81

(2.) The expression "rent-charge" includes "annuity."

35 83. If the said land is part of land in respect of which any rent is payable, the Court shall determine what part of such rent shall cease to be payable, so that the remaining rent payable shall bear the same proportion to the whole rent as the value of the land in respect of which compensation is awarded bears to the value of the whole land.

Case of lands on which rent is payable.
Ibid, sec. 82

Payment and other Satisfaction of Compensation and Purchase-money.

40 84. In any case where the amount of compensation or purchase-money to be paid to any person has been or may hereafter be determined by agreement between such person and the Minister, the Minister may agree to grant to such person, his heirs, executors, administrators, assigns, and successors, any easement, right of way, right of occupation, or any other right, privilege, or concession in, upon, over, or under any
45 land taken or reserved for the purpose of any public work, in satisfaction or part satisfaction or mitigation of the compensation claimed by such person:

Minister may agree to grant easements in lieu of compensation or purchase money.
Ibid, sec. 83

50 Provided that no such agreement shall be of any validity at law or in equity until notice of the assent of the Minister thereto has been duly gazetted.

Court may award easements in lieu of compensation.

1894, No. 42, sec. 84

Governor may grant surplus land in lieu of compensation.

Ibid, sec. 85

1900, No. 47, sec. 5

Out of what funds compensation to be paid.

1894, No. 42, sec. 86

Power to take.

Ibid, sec. 87

Taking for work other than railway or defence work.

Ibid, sec. 88

85. In any case where the amount of compensation to be paid to any claimant has been or may hereafter be determined by the Court, the respondent may offer, and the Court may award to the claimant, his executors, administrators, assigns, and successors, in satisfaction or part satisfaction or mitigation of the compensation claimed, any easement, right of way, right of occupation, or any other right, privilege, or concession in, upon, over, or under any land taken or reserved for the purpose of any public work; and the Compensation Court may, by its award, declare which (if any) of such easements, rights, privileges, or concessions so offered shall be granted to the claimant in satisfaction or part satisfaction or mitigation of his claim to compensation.

86. In payment or satisfaction or in part payment or satisfaction of the compensation payable for any land which has been or which may hereafter be taken, purchased, or acquired, or for any damage done or which may hereafter be done by reason of the construction or use of a public work, the Governor may grant to the person entitled any Crown land or any land reserved or taken, purchased, or acquired for the use, convenience, or enjoyment of the said public work, but which is not required for such public work:

Provided that, before such land is conveyed, the Minister shall certify that the land to be conveyed has been valued by a competent person, and that the total value (with money compensation, if any) does not amount to more than the sum which would be paid by the Government for the land taken, purchased, or acquired and the damage done if compensation for the same were made wholly in money in the usual way.

87. Moneys payable as compensation or as costs under this Act shall,—

(a.) If payable by the Minister, be paid out of moneys appropriated by Parliament for the works in respect of which the claim for compensation arises;

(b.) If payable by a local authority, be paid out of the fund of such local authority available for such purposes:

but neither the Minister nor any member of a local authority shall be personally liable for any compensation or costs which may become payable under this Act.

PART IV.

NATIVE LANDS.

Taking for Public Works.

88. Notwithstanding anything contained in any law in force to the contrary, any Native land and any land owned by Natives under title derived from the Crown may be taken for any public work in manner hereinafter provided.

89. Whenever it may be necessary to take any such land for any public work other than a railway or than for defence purposes the following provisions shall apply:—

(a.) Where the title to such land is not derived from the Crown,— Title not derived from Crown.

(i.) A map shall be prepared in duplicate, showing accurately the position and extent thereof, and shall be signed by the Surveyor-General, or some authorised surveyor appointed by him to certify plans for the purpose of any Act relating to the conveyance or transfer of land, as evidence of the accuracy thereof.

(ii.) At any time thereafter the Governor in Council may, by Order in Council, to be gazetted for at least one month after the making thereof, declare that the lands shown upon such map shall be deemed to be taken for the purposes of such public work; and thereupon such land shall vest in His Majesty or the local authority, as the case may require, as from a date to be named in such Order in Council, not being less than one month from the date of the first gazetting thereof, unless in the meantime revoked.

(iii.) The Minister shall, as soon as may be after the date so named in such Order in Council, cause a copy of the same, if unrevoked, to be lodged in the office of the Surveyor-General, who shall cause the land included therein to be shown upon the proper maps and records of the district in which it is situated in such manner as to prevent such land being disposed of in any manner at variance with such Order in Council.

(b.) Where the title to such land is derived from the Crown the land may be taken in the manner set forth in Part II. of this Act. Title derived from Crown.

90. Whenever it may be necessary to take any such land for any railway authorised to be constructed under the provisions of any special Act, or for defence purposes, whether the land to be taken is Native land or the title thereto is derived from the Crown, such land may be taken for any such railway in the manner prescribed in Part VII. of this Act, and, for defence purposes, in the manner prescribed in Part IX. of this Act. Taking for railway or defence work. 1894, No. 42, sec. 89

Compensation.

91. For the purpose of ascertaining the amount of compensation to be paid to the Natives interested in any Native land, or to the Native owners of any land held or owned under title derived from the Crown, the following provisions shall apply :— Compensation to Native owners and others to be ascertained by Native Land Court in all cases. Ibid, sec. 90

(a.) The Minister, in the case of a Government work, may at any time, and the local authority, in the case of a local work, shall, not later than six months after the date of the first gazetting of the Order in Council or Proclamation taking the land, cause application to be made to the Native Land Court to ascertain what amount of compensation ought to be paid to the owners of or other persons interested in such land, and who are the persons entitled to be paid such compensation; and, after hearing such evidence as may be produced before it or may be thought necessary, such Court may make such order or orders as to it seems fit :

(b.) Provided always that if any person, whether a Native or European, has any estate of leasehold or other par-

ticular estate in, or any mortgage or charge upon, such land, the Native Land Court shall in and by the same order or orders ascertain and determine what part of the whole compensation shall be paid to such person, and no Court constituted under Part III. of this Act shall have jurisdiction to entertain the claim of any such person for compensation; and every sitting of the said Court to be held for the purpose of dealing with such land shall be duly notified in the *Gazette* and *Kahiti*. 5

- (c.) The Native Land Court shall have all such authority and jurisdiction in respect of any such application as it would have in any matter within its ordinary jurisdiction; and, in addition thereto, shall have all the powers and authority of a Compensation Court under Part III. of this Act. 10
- (d.) The compensation ascertained by the Court to be payable to the owners or occupiers of the land taken, or other persons having particular estates, mortgages, or charges, shall be paid to them as soon as practicable after the making of the order of Court; and from one month after the date of such order interest on the sum awarded, or on so much thereof as is not then paid, shall, until the same is paid, be payable at a rate not exceeding five per centum per annum. 15 20

Roads.

Procedure for
taking roads.
1894, No. 42, sec. 91

92. Notwithstanding anything in the foregoing provisions of this Part of this Act,— 25

- (a.) A road may be taken and laid off under the provisions of the *next following* section in the manner formerly in use for the taking and laying-off of roads under the like provisions contained in "The Native Land Court Act, 1886," or any Act passed in amendment thereof or substitution therefor. 30
- (b.) No compensation shall be payable in respect of any land taken for a road under the provisions of the *three next following* sections, or in respect of any land taken for a railway over which there is at the time of the taking thereof an existing right in the Governor, under the provisions of the three next following sections, to take the same or a greater quantity of land for a road or roads, or in respect of any Native land taken for a road or railway, of which the ownership had not, at the time of the taking thereof, been determined by the Native Land Court, where the area taken does not, in the opinion of the Native Land Court, exceed the quantity which the Governor would have had a right to take under the next following section out of the land of which it forms a part had the ownership thereof been so determined. 35 40

No compensation
payable.

Over what lands
roads may be
laid off.
Ibid, sec. 92

93. (1.) From and out of any land which has been or may be granted under the provisions of any Act repealed by "The Native Land Act, 1873," or by "The Native Land Court Act, 1886," or by "The Native Land Court Act, 1894," or which has been or shall be granted, or has or shall become the subject of Land Transfer certificate under the provisions of "The Native Land Court Act, 1886," or any Act passed in amendment thereof or substitution therefor, or which is owned by 45 50

Natives under Native Land Court certificate of title or under memorial of ownership, it shall be lawful for the Governor, at any time hereafter, to take and lay off for public purposes one or more line or lines of road through the said land :

5 Provided that the total quantity of land which may be taken, in- Limit of quantity.
clusive of any already taken, for such line or lines of road shall not
exceed one-twentieth part of the whole.

(2.) The Governor may at any time, by indorsement on the Crown
grant, or on a subsequent or other instrument of title, or by deed, release
10 the land the subject of such right therefrom or from any part thereof.

94. But there shall not be taken under the authority of the last- Exception of
cultivations, &c.
1894, No. 42, sec. 93
preceding section any land occupied by any pa, village, or cultivation,
or any buildings, gardens, orchards, plantations, or any burial or orna-
mental grounds, without the previous consent of the Governor in Council.

15 95. The powers given by section ninety-three hereof as to public Within what time
right must be
exercised.
roads shall cease,—

(a.) As to land the subject of a grant or certificate issued under Ibid, sec. 94
“ The Native Land Court Act, 1886,” or any Act passed in
amendment thereof or substitution therefor, at the end
20 of fifteen years from the date of such grant or certificate ;

(b.) As to grants issued under any Act repealed by “ The Native
Land Court Act, 1886,” at the time when such power
would have ceased under such repealed Act.

96. (1.) Whenever any lines of road are surveyed and laid off on Laying-off of roads
by Surveyor-
General.
Ibid, sec. 95
25 or over any Native land, under the direction of the Surveyor-General,
the site of such road shall be deemed to be a road dedicated to the public,
and shall vest in His Majesty.

(2.) When any road is laid off along the boundary between land
owned by Natives and land owned by Europeans, such road shall be
30 taken equally from both such lands where practicable.

PART V.

SURVEYS.

97. (1.) For all the purposes of this Act the Minister for Public Powers of entry on
lands, &c., for
survey purposes.
Ibid, sec. 96
35 Works, the Minister of Lands, the Surveyor-General or his deputy, or
any local authority, or any person authorised either specially or generally
by any such person or authority,—

(a.) May enter and re-enter from time to time during the day-
time upon any land, with such assistants as he thinks fit,
40 for the purpose of making any survey which he is authorised
to make ;

(b.) May affix or set up thereon trigonometrical stations, survey
pegs, marks, or poles, and the same from time to time alter,
remove, inspect, and repair ;

(c.) May dig and bore into the land so as to ascertain the nature
of the soil and set out the lines of any works thereon ;
45

(d.) May do all things necessary for such survey in accordance with
existing regulations, or for any inspection, repair, or altera-
tion thereof.

(2.) When practicable, reasonable notice shall be given to the owner or occupier of the land of the intention to enter thereon; and the authority under which the person entering claims to enter or has entered on such land shall, if required by such owner or occupier, be produced and shown.

Penalty for destroying survey marks.
1894, No. 42, sec. 97

98. Every person who, without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any surveyor or other person under the authority of the *last preceding* section shall be liable, on summary conviction, to imprisonment with or without hard labour for any term not exceeding two years; and every person who wilfully obstructs any such surveyor or other person or his assistants in carrying on such survey shall for every such offence be liable to a fine not exceeding fifty pounds.

Native cultivations protected.
Ibid, sec. 98

99. (1.) Nothing herein contained shall authorise any surveyor to enter upon any Native cultivation for the purpose of taking a road under the authority of this Act without the previous consent of the Governor in Council.

(2.) A "Native cultivation," wherever the term is used in this Act, means any land regularly used by Natives for the growth of food-crops for their own consumption.

PART VI.

ROADS AND RIVERS.

Construction and Maintenance of Roads.

Interpretation.
Ibid, sec. 99

100. (1.) Either the Minister of Lands appointed under "The Land Act, 1892," or the Minister for Public Works appointed under this Act, may administer this Part of this Act; and the word "Minister," wherever it occurs throughout this Part of this Act, means either the Minister of Lands or the Minister for Public Works.

Certain provisions of "The Municipal Corporations Act, 1900," saved.

(2.) This Part of this Act shall, so far as concerns boroughs, be construed subject to the repealing provisions of section four hundred and thirty-three of "The Municipal Corporations Act, 1900," in cases where those provisions apply.

Proviso.

Provided that those repealing provisions shall not operate to apply to boroughs any provision of this Part of this Act which in the absence of those provisions would not so apply.

Definition of road.

Ibid, sec. 100
1903, No. 93, sec. 7

101. Throughout this Act the word "road" means a public highway, whether carriage-way, bridle-path, or footpath; and includes the soil of—

- (a.) Crown lands over which a road is laid out and marked on the record maps :
- (b.) Lands over which right of way has in any manner been granted or dedicated to the public by any person entitled to make such grant or dedication :
- (c.) Lands taken for roads under the provisions of this Act or any other Act or Provincial Ordinance formerly in force :
- (d.) Lands over which a road has been or is in use by the public which has been formed or improved out of the public funds, or out of the funds of any former province, or out of the District Fund of any local authority, for the width formed,

used, agreed upon, or fenced, not being more than fifty links on either side of the middle line thereof, and a sufficient plan whereof, approved by the Chief Surveyor of the land district wherein such road is situate, has been or is hereafter registered by the District Land Registrar or the Registrar of Deeds of the district against the properties affected by it; and the said Registrars, or either of them, are hereby authorised and required to register any such plans accordingly, anything contained in any other Act notwithstanding, when presented for registration by or on behalf of the Minister :

(e.) Lands over which any road, notwithstanding any legal or technical informality in the taking or construction thereof, has been taken, constructed, or used under the authority of the Government of any former province, or of any local authority, and a sufficient plan whereof is registered in manner provided in the last preceding paragraph :

and, unless repugnant to the context, includes all roads which have been or may hereafter be set apart, defined, proclaimed, or declared roads under any law or authority for the time being in force, and all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging, upon the line and within the limits of the road.

102. All roads and the soil thereof are hereby declared to be and are hereby vested in His Majesty, together with all materials and things of which such roads are composed, or which are capable of being used for the purposes thereof, and are placed or laid upon any such roads.

Roads vested in the Crown.
1894, No. 42, sec. 101

103. (1.) The Governor may construct or repair any road within any part of New Zealand, but such road shall not by reason of such construction or repair become a Government road if at the time of

Governor may make roads.
Ibid, sec. 102

(2.) The Governor may, by Order in Council duly gazetted, declare that any road shall be a Government road, and such road shall become a Government road accordingly.

And declare Government, county, district, and town district roads and streets.

(3.) The Governor may, in like manner, declare that any road shall be a county or district road, and such road shall become a county or district road accordingly.

(4.) The Governor may, in like manner, declare that any road or street constructed or controlled by the Governor within the limits of a borough shall be under the control and management of the Council of the borough, and such road or street shall thereupon be deemed to be a street within the meaning of section two hundred and nine of "The Municipal Corporations Act, 1900."

1900, No. 47, sec. 6

(5.) The Governor may, in like manner, declare that any road constructed or controlled by the Governor within the limits of a town district shall be under the control and management of the Town Board, and in such case the road shall be deemed to be a town district road.

1903, No. 93, sec. 8

(6.) The powers hereby conferred on the Governor in Council may be exercised from time to time, and any Order in Council made hereunder may be revoked or altered, and a fresh Order in Council may be made, as often as the Governor in Council thinks fit, and every such Order in Council shall have full effect according to its tenor.

County Council may make county roads, and declare county and district roads.

1894, No. 42, sec. 103

Roads in outlying districts.

Ibid, sec. 104

Powers of Governor and County Councils over Government and county roads.

Ibid, sec. 105

1904, No. 46, sec. 7

Roads to be under control of Road Boards.

1894, No. 42, sec. 106

County Council may vest control of road or part of road in local authority.

Ibid, sec. 107

104. The County Council may make county roads throughout the county; and, by an order publicly notified, may from time to time—

- (a.) Declare any district road within the county to be a county road; and, with the consent of the Road Board, revoke such order, and on such revocation the road to which it relates shall again become a district road; 5
- (b.) With the consent of the Road Board within whose district a county road lies, declare any portion of such county road to be a district road. 10

105. Subject to the provisions of any Order in Council made under section one hundred and *three* hereof, all roads in an outlying district, or on the boundaries thereof,—

- (a.) Shall, where the whole of “The Counties Act, 1886,” is in force, be deemed to be county roads; 15
- (b.) Shall, where the whole of “The Counties Act, 1886,” is not in force, be deemed to be Government roads.

106. (1.) All the powers, rights, duties, and liabilities hereby vested in and imposed upon a Road Board in respect of a district road shall,— 20

- (a.) In the case of a county road, be vested in and imposed upon the County Council; and
- (b.) In the case of a Government road, shall be vested in and imposed upon the Governor; and
- (c.) In the case of a town district road, shall be vested in and imposed upon the Town Board— 25

instead of in or upon the Road Board.

(2.) All the rights and powers vested in any local authority by any Act in respect to—

- (a.) The care, management, or control of roads or streets; 30
- (b.) The management, restriction, or prohibition of any traffic thereon;
- (c.) The use of any vehicle, engine, machine, or thing thereon, including the power to impose any charge or tax thereon;
- (d.) The abatement or prohibition of any nuisance thereon; 35
- (e.) The power to make and enforce by-laws for any or all of such purposes—

may, in the case of a Government road, or road or street being constructed, improved, or maintained by Government, be exercised by the Governor. 40

107. All roads, except as herein otherwise provided, shall be under the control of and may be constructed and repaired by the Road Board of the district in which such roads are, and shall be called district roads.

108. (1.) The County Council may, by special order, declare that all or any part of any district road within the county shall, from and after a date to be fixed therein, be under the exclusive control of such local authority within the county as is mentioned in such special order; and may, by the same special order, direct that the cost of constructing and maintaining any such road or part of a road shall be borne either by the local authority to which the exclusive control thereof is given, or that a 45 50

proportion of such cost to be fixed in and by such special order shall be borne by any other local authority or local authorities; and the local authority to which such exclusive control is granted may recover from such other local authority or local authorities in any Court of competent jurisdiction the share so fixed of any reasonable expenditure incurred in constructing and maintaining any such road or part of a road as aforesaid.

(2.) The County Council may, in like manner and with like effect, with the consent of the Town Board, declare that any part of a county road within the town district shall be under the control of and be constructed and maintained by the Town Board, and thereupon it shall be the duty of the Town Board to construct and maintain such part.

(3.) Wherever the operation of "The Counties Act, 1886," is suspended, the Governor shall have and may exercise all the functions vested in a County Council under this section.

Governor to exercise powers in certain cases.

109. (1.) In any case where a road in one district is largely used by or for the purpose of traffic to or from any other district or districts, and affords access to or from such district or districts, and the Governor is of opinion that it is equitable that the latter district or districts should contribute towards the cost of constructing or maintaining the whole or any portion of such road in the former district, the Governor may from time to time apportion the cost of constructing or maintaining the whole or any part of such road among the local authorities of the respective districts as he thinks fit; and for that purpose, and to enable effect to be given hereto, the provisions of section one hundred and *eighteen* hereof shall, *mutatis mutandis*, apply in the case of the construction or reconstruction of the road, and the provisions of section one hundred and *nineteen* hereof in the case of the maintenance of the road.

Apportionment of cost where road used principally by traffic from another district.

1900, No. 47, sec. 8
1903, No. 93, sec. 4

(2.) The word "road" in this section includes, in the case of a borough, a street or other thoroughfare.

110. (1.) Where a road lies lengthways on the boundary of a borough, such road, whether included in whole or in part in such borough or not, shall be under the control of and shall be constructed and maintained by the borough; and with respect to every such road the following provisions shall apply:—

Control and cost of road on boundary of borough.

1900, No. 47, sec. 7

(a.) The cost of such construction and maintenance shall be borne by the Council of the borough and the local authority of every district of which such road is also a boundary, or which is benefited by the construction or maintenance thereof, in such proportions as may be mutually agreed upon.

(b.) If any dispute arises respecting the apportionment of such cost, such dispute shall be decided by the Governor, who may from time to time declare that the whole of such cost shall be borne by the Council of the borough, or may apportion the same among all or any of the local authorities concerned in such manner as he thinks fit.

(c.) Prior to making such declaration or apportionment the Governor may, if he thinks fit, appoint a Commissioner to inquire into the matter and report thereon, and such Commissioner shall have the powers set forth in paragraph (d) of subsection *two* of section one hundred and *eighteen* hereof, or such other powers as the Governor thinks fit to confer.

(d.) The share, if any, of the cost to be contributed by any local authority as aforesaid may be recovered by the Council of the borough in any Court of competent jurisdiction.

(2.) This section shall be construed subject to sections two hundred and thirteen to two hundred and seventeen of "The Municipal Corporations Act, 1900," in cases where those sections apply. 5

Roads on boundaries
of counties.
1894, No. 42, sec. 109

111. All or any of the powers in relation to the control of roads on the boundaries of counties, and the cost of constructing and maintaining the same, conferred upon the Governor by section two hundred and fifty of "The Counties Act, 1886," may be exercised from time to time as occasion may require; and any instrument issued or direction given by him under the provisions of the said section may be revoked, altered, or varied in such manner as the Governor may deem expedient. 10

Powers of a Road
Board over district
roads.
Ibid, sec. 11C

112. (1.) The Road Board shall have full power to do all things necessary to construct and maintain in good repair any road under its control, and therein especially to do the following things:— 15

(a.) To make surveys for the laying-out of new roads:

(b.) To alter the line of any road:

Provided that no new line of road shall be laid out by the Road Board over Crown lands without the consent of the Land Board: 20

(c.) To increase or diminish the width of any road:

(d.) To determine what part of a road shall be a carriage-way and what part a footpath only:

(e.) To alter the level of any road, except as herein otherwise provided: 25

(f.) To stop up any road as hereinafter provided:

(g.) To stop the traffic upon any road temporarily whilst being constructed or repaired:

(h.) To close any public highway or bridge for such period as may be deemed advisable when it is found necessary to execute such repairs thereto as will prevent the use of the same for traffic: 30

(i.) To enter upon any lands and cut therein such ditches and drains as may be required to drain water from any road and to keep such ditches and drains open at all times for the flow of water; and to erect floodgates therein, and to open or close the same as the Board thinks fit, doing as little damage as may be: 35

(j.) To enter upon any uncultivated and unfenced land adjacent to a road, and make thereon and use a temporary road whilst the road is being constructed or repaired: 40

(k.) After twenty-four hours' notice to the occupier, to enter upon any land, other than land occupied in a *bona fide* manner as a garden or ornamental shrubbery, and dig and take any stone, gravel, or other material therefrom, or from any river or stream, except within fifty yards above or below any bridge, dam, or weir, and so nevertheless as not to divert or interrupt the course of such river or stream, or damage any building, road, or ford. 45

Subject to
compensation for
injury done, &c.

(2.) Reasonable compensation shall be paid for any injury done and material taken; and where any Road Board and the owner or occu- 50

pier of land do not agree as to the compensation, the same shall be determined as provided for in Part III. of this Act.

113. (1.) The provisions of paragraph (k) of the *last preceding* section shall extend and apply to any Native land which has not been partitioned, and to any unfenced and uncultivated land which is unoccupied and the owner of which is unknown or cannot readily be found.

Power to remove gravel, &c., from Native lands and unoccupied land.

1900, No. 47, sec. 9

(2.) In any such case the notice referred to in the said paragraph shall be sufficient if it is legibly written or printed and is posted up in a conspicuous position at or near to the place from which it is intended to remove such stone, gravel, or other material.

(3.) Such notice shall be signed by the Chairman of the Road Board or County Council in the case of district or county roads, by the Chairman of the Town Board in the case of town district roads, and by some person on behalf of the Minister in the case of Government roads.

114. Where a road crosses the boundary of a district or meets another road on such boundary it shall not be lawful to alter the level of such road or roads at such point of crossing or meeting unless both the parties having the control of the roads respectively agree as to the new level at such point.

Level of road on boundary of a district to be as agreed on.

1894, No. 42, sec. 111

115. (1.) Where land purchased from the Crown has no existing access by road, and access can only be gained by passing through adjoining land, the owner of the first-mentioned land may, if such adjoining land is the property of the Crown, serve upon the Minister a notice claiming that a way of access by road from and to the nearest public road shall be laid off through such adjoining land, and it shall be the duty of the Minister to direct that such way of access be provided.

Access to land to which there is no road.

Ibid, sec. 112

(2.) If such adjoining land is not the property of the Crown or of such owner, he may, if the local authority within whose jurisdiction such land is situate has refused or neglected to take action in this behalf, in like manner serve a notice upon the Minister requiring that a way of access by road through such adjoining land shall be provided, and it shall be the duty of the Minister and he is hereby empowered to provide the same by taking or acquiring the necessary land, subject always to the following conditions :—

(a.) The Minister shall ascertain the cost of taking or acquiring the land required for such road, and if such cost does not exceed one-fifth of the sum paid to the Crown as the purchase-money of the land to which access by road is to be provided, then the cost of taking or acquiring the land for such road shall be defrayed out of the Consolidated Fund.

If private land adjoining, how land for road to be acquired.

(b.) If such cost exceeds one-fifth of the sum so paid to the Crown, then the person applying for such road shall repay such excess to the Minister upon his demand, and may be required to make such payment, or to give security therefor to the satisfaction of the Minister, before the land for such road is taken or acquired.

(c.) If any part of the purchase-money of the land to which access is to be provided has been paid to any local authority, then such local authority shall, on demand of the Minister, refund to him a proportionate share of such cost not exceeding the amount received by such local authority on account of such purchase-money.

Refund by local authority.

Where land sold,
road to give access
to be dedicated to
public use.

1903, No. 93, sec. 2
1904, No. 46, secs.
5, 14

116. (1.) Where the owner of any land sells any part thereof he shall (unless such part has a frontage to an existing road, street, or private street) provide and dedicate as a public road or street, a strip of land of not less than sixty-six feet in width, giving access to such part from some existing road, street, or private street :

Provided that this section shall, so far as it relates to land within a borough, be read subject to the provisions of section two hundred and thirty-six of "The Municipal Corporations Act, 1900," and shall not extend or apply to the sale of land to the owner of any adjoining land, or to any case where the local authority is satisfied that the land sold is not intended to be used for the erection of a dwellinghouse, and resolves that this section shall not apply.

(2.) The owner shall form the road or street so dedicated to the satisfaction of the local authority, and shall, where the road or street is in a borough or town district, or is within the County of Selwyn, if so required by the local authority, metal the road or street, or any required portion thereof, to the satisfaction of the local authority, and shall also construct in connection therewith such drains and footpaths as may be agreed upon between the owner and the local authority.

(3.) The dedication shall be by instrument in writing under the hand of the owner, and registered by him in the office of the District Land Registrar or, as the case may require, of the Registrar of Deeds.

(4.) The Registrar shall refuse to register any instrument affecting the land unless and until he is satisfied that the owner has complied with the requirements of this section :

(5.) The road or street so dedicated shall be deemed to be vested in and under the control of the Borough Council where the road or street is within a borough, and in all other cases shall be deemed to be vested in His Majesty, and shall be under the control of the local authority.

(6.) For the purposes of this section—

"Owner" means the owner in fee-simple, whether beneficially or as trustee, and includes a mortgagee acting in exercise of power of sale, the Public Trustee, and any local authority, Board, or other body or authority, howsoever designated, constituted, or appointed, having power to dispose of land by way of sale or lease :

"Sale" includes gift, exchange, or other disposition affecting the fee-simple, and lease for any term (including renewals under the lease) of not less than fourteen years.

(7.) The foregoing provisions of this section shall not be deemed to prevent the registration of any transfer or conveyance of any allotment or subdivision of land abutting on any road or street of not less than forty feet in width shown on any plan of subdivision deposited in any Land Registry Office or Deeds Register Office before the twentieth day of October, one thousand nine hundred, being the date of the passing of "The Public Works Acts Amendment Act, 1900."

117. (1.) Where land having a frontage to an existing road or street of a less width than sixty-six feet is subdivided into allotments for the purpose of sale, the owner shall set back the frontage of the land to a distance of at least thirty-three feet from the centre line of the road or street, and shall dedicate as a public road or street the strip of land between the frontage-line so set back and the frontage-

Where land fronts
road or street of
less width than
66 ft., frontage to be
set back.

1903, No. 93, sec. 3
1904, No. 46, sec. 5

line as previously existing, and the land so dedicated shall form part of such existing road or street :

Provided that this section shall not apply in any case where the local authority having control of the road or street, by resolution, declares
 5 that the provisions hereof shall not apply to any specified road or street, or any specified part thereof, and such resolution is approved by the Governor in Council.

(2.) In cases where the frontage on either side of any road or street has already been set back under the operation of this or any other Act,
 10 or voluntarily by the owner, or by arrangement with the local authority, the centre line of the road or street shall be taken to mean the centre of the road or street as it originally existed.

(3.) The owner of the land so dedicated shall be entitled to compensation by the local authority having control of the road or street ;
 15 such compensation to be assessed under the provisions of this Act.

(4.) If any question or dispute arises hereunder between the owner and a local authority, or the owner or local authority and the District Land Registrar or Registrar of Deeds, such question or dispute shall
 20 be referred to the Minister, whose decision in writing shall be final and conclusive on all parties ; and he may, for the purposes of such decision, cause an inquiry to be held in the manner set forth in section one hundred and *nineteen* hereof.

(5.) Subsections *three to seven* of the *last preceding* section shall apply to this section.

25 *Bridges, Ferries, and Fords.*

118. (1.) For the purposes of this section, if not inconsistent with
 the context,—

“ District ” means and includes a borough, county, town district,
 or road district :

30 “ Local authority ” includes the Minister, in respect of the construction of a bridge or the establishment of a ferry or ford by His Majesty on a Government road, and he shall have and may exercise all the rights, privileges, and authorities conferred upon a local authority by this section in
 35 respect of such work :

“ Work ” means the construction of a bridge (including approaches thereto and protective works in connection therewith, where
 40 necessary) or the establishment of a ferry or ford, with all requisite appliances, including approaches thereto and protective works in connection therewith, where necessary :

“ The construction of a bridge ” includes an addition to the length of a bridge, or the rebuilding of any portion of a bridge
 45 which has been destroyed by fire, flood, tempest, or accident, or the entire rebuilding of a bridge which in the opinion of the Minister requires to be entirely rebuilt.

(2.) In any case where the local authority of any district desires to construct a bridge, or to establish a ferry or ford, in any position
 50 that will, in its opinion, be of advantage and benefit to the whole or any considerable portion of the inhabitants of an adjacent district, as well as to the inhabitants of its own district, and where it is, in the opinion of such local authority, reasonable that the local authority of such

Local authorities
 benefiting by construction of bridge,
 ferry, &c., may be
 compelled to
 contribute thereto.
 1894, No. 42, sec. 113

adjacent district should contribute to the cost of constructing or establishing the said bridge, ferry, or ford, the following provisions shall have effect :—

- (a.) The local authority proposing to construct the work shall prepare plans, specifications, and estimates of the work, and shall send a copy of the same to the Minister and to each local authority which it is proposed should contribute to the cost of the work, together with a notice stating—
 - (i.) The proportion of such cost which it is proposed that each local authority should bear ;
 - (ii.) That after the expiration of two months from the date of such notice being served it is the intention of such local authority to apply to the Governor for power to construct the work, and to recover the proportion of the cost of the same from the local authority mentioned in such notice ; and
 - (iii.) That any objection to the proposal must be sent to the Governor within such period of two months.
- (b.) At the expiration of the aforesaid period of two months the local authority may make application to the Governor for power to construct the work on the terms mentioned in the notice aforesaid.
- (c.) Any local authority making an objection shall state in such objection the grounds thereof, and such local authority shall send a copy of such objection to the local authority proposing to construct the work.
- (d.) If an objection is lodged, the Governor (with the view of determining whether or not the work should be done, or what proportion, if any, of the cost of the same should fairly be borne by any local authority, or what local authority should do the work) may direct any Magistrate or other person to be a Commissioner to inquire into and report to him on the matter, and such Commissioner shall have all the powers and duties mentioned in subsections seven and eight of section one hundred and *nineteen* hereof ; but it shall not be obligatory upon the Governor to act in accordance with the opinion that may be expressed by such Commissioner, or to give effect to any recommendation that may be contained in his report.
- (e.) If no objection is lodged within the two months aforesaid, or if, although an objection is lodged, the Governor is of opinion that the work should be done, he may, if he thinks fit, by warrant under his hand publicly notified and gazetted, authorise any local authority to execute such work, and may declare that a proportion of the cost thereof, to be mentioned in such warrant, shall be borne by any other local authority, and such proportion shall be paid by such local authority accordingly.
- (f.) The local authority empowered to construct the work shall execute and construct the same accordingly, and shall, on the completion thereof, make a demand in writing on any other local authority liable to contribute to the cost of the same.

5 (g.) Such demand shall show in detail the cost of the work and the amount demanded in respect of the same; and if such other local authority does not, within three months from the date of such demand being made, satisfy the same, the first-mentioned local authority may recover the amount, or as much thereof as may be found to be payable, in any Court of competent jurisdiction; but the proportion to be paid as stated in the warrant of the Governor shall be conclusive and binding on such Court, and it shall not be competent for such Court to question the validity of such warrant.

10 (h.) After the construction of the work the control thereof shall be deemed to be vested in the local authority which constructed it; but nothing herein contained shall limit the power of the Governor at any time thereafter to make other provision in respect of such control under section one hundred and *nineteen* hereof.

15 (i.) The provisions of subsection *nine* of section one hundred and *nineteen* hereof shall extend and apply in respect of all matters intended to be provided for under the provisions of this section.

20 (3.) For the purpose of providing the amount necessary to enable any local authority to comply with any order which may be made by the Governor hereunder, such local authority may raise a loan for the said amount in terms of section fourteen of "The Local Bodies' Loans Act 1901," without taking any poll of the ratepayers thereon, and for that purpose, and for the purpose of paying the interest on such loan and repaying the principal thereof, such local authority shall have and may exercise all the powers of "The Local Bodies' Loans Act, 1901," and all the provisions of that Act, where not inconsistent herewith, shall apply to such loan.

25 (4.) Any contribution due by any local authority under any warrant of the Governor hereafter issued under paragraph (e) of subsection *two* hereof, or already issued under the corresponding provisions of any of the compiled Acts, in respect to any bridge constructed by the Minister in pursuance of this Act or of any of the compiled Acts, shall be deemed to be a debt due to His Majesty, and, without affecting any other mode of recovery, may be deducted from any subsidies at any time payable by the Crown to such local authority.

1900, No. 47, sec. 11
1903, No. 93, sec. 9

30 (5.) This section shall extend and apply—

35 (a.) To any works in respect to which the whole or any portion of the moneys required for construction has been or may hereafter be voted by Parliament, and where the Minister is of opinion that it is reasonable that a proportion of the cost of the work should be contributed by any local authority whose district is benefited by the work, and for that purpose the Minister shall be deemed to be a local authority, and shall have all the powers of a local authority, under this section, notwithstanding that he has no district;

40 (b.) To the bridge over the Rangitikei River at or near the Township of Bull's, notwithstanding that a contract may have been already accepted for it by the Government.

Governor may vest control of bridge, ferry, or ford in local authority, and apportion cost of maintenance.

1894, No. 42, sec. 114

119. (1.) For the purposes of this section the words "bridge," "ferry," and "ford" respectively include such approaches to a bridge, ferry, or ford, and such protection-works in connection therewith as may by any warrant under this section be defined to be part of the bridge, ferry, or ford.

(2.) The Governor may, by warrant under his hand publicly notified and gazetted, direct that any bridge already constructed or which may hereafter be constructed, and any ferry or ford already established or which may hereafter be established, over or across any river or arm of the sea respectively shall, from and after a date to be fixed in such warrant, be under the exclusive care, control, and management of the Minister or of such local authority as shall be mentioned in that behalf in such warrant: and

(3.) May, by any subsequent warrant as aforesaid, from time to time vary or alter such care, control, and management: and

(4.) May, by any such warrant, fix and determine whether all or any, and, if so, what part, of the cost, whether theretofore incurred or thereafter to be incurred, of maintaining, repairing, improving, or reconstructing any such bridge, or of managing and maintaining any such ferry or ford, and the machinery and appliances used therewith, is to be provided and paid by any local authority or local authorities (if more than one), and, if so, by what local authority or local authorities (if more than one): and

(5.) May, by any such warrant, direct how, when, and to whom any such payment is to be made; and every payment so directed to be made shall be made as directed by such warrant, and unless so made may be recovered in any Court of competent jurisdiction at the suit of the Minister or local authority, as the case may be, as a debt due to His Majesty or to the local authority to which such payment ought to be so made.

Revenues to be considered in apportioning maintenance.

(6.) In fixing and apportioning the cost of maintaining, repairing, improving, or reconstructing any such bridge, or of managing or maintaining any such ferry or ford, and the machinery and appliances used therewith, the Governor shall take into account the net revenue (if any) derived from or incident to the use of such bridge, ferry, or ford by the Minister or by the local authority, as the case may be, having the care, control, management, or maintenance thereof.

Governor may refer certain questions to Commissioners.

(7.) The Governor may from time to time, with the view of determining whether it is expedient to vest the exclusive care, control, management, and maintenance of any such bridge, ferry, or ford either in the Minister or in any local authority, or with the view of determining the proportion in which it would be fair and reasonable to fix and determine the amount to be provided and paid by any local authority or local authorities for or towards the cost of maintaining, repairing, improving, or reconstructing any such bridge, or of managing or maintaining any such ferry or ford, and the machinery and appliances used therewith, direct any Magistrate or other person to be a Commissioner to inquire and report to him upon any matter which he shall deem necessary to enable him to determine any such question as aforesaid; and such Commissioner shall have all the powers of a Commission appointed by the Governor in Council under the provisions of "The Commissioners Act, 1903."

(8.) Such Commissioner shall report to the Governor, after such inquiry as he deems requisite and reasonable, his opinion as to the matters respecting which he was appointed to report; but it shall not be obligatory upon the Governor to act in accordance with any opinion that may be expressed by such Commissioner, nor to give effect to any recommendation that may be contained in his report.

(9.) All costs, charges, and expenses attending or incidental to the exercise of the powers conferred upon the Governor, or upon such Commissioner or other persons, shall be a charge upon the revenues of such local authority or local authorities as the Governor directs, and may be recovered as a debt due to His Majesty in any Court of competent jurisdiction.

Cost of exercising powers to be paid by local authority.

(10.) In case any local authority or local authorities refuses or neglects to maintain, work, improve, or repair any bridge, ferry, or ford (including the working of swing- or lifting-spans in bridges, where such have been provided) under its or their care, control, and management, or to reconstruct any such bridge, ferry, or ford when requisite, the Minister may undertake such maintenance, repairs, improvements, or reconstruction in the place of the local authority or local authorities so refusing or neglecting as aforesaid, and may provide for the care, working, and management of such bridge, ford, or ferry, and may recover all costs, charges, and expenses attending or incidental to his so doing from such local authority or local authorities, as a debt due to His Majesty, in any Court of competent jurisdiction.

Power to Minister to maintain bridge &c., in case of refusal by local authority, and recover cost.

(11.) In the exercise of the authority conferred upon him by this section the Minister, and any and every person authorised by him, shall have all the powers and authorities which under any law are or may be vested in or could be exercised by the local authority or local authorities in the place of which the Minister is acting.

(12.) Any Proclamation or instrument heretofore issued or made under any of the compiled Acts or any Act thereby repealed, vesting the control of any bridge, ferry, or ford, and apportioning the cost of maintenance thereof, may be revoked, altered, or varied by the Governor from time to time as he may deem expedient, subject to the provisions of this Act.

Proclamation may be varied, altered, or revoked.

120. Any local authority having control of a ferry may let such ferry for a period not exceeding three years.

Local authority may let ferry for three years.

1894, No. 42, sec. 115

Other Provisions.

121. Where any local authority is notified that accrued "thirds" or "fourths" are available for expenditure, and for a period of not less than eighteen months fails to utilise the same, the Minister may give such local authority six months' notice to put in hand works approved by the Land Board to the value thereof; and if during that period the local authority fails so to do, the expenditure of the "thirds" or "fourths" as aforesaid may be undertaken by the Minister, and all rights of the local authority thereto shall be determined.

Expenditure of thirds and fourths.
1904, No. 46, sec. 6

122. The Governor may authorise any local authority to sell or contract to sell and remove any timber, stone, mineral, metal, or other substance upon or under any land vested in it or placed under its control for a public road or other public work:

Local authority may sell stone, &c.
1900, No. 47, sec. 19

Provided that nothing herein contained shall limit the liability of the local authority in respect to damage to person or property by reason of the removal of such timber, stone, mineral, metal, or other substance.

Gates across Roads.

5

Local authority may permit swing-gates to be placed on roads in sparsely populated districts. 1894, No. 42, sec. 116

123. The Minister or the local authority respectively having the control of any road in a sparsely populated district may, by writing, permit any person to erect a swing-gate, including a rabbit-proof swing-gate, across such road ; but the Minister or local authority, as the case may be, may, notwithstanding such permission, cause such swing-gate to be removed at any time, without payment of compensation to the person who may have erected the same or to any person deriving benefit therefrom. 10

Local authority may agree as to gates on roads taken through private lands by agreement. Ibid, sec. 117

124. In the case of any road which has been or may be taken or constructed through private lands under agreement with the owner thereof, the Minister or local authority, as the case may be, may agree with the owner or lessee of such lands to permit a swing-gate to be erected across such road at the outer boundaries respectively of such lands at the cost of one or both parties as may be agreed, there to be maintained at the like cost for any period not exceeding twenty years, or until such road has, within such period, been fenced on both sides. 15 20

Permission to erect swing-gates not to be granted until after notice published in newspaper. Ibid, sec. 118

125. Permission to erect a swing-gate across any road shall not be granted unless and until after notice of any application in that behalf has been given at least once in each of two consecutive weeks in some newspaper circulating in the district, and the cost of all such notices shall be defrayed by the person applying for such permission. 25

Gates across roads registered under section 101. Ibid, sec. 119

126. (1.) Every owner of land through which a road has been taken and registered under paragraph (d) of section one hundred and one hereof shall have a right, wherever such road crosses the boundary of his land, to erect a swing-gate on the formed portion thereof, not less than ten feet wide, to fence up to such gate, and to maintain such gate and fences for a period of twenty years from the date of such registration. 30

Regulations as to gates and fences. Ibid, sec. 120

(2.) Every such gate shall be constructed and maintained to the satisfaction of the Commissioner of Crown Lands for the district. 35

127. (1.) In every case where a gate is erected across a road under any of the *four last preceding* sections, or the corresponding provisions of any of the compiled Acts or of any Act thereby repealed, a board with the words " Public Road " legibly painted thereon in letters of not less than three inches in height shall be fixed upon each side of such gate and at all times maintained thereon by the person or body authorised to erect such gate, or at whose cost it has been agreed that such gate shall be erected and maintained. 40

(2.) The Minister or local authority, as the case may be, shall have power to make by-laws providing penalties for leaving any such gate open or for damaging the same. 45

Damage to gates and fences.

(3.) Every person damaging any such gate or any fence authorised to be erected across any part of a road shall be liable to the person or body authorised to erect such gate or fence, or at whose cost it has been agreed that such gate or fence shall be erected and maintained, in like manner, and any such gate or fence shall be deemed to be the property of such last-mentioned person or body. 50

Removal of fences
and other obstruc-
tions on roads.
1900, No. 47, sec. 10

128. (1.) If at any time, upon petition of any five or more rate-
payers, it is shown to the local authority having the control of any road
that any gate, fence, or other obstruction erected or placed upon or across
such road is or has become a public inconvenience, such local authority
5 shall forthwith serve notice in writing on the owner or occupier by whom
or at whose instance the same was erected or placed as aforesaid ordering
the removal thereof within a time (not exceeding sixty days) to be ap-
pointed in such notice.

(2.) If after receipt of such petition the local authority declines
10 or neglects to issue a notice as aforesaid, any ratepayer may, by com-
plaint under "The Justices of the Peace Act, 1882" (the provisions
whereof shall, *mutatis mutandis*, apply), require the local authority to
appear before a Stipendiary Magistrate to show cause why such notice
should not issue.

15 (3.) On the hearing of the complaint the Magistrate, whose decision
shall be final, shall decide whether such notice should or should not
issue, and the local authority shall act accordingly.

(4.) If such notice is issued and served as aforesaid, and default
is made in duly complying therewith, the defaulting owner or occupier
20 shall be liable to a fine of one pound per day for every day during
which such default continues, and the local authority or any ratepayer
may remove such gate, fence, or other obstruction, and recover from
such owner or occupier as a debt the cost of such removal:

Provided that nothing herein contained shall apply to any swing-
25 gate erected across any road under the authority of any Act relating
to the abatement of the rabbit nuisance, if the local authority is of
opinion that such gate is necessary for the purposes of such Act.

Stopping of Roads.

129. No road shall be stopped unless and until a way to the lands
30 in the vicinity as convenient as that theretofore afforded by the said
road is left or provided, unless the owners of such lands give consent
in writing to such stoppage; and no road along the bank of a river
shall be stopped either with or without consent.

Road not to be
stopped, except a
way is left to
land in the vicinity.
1894, No. 42, sec. 121

130. No road under the control of a Road Board shall be stopped
35 except in the manner and upon the conditions following:—

Mode of stopping
a road.
Ibid, sec. 122

(a.) The Board shall have a plan prepared of the road proposed
to be stopped, and a survey made and a plan prepared of
the new road (if any), showing the lands through which
it is proposed to pass, and the owners and occupiers of such
40 lands so far as known.

(b.) The said plans shall lie open to public inspection at the office
of the Board or other convenient place during eight con-
secutive weeks, and the Board shall, once in each week
during such eight weeks, give public notice of the proposed
45 alteration and of the place where the plans are on view.

(c.) A notice of the proposed stoppage, printed on linen or calico,
shall be fixed in a conspicuous place at each end of the road
to be stopped.

(d.) A copy of the aforesaid notice and plans shall be transmitted
50 by the Board for record in the office of the Chief Surveyor

of the district, and no notice of the stoppage or diversion of any road shall take effect until the said notice and plans have been recorded as aforesaid.

- (e.) The Board shall, by public notice, call a meeting of the ratepayers of the district to be held on any day after the expiration of fourteen days after such notice : 5

“Ratepayer” means any person entitled to vote at the election of a member of the Road Board.

- (f.) The Chairman of the Road Board, or, in his absence, some other member of the Board appointed by the meeting, shall preside thereat ; and such meeting shall decide by a majority of the ratepayers present whether or not the road shall be stopped. 10

- (g.) If the meeting decide that the road be not stopped, such decision shall be final, and no proceedings for stopping such road shall be taken by the Board for one year thereafter. If the meeting decide that the road may be stopped, the Board shall send the plans aforesaid, with a full description of the proposed alterations, and with their decision thereon, to the County Council. 15

- (h.) The County Council shall consider the proposed alterations, and any objection made thereto by any person likely to suffer injury thereby, and shall confirm or reverse the decision of the ratepayers ; and the decision of the County Council shall be final and conclusive on all questions, including the question whether the condition prescribed in section one hundred and twenty-nine hereof has been complied with. 20

- (i.) If the Council reverse the decision of the ratepayers, no proceedings shall be entertained by the County Council for stopping such road for two years thereafter. 25

- (j.) If the County Council confirm the decision of the ratepayers, the Board may declare, by public notice, that the said road is stopped ; and such road shall thereafter cease to be a public highway. 30

Procedure for
altering course of
roads when
landowners consent.
1894, No. 42, sec. 123

131. Where a Road Board determines to alter the course of an existing road, and the owners of land on each side of such existing road agree to such alteration,— 35

- (a.) The Board shall have a plan prepared of the road proposed to be stopped, and a survey made and a plan prepared of the new road, if any, showing the lands through which it is proposed to pass, and the owners and occupiers of such lands so far as known. 40

- (b.) The said plans shall lie open to public inspection, at the office of the Board or other convenient place, during four consecutive weeks ; and the Board shall once in each week during such four weeks give public notice of the proposed alteration, and of the place where such plans are on view ; and, in such notice, shall call upon all persons having any objection to the proposed alteration to lodge such objections in writing in the office of the County Council within the four weeks aforesaid. 45 50

(c.) At the expiration of the said four weeks the Board shall send the plans mentioned in paragraph (a) hereof, with a full description of the proposed alterations, to the County Council, and the Council shall consider the proposed alterations and any objections lodged thereto, and shall prohibit or permit the proposals of the Board; and the decision of the Council shall be final, and, in the event of its being adverse to the proposals of the Board, no further action shall be taken by the Board therein for one year thereafter.

(d.) If the decision of the Council is in favour of the proposals of the Board, the Board may, by resolution publicly notified, declare the existing road to be stopped between the points where such alteration is proposed, and the road so declared to be stopped shall thereafter cease to be a public highway.

(e.) The Board may thereupon agree with the owners of the land on either side of the road so stopped either to exchange the land occupied by the closed road (or any part thereof) for the land to be used for the new road (or any part thereof), or to pay compensation for the land required for the new road (or any part thereof), or to sell the land occupied by the closed road (or any part thereof) to any of the adjoining landholders, or to sell the same (or any part thereof) in the manner provided in section one hundred and thirty-four hereof.

132. Within any county where "The Counties Act, 1886," is suspended, the term "County Council" in the *two last preceding* sections shall be taken to mean the Magistrate exercising jurisdiction in the district wherein the road proposed to be stopped is situated, who shall have all such powers of a County Council as are applicable in any such case.

Where Counties Act suspended.
1894, No. 42, sec. 124

133. Notwithstanding anything contained in sections one hundred and thirty and one hundred and thirty-one hereof,—

Further provision as to closing roads.
1900, No. 47, sec. 12

(a.) A local authority shall not declare any county or district road to be stopped, and such road shall not be deemed to be stopped, until the consent thereto of the Governor by Order in Council gazetted is obtained.

(b.) The District Land Registrar shall not issue any certificate under paragraph (d) of the *next succeeding* section unless a copy of such Order in Council or of the *Gazette* containing the same is filed in his office.

(c.) The Governor may, by Proclamation publicly notified, stop or alter the course of any Government road or any part thereof, and may dispose of the land occupied by the road or part of the road so stopped or altered in manner provided by sections twenty-six or thirty hereof.

(d.) A copy of every Order in Council or Proclamation issued under this section shall be laid before Parliament within ten days after such issue if Parliament is then sitting, or, if not, then within ten days after the commencement of the next ensuing session.

134. The land occupied by any road stopped under section one hundred and thirty, or stopped under section one hundred and thirty-

How the land of stopped road to be disposed of.
1894, No. 42, sec. 125

one hereof, and agreed to be sold under this section, may be sold under the following conditions :—

- (a.) The Chairman of the County Council or the Magistrate, as the case may be, shall, in writing under his hand, certify that the said road has been stopped as by law required, and order 5 that the same shall be sold.
- (b.) The Road Board shall cause the land proposed to be sold to be valued by one or more competent valuers, and shall offer such land, at the price fixed by such valuation, first to the person then entitled to the land from which such land was 10 originally severed ; and, if he refuse it, or cannot after due inquiry be found, then to the owner of the adjacent lands ; or, if there be more than one such owner, then to each of such owners in such order as the Board thinks fit ; and, if no such owner accept such offer, may cause the land to be 15 sold by public auction.
- (c.) The purchase-money of lands so sold shall be paid into the District Fund, and shall form part of such fund.
- (d.) Upon payment of the purchase-money the Chairman of the Road Board shall file, in the District Land Registry Office 20 for the district in which such land is situate, a copy of the order directing the sale of the said land, together with a map thereof certified in the manner required by paragraph (a) of section *nineteen* of this Act, and shall indorse thereon a certificate of the payment of the purchase-money, with the 25 name and address of the purchaser ; and such copy of the order so indorsed shall be deemed to be a memorandum of transfer of such land to such purchaser within the meaning of “ The Land Transfer Act, 1885,” and the Registrar shall register the same and deal therewith in the manner in the 30 said Act provided.

Exchange of land
for roads.
1894, No. 42, sec. 126

135. (1.) The land occupied by any road stopped either under section one hundred and *thirty* or under section one hundred and *thirty-one* hereof may be exchanged for other land under the following conditions :—

- (a.) The Board may agree with the owner or owners of any land required for a road, to be made in lieu of a road stopped as herein provided, to exchange the whole or any part of the land occupied by such last-mentioned road for the whole or any part of the land so required. 35
- (b.) The Chairman of the County Council or the Magistrate as aforesaid shall certify in writing under his hand that such road has been stopped as by law required. 40
- (c.) The Chairman of the Road Board shall indorse on a copy of such certificate that the land occupied by such road so stopped 45 has been exchanged for other land, and the name and address of the exchangee.
- (d.) And such copy of certificate so indorsed, together with such map as is mentioned in paragraph (d) of the *last preceding* section, shall, when filed in the District Land Registry Office 50 for the district in which such land is, be dealt with in the manner directed by the said paragraph, and shall confer upon the exchangee the same rights and titles as are therein mentioned.

(2.) No stamp duty, or registration or other fees, shall be charged or payable upon or in respect of any certificate of title or copy thereof made and issued under the provisions of this section.

Conveyance to be free of stamp duty.

136. If a road is proposed to be stopped upon the motion and solely for the convenience of any private person, such person shall pay all the costs incurred thereby, including the cost of constructing a new road, if in the opinion of the Board such new road is necessary in the place of the road stopped; and the Board shall take no steps towards stopping such road until such person pays into the District Fund the whole estimated cost of the proposed alteration.

If road stopped for benefit of private person, to be at his sole expense.
1894, No. 42, sec. 127

137. Any road stopped under the authority of any Act or Provincial Ordinance may be sold or exchanged by the Governor, if the land occupied by the stopped road is not required for public use; and the Governor may execute all necessary grants and assurances, and do all things requisite to carry into effect any such sale or exchange.

Governor may sell stopped roads not required for public use.
Ibid, sec. 128

138. Whenever it is made to appear to the satisfaction of the Governor—

Where land of stopped road sold or exchanged, Governor may perfect sale or exchange.
Ibid, sec. 129

(a.) That any road has been stopped under the authority of any Act or Provincial Ordinance, and the same or any part thereof has heretofore been sold or exchanged, or agreed to be sold or exchanged, whether the contract for such sale or exchange is in writing or not; or

(b.) That any contract has been entered into for the sale or exchange of any land for the purposes of a road, and whether such land consists wholly or in part of closed road-lines,—

then and in any such case, and for the purpose of completing and perfecting such agreement, sale, or exchange, the Governor may issue such grants or execute such conveyances, transfers, and other assurances as he may deem necessary, or may direct the issue of any other instrument of title authorised by law.

By-laws as to Use of Roads.

139. (1.) “Heavy traffic” in this section means—

Definition of heavy traffic.

(a.) The transportation of any vehicle, engine, or machine which itself, or together with any thing or things being transported thereon, weighs more than one and a half tons avoirdupois to each pair of wheels;

Ibid, sec. 130
1895, No. 47, sec. 2
1904, No. 46, sec. 10

(b.) The traction of any vehicle or thing by means of bullocks, notwithstanding that such vehicle or thing may separately or together with any load thereon weigh less than one and a half tons avoirdupois;

(c.) Any traffic which may from time to time be declared to be “heavy traffic” by Order in Council.

(2.) The Minister in respect of all or any Government roads, and of all or any bridges, ferries, and fords under the control of the Minister, and any local authority in respect of all or any roads, bridges, ferries, and fords under the care, control, or management of such local authority, may from time to time make, alter, or revoke by-laws upon the following subjects:—

Power to Minister and local authorities to make by-laws.

(a.) Classifying all vehicles of any kind, and prescribing a maximum and minimum width of tires of all vehicles used wholly

- or chiefly for the carriage of passengers, whether plying for hire or not:
- (b.) Regulating, in proportion to the number of wheels or to the weight of load, or to the number of animals employed to draw the same, or to all or any of such matters, the width of the tires of all vehicles, whether plying for hire or not: 5
 - (c.) Regulating the number of passengers and the quantity and weight of goods which may be carried in any vehicle with a specified width of tire, or the number of horses or other animals that may be employed to draw the same, and preventing such number, quantity, or weight being exceeded: 10
 - (d.) Regulating heavy traffic generally, or making special regulations in regard to any one or more special kinds of heavy traffic, such as the cartage of timber, stone, minerals, metallic ores, metals, machinery, or any other special kind of load, and dealing in a different way with different kinds of heavy traffic: 15
 - (e.) Providing for the giving or taking of security by or from any person that no special damage will accrue to any road, bridge, ferry, or ford by reason of any heavy traffic thereon: 20
 - (f.) Providing for the annual or other payment of any reasonable sum by any person concerned in any heavy traffic by way of compensation for any damage likely to occur to any road, bridge, ferry, or ford therefrom:
 - (g.) Providing for the establishing of a toll to be levied on any kind of heavy traffic; such toll to be established in the manner prescribed by this Act: 25
 - (h.) Providing for a yearly license fee on any vehicle or machine engaged in heavy traffic: 30
- Provided, in the case of a by-law made by a local authority, that no other charge is levied thereon by the local authority: 30
- (i.) Providing that heavy traffic of all or any kinds shall cease during the whole or any part of the months of May, June, July, August, and September: 35
 - (j.) Regulating the use of bullocks as traction animals, or prohibiting the use thereof at any time and for any period:
 - (k.) Regulating the weight of any engine, agricultural or other machine, or vehicle of any kind, and the weight of any load or material of any kind which shall be permitted to cross any bridge or culvert, and the times when such engines, agricultural or other machines, or vehicles shall be allowed to cross any bridge or culvert, or the weight of the load which any traction-engine may draw: 40
 - (l.) Regulating the pace, mode or manner, and times at which any horses, cattle, engines, agricultural or other machines, or vehicles shall cross or be driven, led, or taken over any bridge or culvert: 45
 - (m.) Regulating the pace, mode, or manner in which bicycles or tricycles may pass any vehicle: 50
 - (n.) Fixing any fine for any breach of any such by-law, not exceeding in any case the sum of five pounds, except as

especially provided in paragraph (b) of the *next succeeding* section hereof.

(3.) All fines recovered in respect of the breach of any by-law made under this section by a local authority shall be paid to the county or district or other fund of the authority making the by-law, as the case may be; and all such fines, and all charges, fees, and tolls received by any local authority under this section, shall, without any deduction excepting for the cost of collection, be expended on the repair and maintenance of the road, bridge, ferry, or ford in respect of the use of which the same has been received.

Fines, &c.,
to be expended on
repair of roads, &c.

(4.) A copy of every by-law made by a local authority under this section shall, within one week after the making thereof, be sent by such authority to the Minister, who may at any time within twelve months after such copy has been so sent disallow the same or any part thereof; and, upon such disallowance being gazetted, such by-law or part thereof shall cease to have any force; but such disallowance shall not affect the validity of anything theretofore done under the by-law or part thereof so disallowed.

Copy of every
by-law to be sent to
Minister, who may
disallow same.

(5.) Nothing in this section shall apply to any authorised railway or tramway on, over, or across any road, or shall limit any powers of regulating traffic on roads, bridges, ferries, or fords otherwise possessed by the Governor, the Minister, or any local authority.

140. For the purpose of giving fuller effect to the provisions of the *last preceding* section, the following special provisions shall apply:—

Extended powers to
make by-laws in
respect of heavy
traffic.

(a.) Any person authorised in that behalf by the Minister in respect of Government roads, or by any local authority in respect of roads under its control, may stop and detain any vehicle or machine which in his opinion infringes any by-law made under that section until the width of the tires, or the weight of such vehicle or machine and the load thereon, or the weight or measurement of the contents thereof, can be ascertained.

1900, No. 47, sec. 13
1903, No. 93, sec. 5

(b.) Any such by-law may prescribe—

(i.) For the weighing of any vehicle or machine;
(ii.) For the marking of the weight of any vehicle or machine on such vehicle or machine, and imposing a fine not exceeding twenty pounds for the non-marking or incorrect marking of any such weight;

(iii.) For the weighing or measurement of the contents of any vehicle or machine, or for the computation of the weight or measurement of such contents from the cubical or superficial measurement thereof.

(c.) For the purpose of such computation such by-law may prescribe what quantity of timber, agricultural produce, mineral, or any material of any description whatever shall be deemed to be of a specified weight or measurement, and such weight or measurement so computed shall be final and conclusive in any proceedings to recover a fine for the breach of such by-law.

(d.) Any such by-law may also provide for the driver of any vehicle or machine giving such information as to the load or contents thereof, and the quantity, weight, size, or measurement of

Road Boards may
make by-laws.
1894, No. 42, sec. 131

the same, or doing such acts for the purpose of enabling the same to be ascertained as such authorised person requests.
141. Every Road Board within a county where “The Counties Act, 1886,” is not in operation, or where the operation thereof is suspended, may from time to time make, alter, or repeal by-laws under “The Road Boards Act, 1882,”— 5

- (a.) For all or any of the purposes set forth in section three hundred and eleven of “The Counties Act, 1886”; or
- (b.) For fixing times during which horses or cattle not in harness or yoke, or sheep, goats, or pigs, may not be driven over any county or district roads lying within three miles from the outer boundaries of any borough or town district, or over certain such roads named in any by-law in that behalf; and any such by-law may be made in respect of any county road, notwithstanding the provisions of any Act whereby the control of such road is vested in the Governor. 15

Grass-seed on
road or street.
1904, No. 46, sec. 13

142. A local authority may by by-law prohibit the cutting of grass for seed on any road or street under its control without the previous consent in writing of such authority, and such by-law may apply to all roads or streets under the control of the authority, or to any specified road or street, and for the whole year or for any specified part of the year. 20

Proof of by-laws.
1894, No. 42, sec. 132

143. In respect to by-laws made under the *four last preceding* sections, the following provisions shall apply:—

- (a.) A copy of the *Gazette* containing any such by-law shall be evidence in all Courts of the same having been duly made under the authority of this Act. 25
- (b.) A copy of all by-laws having special reference to bridges shall be conspicuously displayed and maintained in a clearly legible condition at each and every bridge to which such by-laws have reference. 30
- (c.) Printed copies of all by-laws having reference to the traffic on roads generally, or on any one road in particular, shall be on sale to every person applying for the same, at a price of not more than a shilling a copy, in the case of Government roads at the Government Printing Office in Wellington, and in the case of other roads at the principal office of the local authority having the control of the same. 35

By-laws not to
relieve offenders
from other
proceedings.
Ibid, sec. 133

144. Nothing in this Act, nor in any by-law made thereunder, shall be deemed to relieve any person from any fine, punishment, or action to which he would otherwise be liable in respect of anything done by him in breach of any such by-law; and the Minister or the local authority, as the case may be, may sue any person for any damage done to any road or bridge or other works in contravention of any by-law made under this Act, in addition to recovering the amount of the fine for the breach of the by-law. 45

Injuries to and Nuisances on Roads.

Penalties for
injuries to roads, or
for allowing tailings,
&c., to flow on to
road or into public
drain.
Ibid, sec. 134
1895, No. 47, sec. 2

145. Every person who, without lawful authority or the written permission of the local authority having the control of a road,—
(a.) Encroaches on the road by making or erecting any building, fence, ditch, or other obstacle, or planting any tree or shrub, thereon; 50

- (b.) Leaves on the road any timber, stones, or other material so as to obstruct or endanger persons using the road ;
- (c.) Digs up, removes, or alters in any way the soil or surface or scarping of the road ;
- 5 (d.) Fills up, alters, or obstructs any ditch or drain, whether on the road or elsewhere, made by or under the control of the local authority to carry water off the road ;
- (e.) Allows any water, tailings, or sludge, or any filthy or noisome matter, to flow from any building or land in his occupation on to the road, or into any ditch or drain declared to be a public drain ;
- 10 (f.) Causes or allows any timber or other heavy material, not being wholly raised above the ground on wheels, to be dragged on the road,—

15 shall be liable to a fine not exceeding ten pounds for every day upon which such offence is committed or suffered to continue, and to a further sum equal to the cost incurred by the local authority in removing any such encroachment or obstruction, or in repairing any injury done to any road, ditch, or drain as aforesaid :

20 Provided that no fine shall be imposed unless the information or complaint is laid by authority of the local authority or the Chairman thereof.

146. In any case where trees or hedges growing on land within the district of a local authority overshadow any road or street in the district so as to be detrimental to the maintenance of such road or street, the local authority may, by notice in writing served on the occupier, or, if there is no occupier, or if the occupier is unknown or cannot be found, then on the owner of the land, require him to remove, lower, or trim such trees or hedges to the satisfaction of the local authority within two months after the service of the notice ; and with respect to such notice the following provisions shall apply :—

25

(a.) Within ten days after the service of the notice such occupier or owner may, by complaint under “ The Justices of the Peace Act, 1882 ” (the provisions whereof shall, *mutatis mutandis*, apply), require the local authority to appear before a Stipendiary Magistrate to show cause why the notice should not be set aside.

35

(b.) On the hearing of the complaint the Magistrate, whose decision shall be final, shall decide whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.

40

(c.) In the case of a notice which is not set aside as aforesaid, if the occupier or owner fails to duly comply therewith within two months after the service thereof, or within two months after the Magistrate’s decision, whichever period is the later, he is liable to a fine not exceeding one pound for every day thereafter during which such failure continues ; and the local authority may cause the land to be entered upon and the work to be done at his cost and expense in all things.

45

50 147. (1.) The local authority may order the occupier, or, in case there is no occupier, then the owner, of any land abutting upon any road under its control,—

Removal or lowering of trees overshadowing road.
1900, No. 47, sec. 15

Removal of gorse, &c., from roads.
1894, No. 42, sec. 135
1895, No. 47, sec. 2
1900, No. 50, sec. 433

- (a.) To remove any part of a tree, or lower or trim any part of a hedge, overhanging the road so as to injure such road or obstruct the traffic thereon, or obstructing any ditch or drain appertaining thereto; and
- (b.) To cut down or grub up, as the local authority may direct, and remove all obstructions to traffic or drainage arising from the growth of plants upon such road, up to the middle line of such road, along the whole frontage of the land occupied or owned by him. 5

(2.) In the event of any such occupier or owner failing to comply with such order within two months from the service thereof, he shall be liable to a fine not exceeding one pound for every day during which such order is not obeyed, and a further sum equal to the cost incurred by the local authority in removing such tree, or lowering or trimming such hedge, or cutting down or grubbing up and removing any such plants then growing on such road; and the said cost shall be a charge on the land, and may be recovered by the local authority as rates are recoverable by the local authority under any Rating Act for the time being in force in the district of the said local authority. 10 15

1900, No. 47, sec. 14

(3.) The powers given to the local authority under this section may be exercised by the local authority irrespective of the fact that the obstruction existed before the passing of this Act. 20

(4.) "Cut down" in this section means cutting down and keeping cut down the stem and root of any plants so as to prevent their throwing out any leaf, offshoot, or flower. 25

"Plants" means and includes gorse, sweetbriar, blackberry, acacia, broom, and fennel.

Notice to clear
gorse, &c.

1894, No. 42, sec. 136
1895, No. 47, sec. 2

148. (1.) When, under the provisions of the *last preceding* section, an order is made by a local authority, such order shall be in writing, signed by any person appointed, either generally or specially, by the local authority for the purpose of giving such notices, and shall be delivered to the person liable, either personally or by leaving the same at or posting the same in a registered letter addressed to his last known place of abode or business in New Zealand; and it shall not be necessary to prove the actual receipt of such order by the person to whom it is addressed. 30 35

(2.) If any person upon whom such order should be served is unknown, or after due inquiry cannot be found, or is absent from New Zealand, then a service upon his known agent or attorney shall be deemed a sufficient service. 40

(3.) If such person has no known agent or attorney in New Zealand, or such agent or attorney cannot after due inquiry be found, then a publication of such order in a newspaper circulating in the district in which such order is issued, and affixing a copy of the order upon a conspicuous part of the property in respect of which such order is issued, or on some public road adjacent thereto, shall be sufficient service. 45

(4.) The cost of publishing such notification shall be a charge upon the land, and shall be recoverable by the local authority in the same manner as rates are recoverable by it under any Rating Act for the time being in force in the district of the local authority. 50

Trimnings of
hedges, &c., not to
be thrown on roads.

1894, No. 42, sec. 137
1895, No. 47, sec. 2

149. If any person throws or causes to be thrown the trimmings of any hedge or tree, or any gorse, sweetbriar, blackberry, broom,

or other rubbish upon any road, and neglects to remove⁵ the same within two weeks from the receipt of an order so to do from the local authority having control of the road, the local authority may cause such trimmings, gorse, sweet-briar, blackberry, broom, or other rubbish
 5 to be removed; and the cost of the removal of the same and all expenses attendant thereupon shall be recoverable accordingly from such person by the local authority.

150. Where it appears to the local authority which is liable or has undertaken to repair any road, whether a main road or not, that extraordinary expenses have been incurred by such authority in repairing
 10 such road by reason of the damage caused by excessive weight passing along the same or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order or for whose benefit such weight or traffic has been conducted the amount
 15 of such expenses as may be proved to the satisfaction of the Court having cognisance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid :

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such
 20 authority as is mentioned in this section for the payment to it of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

151. Where the local authority is of opinion that the carriage
 25 of any particular weight, or the conduct of any particular kind of traffic, will cause serious injury to a road under its control, the local authority may make a by-law forbidding such carriage or traffic unless the cost, as estimated by the local authority, of reinstating the road is previously paid to it :

30 Provided that the provisions of subsection four of section one hundred and thirty-nine hereof shall apply to every such by-law.

152. Every person who commits a breach of any such by-law is liable to a fine not exceeding twenty pounds.

Offences on Roads.

35 153. Every person who does any of the following things upon a road,—

- (a.) Rides or drives any horse or vehicle furiously ;
- (b.) Rides or drives any horse or vehicle on a footpath constructed for foot-passengers only ;
- 40 (c.) Tethers any animal on or so that it may be on the road ;
- (d.) Drives any entire horse or any savage or dangerous animal loose ;
- (e.) Plays any game to the annoyance of passengers ;
- (f.) Pitches any tent, booth, or stall ;
- 45 (g.) Makes any fire without written authority from the local authority having control of the road ;
- (h.) Discharges any firearms or fireworks on the road, or within fifty feet from the side of the road ;
- 50 (i.) Unlawfully obstructs in any manner the free passage of persons passing along the road ;

Local authority may recover expenses for repairs to roads damaged by excessive weights.
 1894, No. 42, sec. 138
 1904, No. 46, sec. 11

Proviso.

Power to make by-laws forbidding certain traffic.
 Ibid, sec. 12

Penalty for breach of such by-laws.
 Ibid, sec. 12

Penalties for offences on roads
 1894, No. 42, sec. 139

- (j.) Drives any vehicle in his charge without having reins to guide the horse or other animal drawing the same ;
 - (k.) Goes to sleep in any vehicle in his charge, so as to leave any animal drawing the same without proper guidance ;
 - (l.) Leaves any such vehicle by going to such a distance as to be unable to control the animal drawing the same ; 5
 - (m.) Does not keep any vehicle driven by him on the left or near side of the road when meeting, and on the right or off side when passing, another vehicle, or does not leave a reasonable portion of the road for any vehicle, person, or animal passing him ; 10
 - (n.) Impedes the traffic or endangers the safety of passengers by a load unduly projecting from the side of any vehicle or beast of burden ;
 - (o.) Permits any cattle to be at large without proper guidance, or to wander, or be herded or grazed, upon the road other than in the ordinary course of driving stock,— 15
- shall be liable to a fine not exceeding five pounds.

Penalty for being drunk in charge of vehicle or cattle.
1894, No. 42, sec. 140

154. If any person is drunk when in charge of any cattle or vehicle upon a road, he shall be liable to a fine not exceeding five pounds, or, at the discretion of the Justices, to be imprisoned, with or without hard labour, for not exceeding fourteen days. 20

Cattle straying on roads may be impounded.
Ibid, sec. 141
1895, No. 47, sec. 2.

155. If cattle are found straying on a road which is fenced on both sides, or has a fence on one side and the sea on the other side, it shall be lawful for the local authority having control of the road or for any other person to cause such cattle to be taken to the nearest public pound, whether in or out of the district in which they are found straying, to be dealt with as in the case of cattle lawfully impounded. 25

Tolls.

Toll-gates, &c., may be placed on roads, and tolls collected.
1894, No. 42, sec. 142
1895, No. 47, sec. 2

156. (1.) The local authority having control of a road may cause tolls to be collected upon such road, and for that purpose may do the following things:— 30

- (a.) May appoint and discharge collectors of tolls ;
 - (b.) May place on the road toll-houses, gates and bars, ferry-houses, and posts and other things necessary for working a ferry, and provide boats and punts for the use of any ferry ; 35
 - (c.) May from time to time fix the scale of tolls to be collected at any toll-gate or ferry upon all persons, cattle, or vehicles passing the same, and may revoke or alter such scale. 40
- (2.) But no toll-gate shall hereafter be established within one mile from the boundary of any borough, except for a ferry.

Conditions under which tolls may be taken.
1894, No. 42, sec. 143

157. No toll shall be payable unless the following conditions are observed, that is to say : Unless—

- (a.) The scale of tolls is publicly notified for fourteen days before becoming first payable ; 45
- (b.) The name of the toll-gate or ferry, and the name in full of the collector, and the scale of tolls, are painted in black letters not less than two inches in length on a white board, and

placed in a conspicuous place on or near the toll-house or ferry-house so as to be conveniently read by every person from whom a toll is demanded.

158. (1.) The following persons, cattle, and vehicles, and every animal and vehicle employed solely in carrying such persons, or their tools and materials, shall be exempt from tolls :—

Persons exempt from tolls.
1894, No. 42, sec. 144

(a.) The Governor, and every person in attendance on the Governor ;

10 (b.) Every member of any military, militia, or Volunteer force, or Permanent Militia, when on duty, or going to or returning from parade, and in the uniform (if any) of his corps ;

(c.) Every policeman and constable on duty, and every prisoner in his custody ;

15 (d.) All passengers by any public conveyance, but this exception shall not apply to such passengers at any ferry at which tolls are lawfully taken from foot-passengers ;

(e.) Every child going to or from school ;

(f.) All cattle the property of any person residing within one mile of a toll-gate, going to or from water or feed ;

20 (g.) Every animal and cart employed solely in drawing manure ;

(h.) Every person or vehicle, and all cattle, in respect of whom or which toll has been paid at the same toll-gate at any time since the midnight previous.

25 (2.) But the three last-mentioned exceptions shall not apply to tolls payable at a ferry.

159. Any person falsely claiming exemption from toll shall be liable to a fine of not less than two nor more than five pounds, and the proof of being exempt shall lie with the person claiming to be so.

Penalties for falsely claiming exemption from tolls.

Ibid, sec. 145

30 160. The local authority may let or farm the tolls payable at any toll-gate or ferry, together with the buildings and other things belonging thereto, on the following conditions :—

Tolls may be let on certain conditions.

Ibid, sec. 146

1895, No. 47, sec. 2

(a.) Such letting shall be for a period not exceeding one year.

(b.) Such letting shall be by public auction or sealed tenders, after due public notice given.

35 (c.) Security in two good sureties shall be given for the rent to be paid.

40 (d.) The scale of tolls shall not be altered during such lease without the consent of the lessee, except under the provisions of sections one hundred and seventy-one to one hundred and seventy-three hereof.

(e.) The lessee or any person appointed by him in writing shall be deemed to be for all purposes a collector duly appointed by the local authority.

45 161. If any person refuses to pay a toll for which he is liable, the collector may seize and distrain any cattle or vehicle on account of which such toll is payable, or any goods or chattels carried in such vehicle or on such cattle ; and, unless the toll, with reasonable charges for the seizure and distress and for the maintenance of such cattle, is paid within four days, may sell such cattle, vehicle, goods, or chattels by public auction, and apply the proceeds of such sale in the payment of such toll and charges, and shall pay the residue (if any) to the owner on demand.

Collector may distrain goods of persons refusing to pay toll.

1894, No. 42, sec. 147

Collector may recover toll and compensation instead of distraining.

1894, No. 42, sec. 148

Penalty for evading a toll.

Ibid, sec. 149

Penalty for forcible evasion of toll.

Ibid, sec. 150

Penalty for plying for hire across a stream near a bridge or ferry.

Ibid, sec. 151

1903, No. 93, sec. 10

Penalties for offences by toll-collectors.

1894, No. 42, sec. 152

Toll-gates in different districts may be made to clear one another.

Ibid, sec. 153

Notice of gates cleared to be painted on toll-board.

Ibid, sec. 154

Toll tickets.

Ibid, sec. 155

Penalty on transferring, &c., a toll ticket.

Ibid, sec. 156

County Council or Governor in Council, in certain cases, may abolish toll-gate or diminish tolls.

Ibid, sec. 157

162. Any collector may, instead of making such seizure and distress, recover from any person refusing to pay a toll for which he is liable the amount of such toll, together with such compensation for loss of time in recovering the same as the Court hearing the case determines.

163. Any person leaving a road and returning thereto within three hundred yards on either side of any toll-gate, so as and with the intent to evade paying toll, shall be liable to a fine not exceeding five pounds for each such offence. 5

164. Any person attempting by force to evade the payment of any toll, or resisting or obstructing any toll-keeper in the execution of his duty, shall be liable to a fine not exceeding twenty pounds. 10

165. It shall not be lawful for any person to hire or to ply for hire in any boat or punt, or by or by means of any mode of conveyance whatever, across any river, stream, or creek within half a mile in a straight line from any public ferry in working-order, or bridge open for traffic across the same, at which tolls are payable; and any person so hiring or plying for hire shall for every such offence be liable to a fine not exceeding five pounds. 15

166. If any toll-collector does any of the following things:—

(a.) Demands a larger toll than that payable by law; 20

(b.) Does not maintain the board required by section one hundred and fifty-seven hereof in a legible condition;

(c.) Refuses, when required so to do, to give his name, or gives a false name, to any person of whom he has demanded a toll; 25

(d.) Is drunk when in discharge of his duty;

(e.) Obstructs any person in passing when the lawful toll has been tendered;

(f.) Uses any abusive or offensive language to any person passing.— he shall be liable to a fine not exceeding five pounds. 30

167. The local authority may make any toll-gate in its district clear any other toll-gate in the district; and the County Council may by an order declare, or any two or more local authorities of districts within the county may agree, that any toll-gate in any such district shall clear any toll-gate in any other such district; and no toll shall be payable at a gate so cleared by any person showing the ticket hereinafter mentioned. 35

168. Whenever any toll-gate clears any other toll-gate in the same or any other district, the words “Clears the [naming the toll-gate cleared] Gate” shall be painted upon the board mentioned in section one hundred and fifty-seven hereof. 40

169. Any person passing through a toll-gate may demand from the collector a ticket showing that he has passed the gate on that day, and any collector refusing to give such a ticket on demand shall be liable to a fine not exceeding five pounds. 45

170. If any person, with intent fraudulently to evade any toll, transfers such a ticket to another person, or uses a ticket so transferred, or alters or forges such a ticket so as and with intent fraudulently to evade any toll, he shall be liable to a fine not exceeding five pounds.

171. (1.) If the County Council is of opinion that any toll-gate within the county is not necessary, or that the road in respect of which the tolls are taken is not kept in proper repair, or that the tolls are excessive and unduly burdensome, the County Council 50

may, after due inquiry into the case, by an order publicly notified, abolish such toll-gate, or may direct the local authority having control thereof to diminish the tolls taken thereat, as such Council thinks fit; and such toll-gate shall thereafter be abolished, or the tolls thereat
5 diminished, in compliance with such order.

(2.) Provided that nothing herein contained shall deprive the lessee of such toll-gate of the right which he may have of compensation for any loss which he may sustain thereby.

10 172. In any case where "The Counties Act, 1886," is suspended in any county the Governor may exercise within such county all the powers conferred on County Councils by the *last preceding* section.

When Governor
may act.
1894, No. 42, sec. 157

173. Without limiting the powers conferred on County Councils by section one hundred and seventy-one hereof, with respect to toll-gates and tolls, those powers may at any time be exercised by the
15 Governor in Council in like manner and with the like consequences as in the case of a County Council.

Governor may
abolish toll-gates.
1900, No. 47, sec. 22

174. Nothing in this Act contained shall be construed to limit or interfere with the right to levy tolls on any bridge, ferry, tramway, or toll-gate granted to any person or persons during the period for which
20 such right has been so granted, except on payment of adequate compensation.

Compensation if
tolls not levied.
1894, No. 42, sec. 158

175. All tolls which may be lawfully taken at the time of the passing of this Act shall, subject only to the exemptions contained in this Act, be deemed to be tolls made and collected under the authority of this Act,
25 and all the provisions of this Act shall apply thereto.

Existing tolls to be
tolls under this Act.
Ibid, sec. 159

Rivers.

176. (1.) The local authority of a county, road district, or town district may grub up, clear away, and destroy all gorse, sweetbriar, blackberry, acacia, broom, and fennel growing on any river-bed in its
30 district, and maintain such river-bed free from the same, and may apply any of its funds to the purpose from time to time.

Removal of gorse,
&c., from river-beds.
1894, No. 42, sec. 160

(2. When a river or river-bed divides two districts the local authority on either side may clear and maintain free from gorse, sweetbriar, blackberry, acacia, broom, and fennel such river-bed for half the width thereof
35 adjoining the bank within the district of such local authority.

177. (1.) A local authority may remove from any river, stream, or watercourse in its district, or from the bed thereof, any earth or stone, and all weeds, refuse, and other growth, and all driftwood, logs, trees, branches, and other timber which may be lodged in the bed or
40 against the banks thereof, and be calculated to impede the free flow of water therein in its natural channel, whereby any road or street under the control of such local authority may be injured, and may dispose of the same respectively towards recouping the cost of such removal.

Removal of drift-
wood, timber, weeds,
&c., from river-bed
Ibid, sec. 161

(2.) For the purpose aforesaid every such local authority shall by
45 its servants have the free right of ingress, egress, and regress on any land on the banks of any such river, stream, or watercourse.

(3.) Nothing in this section contained shall be deemed to authorise any local authority to dispose of any timber floated down any river or stream under the provisions of "The Timber-floating Act, 1884."

Removal of
obstacles from
river-beds.
1903, No. 93, sec. 12

178. (1.) A River Board shall have and may exercise the powers and privileges conferred on local authorities by the *last preceding* section, as if the words "whereby any road or street under the control of such local authority may be injured" were omitted therefrom:

Provided that the Board shall be liable to pay compensation for any damage occasioned by the exercise of such powers. 5

(2.) The local authority or River Board may dispose of anything removed under this or the *last preceding* section in such manner as it thinks fit, and the proceeds of such disposal shall form part of its ordinary funds.

Obstructing
watercourse
1900, No. 47, sec. 16

179. The provisions of section one hundred and forty-six hereof shall apply, *mutatis mutandis*, in any case where live or dead timber, plants, or other vegetable growth existing on or near to the bank or in the bed of any river, stream, canal, watercourse, or drain on land held in fee-simple, or on lease from the Crown for a term of which not less than two years are then unexpired, in any way obstructs the navigation of or flow of water in such river, stream, canal, watercourse, or drain: 10 15

Provided, however, that nothing herein shall apply to any timber, plants, or other vegetable growth brought upon such land by the action of the river, stream, canal, watercourse, or drain, and which did not grow or is not growing upon such land. 20

Magistrate's order
thereon.
Ibid, sec. 17

180. On the hearing of any proceedings under the *last preceding* section hereof the Magistrate may, in his discretion,—

(a.) Direct that a portion of the cost of removing the obstruction be borne by any person holding any interest in the land, or by any local authority whose district or works will be improved by such removal; 25

(b.) Decide when and to whom the money is to be paid;

(c.) Direct who shall do the work, and within what time it shall be completed. 30

Removal of obstructions in river outside of district.
1894, No. 42, sec. 162

181. Where any river, stream, or watercourse extends beyond the limits of the district of the local authority, and its obstruction is likely to cause damage to any road or street within such district, such local authority nevertheless may order the occupier, or, when there is no occupier, the owner, of any land on the banks of such river, stream, or watercourse for the space of one mile beyond the upstream boundary of such district to remove any earth or stone, and any *driftwood*, tree, shrub, or bush, or any part thereof, impeding the free flow of water in the said river, stream, or watercourse, or to lower or trim any part of a tree, shrub, or bush overhanging such river, stream, or watercourse and likely to fall therein, within the space of the aforesaid mile; and, in case of the owner or occupier failing to comply with such order within fourteen days from the receipt thereof, he shall be liable to the fines provided in section one hundred and forty-five hereof. 35 40 45

When damage to a road by a river River Board may contribute to purchase land for diversion of road.
Ibid, sec. 163

182. Whenever it is found desirable, in any case when any river, stream, or watercourse causes any damage to a road, to purchase land for the diversion of such road, the River Board of the district in which such road lies may contribute from its funds to the purchase of the necessary land for such diversion, or the construction or maintenance of the diverted road. 50

183. Whenever it is found desirable for the safety or proper maintenance, or for the use, convenience, or enjoyment of any public work to protect the banks of or to alter or divert, either wholly or partially, and either temporarily or permanently, any river, stream, or watercourse, the Governor, by Proclamation publicly notified,—

Power to alter or divert rivers, streams, and water-courses, when desirable for the safety or maintenance of any public work.

1894, No. 42, sec. 164

(a.) May declare that the banks of such river, stream, or watercourse shall be so protected, or its course so altered or diverted; and thereupon the protection of the banks, or the alteration or diversion of such river, stream, or watercourse, as the case may be, shall be a public work within the meaning of this Act:

(b.) May declare any work or works of the description last mentioned which have been heretofore executed, or partially executed, to have been so executed for the purposes therein mentioned; and thereupon such work or works shall for all purposes be taken and deemed to have been executed under the authority of this Act.

Roads or Tramways for Removal of Timber.

184. (1.) Any person (hereinafter called "the applicant") owning timber, or the right to cut timber, upon any land from which there is no practicable means or way of removing the same to any railway, road, mine, or sawmill, except by crossing private lands, may, by proceedings under "The Justices of the Peace Act, 1882" (the provisions whereof shall, *mutatis mutandis*, apply), summon the owner and occupier of the private lands to appear before a Stipendiary Magistrate and show cause why the applicant should not be authorised to construct a road or tramway over such lands for the removal of the timber.

Provision to allow timber to be brought over private lands.
1900, No. 47, sec. 18

(2.) On the hearing of the summons the Magistrate may make such order as he thinks just.

(3.) If the Magistrate decides that the road or tramway is to be constructed, his order shall set forth clearly the route to be adopted, the land to be used, the rent or compensation to be paid, including the cost of fencing the same if in the opinion of the Magistrate such fencing is necessary, and the time within which the road or tramway is to be constructed, and for which the right to use the road or tramway is to last, but such latter time shall in no case exceed five years.

(4.) Such order shall, according to its tenor, be sufficient authority for the applicant to enter upon the land and construct, use, and maintain the road or tramway upon the terms and conditions and for the period specified in the order.

(5.) Such order may be registered under "The Deeds Registration Act, 1868," or "The Land Transfer Act, 1885," according to the nature of the title to the lands.

(6.) Any owner, lessee, or occupier of the private lands may, in any Court of competent jurisdiction, recover from the applicant any rent or compensation payable by him under the order, or compel him to observe any condition imposed upon him by the order.

PART VII.

RAILWAYS.

Definition of
railway.

1894, No. 42, sec. 165

Land purchased for
a railway to be
deemed part of the
railway.

185. The word "railway" includes the land upon which any railway is made or authorised to be made under this or any special Act, and all buildings and erections of every kind thereon, and all land taken, purchased, or acquired for railway purposes; and, except where inconsistent with the context, such word when used in this Act also includes all works, wharves, and jetties the property of His Majesty, whether of a permanent or a temporary nature, used for the purposes of or in connection with such railway, and all materials and things of which such railway, buildings, erections, works, wharves, or jetties are composed, or which are being used for the purposes thereof, and are erected, placed, or laid upon any such land.

Construction and Maintenance.

Railways to be made
only under special
Act.

Ibid, sec. 166

Midland Railway.
1900, No. 47, sec. 23

186. Every railway shall be made only under the authority of a special Act, which shall state as nearly as may be the line of the railway and the two termini thereof.

187. (1.) For all the purposes of this Act and the Acts relating to Government railways, the railways constructed by the Midland Railway Company (Limited), and referred to in the Order in Council a copy whereof is set forth in the *Sixth* Schedule hereto, shall be deemed to have been duly made under the authority of a special Act as required by the *last preceding* section, and shall be managed and administered in like manner in all respects as if they had been constructed by the Governor on behalf of His Majesty under the provisions of a special Act.

(2.) All lands vested in His Majesty by virtue of the said Order in Council shall be deemed to be lands subject to the provisions of "The Land Transfer Act, 1885."

(3.) It shall be the duty of every Registrar appointed under "The Land Transfer Act, 1885," to make all such entries in the register and books under the control of such Registrar, and to issue all such certificates and documents as may be necessary for the purpose of evidencing the title of His Majesty to the lands vested in His Majesty by the said Order in Council.

(4.) The powers conferred upon every such Registrar by section one hundred and seventy-five of "The Land Transfer Act, 1885," shall be deemed to extend to entitle every such Registrar to require the production at his office of all instruments of title affecting any such lands, and to retain possession of all such documents as relate only to such lands, and to make indorsements and entries upon such documents as may affect such lands together with others, as if such lands were the subject of an application to bring the same under the provisions of "The Land Transfer Act, 1885."

188. (1.) When any railway is to be constructed under the provisions of any special Act,—

Procedure for making railway.
1894, No. 42, sec. 167
1900, No. 47, sec. 24
1903, No. 93, sec. 11

Governor to proclaim limits within which railway is to be made.

5

(a.) The Governor shall issue a Proclamation defining the middle line of the railway or of any part thereof, and may from time to time, by a Proclamation revoking or amending such former Proclamation, alter such line in any manner or to any extent which may be found necessary for the construction of such railway within the provisions of the said special Act:

10

(b.) The Minister shall cause to be made such maps and plans as may be necessary to explain the said line and the land through which the same passes, and shall cause a copy of the same to be deposited in the office of the Registrar of the Supreme Court; and such maps and plans shall be referred to in any such Proclamation, and shall form part thereof:

Plans and maps to be made and copies deposited in Supreme Court.

15

(c.) Such maps and plans shall lie open to public inspection at all reasonable hours:

20

(d.) At any time after the publication of any such Proclamation the Minister may enter upon any land required to be occupied for the construction of the railway, and do all things thereon which he is empowered by this Act to do for the construction of the railway, without being deemed to commit any trespass thereby:

After Proclamation land may be occupied.

25

(e.) The Governor may at any time, and from time to time, after the deposit of such maps and plans, by Proclamation, take any land required for the railway or for any road or street diversion in connection therewith, or road or street approach thereto, and wholly close for the full or any less width thereof the whole or any part of the length of any road or street the exclusive use of which may be required for the railway, taking the soil thereof when necessary:

Governor may take land or close road for railway.

30

(f.) The Proclamation, when gazetted, shall be conclusive evidence that the land therein referred to, and the soil of any road or street therein referred to, is vested in His Majesty in fee-simple, freed and discharged from all mortgages, charges, claims, estates, and interests of what kind soever, for the use of the railway, and that any part of any road or street thereby closed has ceased to be a public highway:

35

(g.) Every such Proclamation, together with a map of the land taken, certified as prescribed by paragraph (a) of section *nineteen* hereof, shall be deposited as provided by section *twenty-four*, and all things shall be done and happen thereupon as in cases provided for by that section:

40

(h.) At any time either before or after issuing any Proclamation taking land for a railway, the Minister shall cause notice to be given to every owner or occupier of such land, so far as they can be ascertained, and in such notice shall state that the land therein described is taken or intended to be taken for a railway, and that claims for compensation in respect thereof must be sent to the Minister pursuant to the provisions of this Act:

45

Before or after the time of taking land notice to be given to person whose land is taken.

50

Proclamation to be
indefeasible.

Sheriff may deliver
possession of lands.

Costs.

Provisions as to
notices of objections
not to apply.

Area of Crown land
or reserves used or
set apart to be
deemed to be of two
chains width.
1894, No. 42, sec. 168

Land not used to
revest as Crown
land or reserve.

Road, street, or land
previously disposed
of not to be
interfered with.

(i.) With such notice a plan of the land taken or intended to be taken shall be sent, but the omission to send any such notice or plan shall not invalidate any Proclamation taking the land :

(j.) No Proclamation taking land, or closing a road or street, shall be impeached or defeasible on any ground whatsoever :

(k.) If any person in possession of any land taken, purchased, held, or acquired for a railway refuses to give up possession, or hinders the Minister or any person appointed by him from taking or entering into possession, the Minister may issue his warrant to the Sheriff of the Sheriff's district within which the land is, to deliver possession of the same to the person appointed in the warrant to receive the same ; and upon the receipt of the warrant the Sheriff shall deliver possession of such land accordingly :

(l.) The costs accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained from the compensation, if any, then payable to such party ; or if no such compensation is payable to such party, or if the same is less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand shall be levied by distress ; and upon application by any person appointed in that behalf by the Minister to any Justice for that purpose, the Justice shall issue his warrant accordingly, and such costs shall be paid into the Public Works Account.

(2.) The provisions of sections *eighteen* and *nineteen* of this Act shall not apply to a railway made by the Governor under the authority of any Act, or a Proclamation issued by virtue of any Act, unless it is otherwise provided in any special Act.

189. (1.) Where, out of any Crown lands or public reserve upon which any railway has been or may hereafter be constructed, no definite area or part of such lands or reserve has been or may be set apart or taken by Proclamation for railway purposes, it shall in any such case be deemed that a width of two chains of such lands or reserve (one chain on each side of the centre line of the railway) has been set apart or taken for the purposes of such railway, and shall be included within the limits thereof, and for all purposes be deemed to be part of such railway accordingly.

(2.) If at any time it is desired that any such lands or portion of a reserve so deemed to be part of any railway, or any part thereof respectively, shall cease to be part of such railway, the Governor may from time to time, by a notice published in the *Gazette* defining accurately the portion desired to be retained as part of the railway, declare that the residue thereof shall again become lands of the Crown or a part of the public reserve from which it was originally taken ; and such notice shall take effect accordingly, and such residue shall return to its original status as Crown land or public reserve, as the case may be.

(3.) Nothing herein shall interfere with any public road or street on any such lands or reserve within the area so included in the railway, and lying along, adjacent to, or crossed by any such railway, except

under and subject to the provisions of this Act; nor shall anything herein affect any sale, lease, or other disposition of any such lands or reserve heretofore made and which may be at variance with this enactment.

5 190. (1.) Subject to the restrictions herein specified, the Minister may do the following things in respect of any railway authorised by a special Act :—

Powers to make railways and railway-stations, &c. 1894, No. 42, sec. 109

10 (a.) May enter upon and make the railway upon, over, or under any land necessary for the construction thereof, lying along the middle line defined in any Proclamation under paragraph (a) of subsection one of section one hundred and eighty-eight hereof, or within a distance of ten chains on either side thereof; and for this purpose may construct works of every description and of every material necessary to the making thereof; and locomotive engines, machines, 15 carriages, trucks, wagons, and vehicles of all kinds may be used and run over any land entered upon or taken or acquired for a railway lying within the distance aforesaid; and any such fuel as is mentioned in section ten of "The Government Railways Act, 1900," may be used for any such locomotive engine or machine : 20

(b.) May make any part of such line of railway on and along any part of any road or street :

25 (c.) May make the railway upon, across, over, or under any road, street, railway, or tramway along such line; and may alter the level of any road, street, railway, or tramway for such purpose :

(d.) May make the railway across any arm of the sea, river, stream, or navigable water :

30 (e.) May alter the course or the level of any river not navigable, or of any stream, watercourse, ditch, or drain :

(f.) May make drains or conduits on or under any land adjacent to and for the purpose of carrying water from off the railway, and may at all times maintain the same in good repair : 35

(g.) May remove or alter any drain or sewer, or any pipes or other material for the supply of water or of gas belonging to any company or person within or beyond the limits of the railway :

40 (h.) May make or construct all such buildings, stations, engines, machinery, piers, wharves, roads, approaches, and other works in connection with the railway as may be thought necessary :

45 (i.) May do all acts necessary for making, maintaining, altering, repairing, and using the railway.

(2.) The provisions of paragraph (a) hereof shall be deemed to have applied and shall apply to all railways constructed or deemed to have been constructed under any Act heretofore in force relating to the construction of public works, or in course of construction, or 50 hereafter to be constructed :

Rights of way and traffic where railway made along or across road on a level.

1894, No. 42, sec. 170

191. (1.) Where any part of a road or street, except where it crosses a railway on a level, is used or occupied for a railway under the powers conferred by the *last preceding* section, such part of the road or street shall thereafter cease to be a highway.

(2.) Where a road or street crosses a railway on a level the public right of way at such crossing shall cease whenever any engine or carriage on the railway is approaching and within a distance of half a mile from such crossing; and shall at all other times extend only to the right of crossing the line of railway with all convenient speed, but not to stopping or continuing thereon.

(3.) Whenever a railway is constructed upon or across a road or street upon the same level it shall be lawful for the Minister to carry on and conduct the working and management of such railway in every respect upon or across such road or street.

Compensation where road interfered with or wholly closed.

Ibid, sec. 171

192. (1.) No compensation shall be payable to any person or body in respect of the use or occupation of any part of any road or street for any railway under the powers conferred by section one hundred and *ninety* hereof, or for or in respect of any inconvenience or damage to any lands fronting or adjoining any such road or street arising out of the construction of the railway upon such part of such road or street.

(2.) No compensation shall be payable to any person or body in respect of any road or street being wholly closed under the powers conferred by section one hundred and eighty-eight hereof, or in respect of the use or occupation thereof for any railway, or for or in respect of any such inconvenience or damage as mentioned in the *last preceding* subsection, if reasonable and sufficient access to the nearest road or street crossing over such railway is afforded by some other road or street, whether such last-mentioned road or street has been provided or constructed by the Minister or not.

(3.) If any question arises as to whether such other reasonable and sufficient access as aforesaid is afforded, the same shall be determined in such manner as is agreed upon between the local authority having the control of roads or streets in the district and the Minister; and every such determination shall be conclusive as to the rights or claims of all persons affected.

(4.) In the event of no such agreement being come to, all claims for compensation in respect of the matters mentioned in subsection *two* hereof shall be determined in the manner provided in Part III. of this Act, but no compensation shall be awarded if in the opinion of the Compensation Court such other reasonable and sufficient access is afforded as aforesaid.

Government to make crossings to give access to lands.

Ibid, sec. 172

193. In cases where the making of a railway-line has cut off all access by road to land other than Crown land, the Government shall make such crossing or crossings as may be necessary to give access to such land:

Provided that not more than one crossing may be demanded in respect of each property, unless the frontage of such property to the railway exceeds one mile in length, in which case one crossing shall, on the application of the owner of such property, be given for each mile of frontage; but no additional crossing or crossings need be given in the event of the land being or having been subdivided after the construction of the railway.

194. In any case where the whole or any part of any road or street has been at any time before the passing of this Act actually wholly closed by the construction of a railway thereon, or the use and occupation thereof for the purposes of a railway, and has so continued up to the time of the passing of this Act, such road or street or part thereof shall be deemed to have been lawfully closed under the powers conferred by section one hundred and eighty-eight hereof as from the time of such actual closing.

Road or street wholly closed before passing of Act to be deemed lawfully closed.
1894, No. 42, sec. 173

195. The provisions of the *four last preceding* sections shall apply and be deemed to have applied to railways owned by any company or person under the authority of any Act of the General Assembly.

Application of four preceding sections to railway owned by company.
Ibid, sec. 174

196. (1.) Where it is found necessary for the construction of a railway to alter any road, street, tramway, watercourse or drain, or any other public work, or any water-pipe or gas-pipe for the supply of water or gas belonging to a private person or company, such alterations shall be made in such manner as to interfere as little as possible with the work so altered, and so as to afford to the public and to every person entitled to use the same an equal use and convenience as far as may be as before such alteration.

Alterations in roads, drains, pipes, &c., to be made without detriment to the public or to owners.
Ibid, sec. 176

(2.) Before commencing any such alteration the Minister shall cause a plan thereof to be prepared and to be submitted to the local authority having the control of the work proposed to be altered, or to the owner of such water-pipe or gas-pipe, or other work, as the case may be.

Plan of alteration to be submitted to owners.

(3.) If such local authority or owner objects to the proposed alteration, the Minister shall appoint a competent engineer to confer with such authority or owner, and to agree with it or him as to the manner in which such alteration shall be made; and if no agreement can be come to between the parties, the matter shall be referred to the Governor, whose decision thereon shall be final.

Governor to settle objections.

(4.) The Minister may at any time interfere with any such road, street, public work, or pipe so far as to effect all necessary repairs on any railway theretofore lawfully constructed thereon, but shall give to such local authority or owner three days' notice of his intention so to do.

Notice to be given of intention to make repairs.

(5.) But, in any sudden emergency or danger, the Minister may carry out forthwith all such works as appear to him to be necessary, but shall as soon as possible give notice of so doing to such local authority or owner.

In case of emergency works may be carried out forthwith.

197. (1.) Whenever it may be considered desirable to allocate any portion of any land reserved, taken, purchased, or otherwise acquired for a railway to the purposes of a road or street, and it is certified by the Minister that such land is not required for railway purposes, the Governor may, after having received the consent of the local authority hereinafter referred to, by Proclamation declare such portion of such land as is defined in such Proclamation to be a road or street; and may by such Proclamation vest the control of such road or street in the local authority most capable, in his opinion, conveniently and effectively to construct, control, and maintain the same.

Governor may declare land taken for railway to be road or street, and vest it in local authority.
Ibid, sec. 177

(2.) From and after the date of the gazetting of such Proclamation, such portion of land shall become a road or street, and shall be under the control of and be liable to be maintained by such local authority in like manner as other public highways are controlled and maintained by such authority.

Local authority may agree with Minister as to conversion of railway-bridge into one for combined traffic. 1894, No. 42, sec. 178

198. (1.) Any local authority may agree with the Minister to pay the cost or estimated cost of converting any railway-bridge into a combined road and railway bridge, which work of conversion the Minister is hereby authorised to carry out, if he should so think fit.

(2.) Such local authority is hereby authorised to pay such cost, and also to pay annually to the Minister such further amount as may be necessary to maintain the roadway of the said combined bridge, and any approaches, gates, or other works or structures in connection therewith, and also to pay to the Minister such amount, if any, annually as may be requisite to pay the wages of one or more caretakers of the said bridge. 10

(3.) All moneys hereby authorised to be paid by a local authority shall be paid out of the fund under its control, and be charged accordingly.

Right of way on joint railway and common bridges. Ibid, sec. 179

199. (1.) Where a bridge is used for railway and ordinary traffic jointly, the public right of way on such bridge shall extend only so far as is defined in any by-law made under section eleven of "The Government Railways Act, 1900." 15

(2.) The Minister may close any such bridge to public traffic for such periods as may be deemed advisable, when it is found necessary to execute such repairs thereto as will prevent the use of the same for such traffic. 20

Land may be occupied temporarily. Ibid, sec. 180

200. (1.) Except as and subject to the conditions hereinafter provided, the Governor may temporarily occupy and use any land for the purpose of constructing or repairing a railway, and may do the following things thereon:— 25

(a.) May take therefrom stone, gravel, earth, and other materials;

(b.) May deposit thereon any such material;

(c.) May form and use temporary roads thereon;

(d.) May manufacture bricks or other materials thereon;

(e.) May erect workshops, sheds, and other buildings of a temporary nature thereon. 30

Twenty-one days' notice of occupation to be given.

(2.) The Engineer or other person having the charge of the railway shall, before occupying or using any land as herein provided, and except in the case of accident to the railway requiring immediate repair, give to the owner or occupier thereof not less than twenty-one days' notice in writing, and shall state in such notice the use proposed to be made of such land. 35

(3.) The said owner or occupier may, within ten days after receiving such notice, and after giving notice to the said engineer or other person of his intention so to do, apply to any Justice of the Peace, who may thereupon summon such Engineer or other person to appear before two Justices of the Peace at a time and place to be named in such summons. 40

Justices to decide if occupation necessary, and to settle conditions.

(4.) If it appears to the said Justices that the use proposed to be made of the said lands is unreasonable and unnecessary, or that other neighbouring lands are more fitting to be used for the purpose proposed, the said Justices may, by writing under their hands, order that the lands in question shall not be occupied or used in the manner proposed; or the said Justices may in such order direct that the said lands may be occupied and used, or material taken therefrom, in such 45 50

manner and to such extent only, and subject to such limitations and restrictions, as they think fit; and all persons concerned shall be bound by any such order.

201. (1.) The owner of any land temporarily occupied, as provided by the *last preceding* section, for the purposes of a railway may, at any time during such occupation, give notice in writing to the Minister that he the owner requires the said land to be taken for the purpose of the railway; and such lands shall thereupon be taken for the railway in the manner herein provided.

Owner may require land to be permanently taken
1894, No. 42, sec. 181

(2.) Upon the filing of the said notice by such owner in the Supreme Court, the said owner and all persons having any interest in such land may recover compensation as if the same were taken in the manner provided by Part II. of this Act.

202. If, upon the report of an engineer, the Minister is of opinion that any tree on land adjacent to a railway (not being a Government railway open for traffic) is likely by falling or otherwise to obstruct the traffic or endanger the travellers thereon, he may cause notice to be given to the owner or occupier of such land to remove such tree; and in default of such removal he may cause the tree to be removed; but such owner or occupier may recover the amount of any cost or damage incurred or suffered by such removal.

Tree dangerous to railway to be removed.
Ibid, sec. 182
1900, No. 27, sec. 45

203. (1.) Any person trespassing upon any railway in the course of construction, or upon any land occupied or temporarily occupied for the purpose of such construction under the powers hereby given, shall be liable to a fine not exceeding two pounds.

Penalties for trespassing on railway in course of construction.
1894, No. 42, sec. 183

(2.) Any person riding or driving any animal or vehicle upon such railway or land without lawful authority shall be liable to a fine not exceeding five pounds.

(3.) Any such person refusing to leave such railway or land, or to remove such animal or vehicle therefrom, when warned so to do by the overseer, contractor, or any other person in charge of or employed upon such railway, may be seized and detained by such overseer or other person until he can be conveniently taken before some Justice of the Peace to be dealt with according to law.

204. (1.) The Governor may from time to time, by Proclamation publicly gazetted, declare on behalf of His Majesty that any fences constructed or intended to be constructed by or on behalf of His Majesty for separating land taken for the use of any railway in such Proclamation mentioned from the adjoining lands not taken shall, to such extent as is mentioned in such Proclamation, be thereafter maintained, or erected and maintained as the case may require, at the cost of His Majesty during such time as the railway may continue to be used by or on behalf of the Government of New Zealand.

Crown may elect to erect fences along boundaries of railways.
Ibid, sec. 184

(2.) Such fences shall thereafter be maintained, or erected and maintained as the case may require, by the Minister accordingly.

(3.) In any case in which such Proclamation is issued before any claim for compensation has been ascertained in relation to any land taken as aforesaid, the issue of such Proclamation shall be taken into account by the Compensation Court in reduction of the amount of compensation to be awarded for severance.

205. Any person employed on or about any railway (not being a Government railway open for traffic), whether vested in His Majesty or in any company or other person, may impound cattle trespassing upon such railway; and any act, matter, or thing required under "The

Railway servants may impound trespassing cattle.
Ibid, sec. 185
1900, No. 27, sec. 30

Impounding Act, 1884," to be performed or done by the occupier of land as defined in such Act may be performed or done in respect of any such railway by any person authorised generally or particularly for that purpose by or on behalf of the Minister, the district railway officer, or the General Manager or any District Manager of such railway.

Railway buildings
exempted from local
building regulations.
1894, No. 42, sec. 186

206. No building or other erection built or erected for railway purposes upon a railway shall be subject to any Act, or any by-laws or regulations made under the same, by which any local authority is empowered to regulate the erection, construction, or use of any buildings or erections within the jurisdiction of such local authority.

Officer of Railway
Department may
appear in
proceedings in
inferior Court.
1895, No. 47, sec. 5

207. Whenever it is necessary to take any proceedings in any Court of inferior jurisdiction for the recovery of any debt due to His Majesty under this Act, or any other Act relating to Government railways, or for the recovery or enforcement of any fine recoverable under any such Act, the Minister for Railways may empower any officer of the Railway Department to appear and act in any such proceedings, either generally or in any particular case; and the statement of any such officer that he so appears or acts by the authority of the Minister shall be sufficient evidence of such authority for all purposes.

PART VIII.

RAILWAYS AND TRAMWAYS REGULATION AND INSPECTION.

Government Railways.

Inspection of
railways.
1894, No. 42, sec. 222

208. No part of any railway constructed by the Governor under this Act, or under any other Act relating to the construction of public works or railways, shall be opened for traffic until such part of such railway has been inspected by some proper person appointed by the Minister for that purpose, nor until such person has reported to the Minister that he has inspected the whole of such part, and (except in the case of an extension of an existing railway) all the rolling-stock to be used thereon, and that such railway and rolling-stock are in good and efficient repair, and may be safely and conveniently used for public traffic thereon.

Private Railways and Tramways.

Definition of rail-
way, proprietors,
and telegraph.
Ibid, sec. 223

209. Where used in sections two hundred and *ten* to two hundred and *nineteen* hereof—

"Railway" means and includes all railways (other than railways for the time being vested in His Majesty) and all tramways constructed under the authority of this or any other Act or any Provincial Ordinance, and intended or used for the conveyance of passengers in or upon carriages drawn or impelled by steam, electricity, or any other mechanical power, or by animals:

"Proprietors" means and includes the proprietors for the time being of any such railway as in this section defined, or in whom any such railway is vested, or who have the management or control of such railway, whether such proprietors are a body corporate or individuals:

"Telegraph" includes "telephone."

Regulation of Private Railways and Tramways.

210. There shall be for every railway on which passengers are carried an officer called the General Manager, and the name and address of each such General Manager shall be registered in the office of the Minister.

General Manager to be appointed for every railway.
1894, No. 42, sec. 224

211. The proprietors of every railway shall be bound to convey all public mails in the ordinary trains free of charge; and, in the event of war or civil commotion, the said proprietors shall, on the requisition of the Governor, place the whole of the resources of the railway at his disposal at the charges actually incurred.

Mails to be conveyed free of charge.

Railway at Governor's disposal in time of war.

Ibid, sec. 225

212. The Governor shall have power at all reasonable times to enter into and upon any railway, and to take any necessary land, and erect stations and other buildings thereon for telegraph purposes, and may cause telegraph-poles to be erected and an electric telegraph to be established along any railway, whether constructed under this Act or otherwise, without any compensation or payment for the same; but so nevertheless as not to cause any injury to such railway or to impede or obstruct the working thereof.

Governor may construct telegraphs on any line.

Ibid, sec. 226

Inspection of Private Railways and Tramways.

213. (1.) The Minister may from time to time appoint any proper person to inspect any railway, and such appointment may be general, authorising the person so appointed to inspect all or any railways as occasion may from time to time require; or special, applying to any one or more sections of railway specially named therein.

No railway to be open for traffic except on certificate of Inspector.

Ibid, sec. 227

(2.) Any person so appointed may, at all reasonable times, upon producing his warrant of appointment if required, enter upon and examine any such railway, and the stations, works, and buildings, and the engines and carriages, and other rolling-stock belonging thereto.

(3.) Every person wilfully obstructing any person duly appointed to inspect any railway as aforesaid in the execution of his duty shall for every such offence be liable to a fine not exceeding ten pounds.

Penalty for obstructing Inspector.

214. (1.) No railway or portion of any railway shall be opened for the public conveyance of passengers—

Notice of intended opening of railway.
Ibid, sec. 228

(a.) Until two months after notice in writing of the intention of opening the same has been given by the proprietors of such railway to the Minister; nor

(b.) Until thirty days after notice in writing has been given by such proprietors to the Minister of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers and ready for inspection; nor

(c.) Unless and until the Minister has given notice in writing to the proprietors thereof that he has received from the person appointed under section two hundred and *thirteen* hereof a certificate that the railway or portion thereof is safe and fit for traffic.

1904, No. 46, sec. 2

(2.) If any such railway or portion of any such railway is opened without such notices having been duly given, the proprietors of such railway shall be liable to a fine not exceeding two hundred pounds for every day during which the same continues open until the said notices are duly given, and, in the case of the notices given to the Minister, have expired:

Penalty for opening without notice.

1894, No. 42, sec. 229

Governor
empowered to
postpone the open-
ing or working of
a railway.

Ibid, sec. 230

Provided that the last-mentioned notices shall be deemed to have expired as soon as the Minister has given his notice as aforesaid to the proprietors.

215. (1.) If the person appointed to inspect any railway or portion of railway shall, after any inspection thereof, report in writing to the Minister that in his opinion the opening or the continued working of the same would be attended with danger to the public or to the persons employed on such railway, by reason of the incompleteness of the works or permanent-way, or the need of necessary repairs in any part thereof respectively, or the insufficiency of the establishment for working such railway, the Governor may from time to time—

(a.) Order the proprietors of such railway to postpone such opening or discontinue such working for any period not exceeding one month at any one time, until it appears to the Governor that such opening may take place or such working may be resumed without danger to the public; or

(b.) Where an authorising order has been made under "The Tramways Act, 1894," direct that the works thereby authorised shall be completed in accordance with such order and any plan or documents mentioned therein, without suspending the traffic upon the tramway.

(2.) Provided always that the proprietors shall be entitled to a copy of the report on which such order is founded.

Penalty for breach
of order to postpone
opening or discon-
tinue working.

(3.) If any order made by the Governor under this section is not complied with by the proprietors of any railway affected by such order, such proprietors shall be liable to a fine not exceeding two hundred pounds for every day during which such order is not complied with.

General Manager to
give notice of
accidents to the
Minister.

Ibid, sec. 231
1904, No. 46, sec. 3

216. (1.) The General Manager of every railway shall, within forty-eight hours after the occurrence upon the railway under his management of any accident attended with serious personal injury to the public or to any person employed thereon, or with serious damage to the line, appliances, rolling-stock, or plant, give notice thereof by a telegram to the Minister.

(2.) Such telegram may be sent by the officers of the Government lines of telegraph free of charge.

(3.) If any such General Manager wilfully omits to give such notice, he shall be liable to a fine not exceeding five pounds for every day during which such omission continues.

Inquiry as to
accidents.
Ibid, sec. 4

217. (1.) The Minister may cause an inquiry to be held, in such manner as he thinks fit, as to any accident referred to in the *last preceding* section; and, for the purpose of preventing the recurrence of any such accident, may direct the proprietors of the railway to make such alterations as he thinks fit in the construction or equipment of the railway, or of the rolling-stock, plant, or machinery employed thereon or in connection therewith, or in the method of working the same, and to discontinue the working of the railway, or the use of such rolling-stock, plant, or machinery, or the method of working the same, as the case may require, until such alteration has been made.

(2.) If any such direction is not complied with, the proprietors of the railway shall be liable to a fine not exceeding two hundred pounds for every day during which such non-compliance continues.

218. (1.) The Governor may order the General Manager of any railway to make up and deliver to the Minister returns of serious accidents occurring in the course of the public traffic upon the railway under his management, whether attended with personal injury or not.

Governor may direct returns of accidents to be supplied.
1894, No. 42, sec. 232

5 (2.) Such returns shall be made up in such form and manner as the Governor deems necessary and requires with a view to the public safety.

(3.) If any such returns are not so delivered within fourteen days after the same have been required, such General Manager shall be liable to a fine not exceeding five pounds for every day during which he neglects to deliver the same.

(4.) Provided always that all such returns shall be privileged communications, and shall not be received in evidence in any Court whatever.

219. Notwithstanding anything in any Act, the Governor may allow carriages and rolling-stock up to eight feet in width to be used on any railway in cases where he is satisfied that they may be safely and conveniently used without danger to the public.

Width of carriages and rolling-stock.
1903, No. 93, sec. 14

PART IX.

DEFENCE.

Defence Works.

220. In this Part of this Act :—

“Fortification” or “defence purposes” means and includes any fortification or other work (however designated) which is constructed or intended to be used for the purposes of defence, and all roads or other works which may be requisite for approach to or otherwise necessary or convenient for the purposes of any such fortification.

Definition of fortification and obstruction.
1894, No. 42, sec. 233

“Obstruction” means and includes houses and erections of any kind, trees, shrubs, fences, banks, mounds, ditches, and generally any erection or thing which would or at any time might interfere with the range of fire from any fortification, or obstruct the clear view therefrom, or be available for any hostile purpose against any such fortification.

221. The Minister is hereby empowered to construct and maintain any fortification or other work for defence purposes, and he or any officer, surveyor, or other person or persons authorised by him may, whenever the Minister deems it expedient, enter upon any land, road, or street, and construct any fortification or other such work without having first taken or closed such land, road, or street for the purposes thereof; but in any such case the land, road, or street necessary for the construction thereof shall be taken or closed as soon as conveniently may be thereafter in the manner provided by section two hundred and twenty-three hereof.

Minister may construct fortifications.
Ibid, sec. 234

222. In addition to the power vested in him of taking land for defence purposes, the Minister is hereby empowered, on behalf of His Majesty, to close the whole or any part of any road or street for such purposes, and to require that any land which he has power to take, or any road or street or part thereof, shall (instead of being taken) be kept free from obstruction in respect of the use of any fortification.

And may close roads and streets, and require land to be freed from obstruction.
Ibid, sec. 235

Manner of taking,
&c.
1894, No. 42, sec. 236

223. (1.) Any land, or any road or street or part thereof, may be taken or closed for defence purposes, or required to be kept free from obstruction in respect of the use of any fortification, in the following manner :—

- (a.) A map shall be prepared in duplicate, showing accurately the position and extent of the land, road, or street proposed to be taken or kept free from obstruction. 5
- (b.) Such map shall be signed by the Surveyor-General, or some authorised surveyor appointed by him to certify plans for the purpose of any Act relating to the conveyance or transfer of land, as evidence of the accuracy thereof. 10
- (c.) The Governor may thereupon, by Proclamation publicly notified, declare that such land or road or street, or part thereof, a description whereof shall be contained in or annexed to the Proclamation, is taken or closed for defence purposes, or required to be kept free from obstruction in respect of the use of any fortification. 15

(2.) A Proclamation taking or closing land or a road or street, or part thereof, for defence purposes shall, when gazetted, be conclusive evidence that the land therein referred to, and the soil of any road or street or part thereof therein referred to, is vested in His Majesty in fee-simple, freed and discharged from all mortgages, charges, claims, estates and interests of what kind soever, for defence purposes, and that any road or street or part thereof thereby closed has ceased to be a public highway. 25

(3.) A Proclamation requiring land or a road or street, or part thereof, to be kept free from obstruction shall not vest such land or road or street, or part thereof, absolutely in His Majesty, but shall have the effect of a separate covenant by every person or body having any estate or interest in the land, road, or street, and all persons claiming under such person or body, with His Majesty that such land, road, or street shall at all times be kept free from obstruction, unless the Minister agrees to the release of such covenant, either wholly or in part, which he is hereby empowered to do in any case he thinks fit. 30

(4.) On the deposit of the Proclamation and map in accordance with section twenty-four hereof, the proper officer of the District Land Registry Office for the district where such land, road, or street is shall make such entries in respect thereof, and do such acts and sign such documents, as the Governor in Council may from time to time prescribe. 35

Section 28 not to
apply.
Ibid, sec. 237

224. Section twenty-eight hereof shall not apply to the case of an entry upon or taking of land for defence purposes, but the Minister shall erect such fences as are required by that section to be made with all convenient speed after the removal of any fencing from the land entered upon or taken. 40

Taking land for
parade or camping
grounds or rifle
ranges.
1903, No. 93, sec. 15

225. Land required for parade-grounds, camping-grounds, or rifle ranges, or for approaches thereto, may be taken as for a public work and in the manner prescribed by this Part of this Act for taking land for defence purposes. 45

Refusing to give up
possession of land, or
obstructing Minister.
1894, No. 42, sec. 238

226. If, in any case where the Minister is authorised to take possession of or to enter upon any land for defence purposes, any person refuses to give up possession thereof, or obstructs the Minister or any person authorised by him in taking such possession or entering upon 50

the same, any Magistrate may issue his warrant under his hand empowering any constable to deliver possession of such land to the person named in the warrant, and such warrant shall be sufficient authority to any such constable to enter on the said land and deliver possession thereof accordingly.

227. (1.) No person shall have any claim to compensation by reason of the firing of artillery from any fortification, or the use or working thereof, or otherwise under this Act, except for land actually taken or required to be kept free from obstruction; but nothing in this section shall be deemed to prevent any person who suffers any damage to the materials of any house or building from pursuing any other remedy he may have at law.

Compensation, when payable.
1894, No. 42, sec 239

(2.) No compensation shall be payable to any person or body in respect of the whole or any part of any road or street being closed under the powers conferred by section two hundred and twenty-one, or for or in respect of any inconvenience or damage to any lands fronting or adjoining any such road or street arising out of the construction of any fortification upon such road or street, or part thereof, if reasonable and sufficient access for the purposes for which such road or street, or part thereof, was intended is afforded by some other portion of such road or street, or by some other road or street, whether provided or constructed by the Minister or not.

(3.) The provisions of subsections three and four of section one hundred and ninety-two hereof shall apply to all claims for compensation in respect of the matters mentioned in the last preceding subsection of this section.

228. (1.) Every person who, on land taken or required to be kept free from obstruction, mutilates, defaces, takes away, destroys, or alters the position of any fortification, building, erection, survey peg, mark, or pole set up or affixed thereon, or who constructs or sets up any erection of any kind on any such land without authority of the Minister, or who wilfully obstructs any officer, surveyor, or his assistants or workmen engaged in carrying on any works authorised to be executed or constructed for defence purposes, or any survey of any land taken or required as aforesaid, shall be liable to a fine not exceeding fifty pounds.

Penalty for destroying, altering, &c., fortifications.
Ibid, sec. 240

(2.) Nothing herein shall be deemed to interfere with or restrict the provisions of any other law or statute under which any such person could be punished for any such offence, so as such person be not punished twice for the same offence.

PART X.

DRAINAGE BY PUBLIC BODIES.

229. (1.) The word "drain" in this Act includes every passage or channel on or under ground through which water flows, whether continuously or intermittently, except a navigable river; and extends to and includes an outlet to any lake or other body of water not having a navigable communication with the sea or any navigable river.

Definition of drain and public drain.
Ibid, sec. 241

(2.) Any such drain made by the Government or by any public Board or Commissioners before the passing of this Act, or made or declared to be a public drain under this Act, or made upon, above, or under

any road or other land vested in the Crown, and every natural water-course, stream, and river not navigable, is a public drain within the meaning of this Act.

Public drains under the control of County Council.

1894, No. 42, sec. 242

Minister may make Government drains.

Ibid, sec. 243

All drains upon railway land to be Government drains.

230. All public drains shall, except as herein provided, be under the control of and shall be constructed and kept in repair by the Council 5 of the county in which they are.

231. (1.) The Minister may construct Government drains through any lands within New Zealand.

(2.) All drains now or hereafter existing or made upon, above, or under any land on which any railway the property of His Majesty and 10 open for traffic is constructed, or upon, above, or under any land within the limits of such railway, shall be Government drains.

(3.) The Governor may from time to time, by Order in Council, declare any drain now or hereafter existing or made within New Zealand to be a Government drain, and may by any subsequent Order in Council 15 revoke any such former Order, and may declare that any such drain shall cease to be a Government drain.

In case of Government drains, Minister to have powers of County Council.

Ibid, sec. 244

232. All the powers and liabilities given to or imposed upon County Councils by this Part of this Act shall, in respect of Government drains, be exercised by and imposed upon the Minister, so long as and whilst 20 such drains continue to be Government drains, and during such period the County Council shall not have any powers or liabilities in respect thereof.

Drainage map of county.

Ibid, sec. 245

233. (1.) The Governor may from time to time, by Order in Council, direct any County Council, as soon as conveniently may be after 25 the date of such Order, to cause to be prepared a drainage map of the county, on which shall be shown all the public drains within the county, with the levels and gradients thereof referred to a datum plane thirty feet below the average level of the sea.

Datum plane.

Datum plane to be fixed by appointed Engineer.

(2.) The datum plane shall be fixed by an engineer to be appointed 30 for that purpose by the Governor; and any errors or omissions in any drainage map shall from time to time be corrected or supplied in such manner as such engineer directs.

Drainage map to be open for inspection.

(3.) The drainage map shall be open for public inspection at all reasonable hours at the office of the County Council; and any person 35 under the authority of the Minister, or any Road Board within the county, may cause a copy to be made of any part of such map.

Powers of County Council to drain.

Ibid, sec. 246

234. Subject to the conditions and restrictions herein contained, the County Council shall have the power to do the following things for the 40 drainage of the county :—

- (a.) To make surveys on any lands ;
- (b.) To make new public drains through, above, or under any lands ;
- (c.) To make a public drain under any road, and for such purpose to cut through such road and alter the level thereof, and temporarily to stop the traffic thereon ; 45
- (d.) To take any existing drain and declare the same to be a public drain ;
- (e.) To erect banks and dams on any land or on any drain as a protection against water, and to make sluices therein ;
- (f.) To impound, divert, or take water from any public drain ; 50
- (g.) To keep all drains clean and in good repair, and to remove all obstructions to the flow of water therein ;

- (h.) To widen, deepen, straighten, or otherwise alter the course or level of any drain ;
- (i.) To enter upon any lands, and take therefrom stone or other material for constructing or repairing any drain, bank, or dam ;
- (j.) To make and use temporary roads through any lands for such construction or repair ;
- (k.) To place any soil or rubbish removed from any drain upon any land adjacent thereto ;
- (l.) To inspect any private dam, weir, and mill-race, and to open or close any sluice or flood-gate for the purpose of such inspection ;
- (m.) To make and maintain all such works and machinery, of what kind soever, and generally to do all such things as may be necessary for the efficient drainage of the lands and houses within the county.

235. (1.) The County Council may from time to time, by an order publicly notified, place all the public drains within any road district under the control of the Road Board of the district in which they are, or place under such control any public drains to be specified in such order ; and may revoke any such order, either in whole or in respect of any particular drains.

County Council may place drains under Road Board. 1894, No. 42, sec. 247

(2.) The Road Board shall in respect of any such drains have all the powers and be subject to all the liabilities herein given to or imposed upon County Councils in respect of the construction and repair of public drains.

236. (1.) If for the efficient drainage of any of the lands of a county a public drain is required to run through two or more counties, the Minister may, upon the application of the County Council of either of such counties, cause plans to be prepared showing the course, dimensions, and levels of the proposed drain, and may, after submitting such plans to the said County Councils, and duly considering such reports, objections, or suggestions as either of them may make thereon, alter such plans and finally settle the same as he thinks fit, and may cause the said drain to be so constructed in accordance therewith.

Where a drain runs through two counties, Minister to construct it. Ibid, sec. 248

(2.) In cases where "The Counties Act, 1886," is suspended in any county, all the powers, duties, and functions vested in a County Council by this section and the *last two preceding* sections shall vest in and be exercised and performed by the Governor.

237. The cost of constructing and repairing such a drain shall be divided amongst and charged upon the counties through which it runs, in proportion to the benefit accruing to each county from the drainage of the lands therein ; and the Minister shall fix the share so calculated to be paid by each county, and may recover the same from the County Council.

Cost to be recovered from the County Councils. Ibid, sec. 249

238. If any such drain is constructed or repaired in part out of moneys appropriated by Parliament, the balance only of the cost thereof shall be charged on the counties, as provided by the *last preceding* section.

If any money provided by Parliament, only balance of cost to be recovered. Ibid, sec. 250

239. (1.) The Council of any county may from time to time, at the request of any Road Board within the county, by a special order, delegate to such Board all or any of the powers granted to such Council by section two hundred and thirty-four hereof for the purpose

County Council may delegate to Road Boards power to make new drains. Ibid, sec. 251

of enabling such Board to make or maintain new public drains within the district under its jurisdiction.

(2.) The Road Board, for the purpose aforesaid, may, from the date of such order taking effect, exercise any of the powers mentioned in the aforesaid section; and also shall have all the powers and be subject to all the liabilities herein given to or imposed upon County Councils in respect of the construction and repair of public drains. 5

Penalties for
destroying drains.
1894, No. 42, sec. 252

240. Every person who wilfully and maliciously destroys or damages any public drain, or any bank or dam or other work made under the authority of this Part of this Act, shall be liable on conviction to a fine not exceeding five hundred pounds, or, at the discretion of the Court inflicting the same, to be imprisoned with or without hard labour for any term not exceeding two years. 10

Railways not to be
interfered with.
Ibid, sec. 253

241. Nothing in this Part of this Act shall be deemed to authorise any interference by any local authority with any land, drains, or works upon or within the limits of any railway. 15

Saving of "Christ-
church District
Drainage Act,
1875," and other
Acts.
Ibid, sec. 254

242. Nothing in this Act shall be deemed to repeal or alter any of the provisions—

- (a.) Of "The Christchurch District Drainage Act, 1875," or any Act or Acts amending the same, or to authorise any interference by any County Council with any drains or other works under the control of the Boards constituted by the said Acts respectively without the consent of such Boards; 20
or
- (b.) Of "The Land Drainage Act, 1904," or to authorise any interference by any County Council with any drains or other works under the control of the Boards constituted by the said Act respectively without the consent of such Boards; 25
or
- (c.) Of "The River Boards Act, 1884," or to authorise any interference by any County Council with any drains or other works under the control of the Boards constituted by the said Act respectively without the consent of such Boards; 30
or
- (d.) Of "The Water-supply Act, 1891." 35

PART XI.

SUPPLY OF WATER FOR MINING DISTRICTS.

Definition of
water-race and
mining district.
Ibid, sec. 255

243. (1.) The term "water-race" means the land occupied by any channel, natural or artificial, for the supply of water, or by any sludge-channel or drain for removing the wash or refuse matter from mining claims, proclaimed to be a water-race under this Part of this Act; and includes all dams, sluices, reservoirs, and other waterworks, and all buildings and machinery upon the land and within the limits so proclaimed. 40

(2.) "Mining district" means any mining district constituted under "The Mining Act, 1898." 45

Governor may
proclaim water-
races, and take any
stream to supply
water-race.
Ibid, sec. 256

244. The Governor may, by Proclamation publicly notified and gazetted, declare any land therein specified, whether within or without or partly within and partly without a mining district, to be a water-race,

and may declare any stream therein specified to be taken for the purpose of supplying a water-race.

245. The Minister shall cause a map of such water-race to be deposited in the Warden's Court of the district in which such land is, and such map shall be referred to in and shall form part of any such Proclamation.

Map to be deposited in Warden's Court. 1894, No. 42, sec. 257

246. The Governor may, by a similar Proclamation, at any time during the construction of such water-race, revoke any former Proclamation or part thereof, and alter the course of such water-race as he thinks fit.

Governor may alter the course of any water-race. Ibid, sec. 258

247. When such water-race is proposed to be constructed over lands not surveyed, it shall be sufficient that such Proclamation and map describe in general terms, but as nearly as may be, the course and limits of the water-race; but, where it is proposed that the water-race shall pass through lands held or occupied, or contracted to be held or occupied, under grant, lease, or license from the Crown, the middle line of such water-race shall be marked out by pegs driven into the ground at a distance, wherever the nature of the ground admits, of not more than one chain from each other; and the said Proclamation shall describe the course of such water-race over such lands by reference to the middle line so marked out.

On unsurveyed land, Proclamation to be in general terms, but line to be pegged out. Ibid, sec. 259

248. (1.) In any case where the course and limits of any water-race or any portion thereof constructed at any time under the powers given by this Act or any other Act relating to the supply of water to mining districts, whether at present or heretofore in force, and the streams taken for supplying the same, are described in general terms, and it is found expedient to describe the exact limits of such water-race or of any portion, and the streams taken for supplying the same, the Governor may, by Proclamation, at any time and from time to time define the exact limits of such water-race or any portion, and the streams for supplying the same.

How and when limits of land for water-race and streams taken therefor shall be determined. Ibid, sec. 260

(2.) The effect of such a Proclamation shall be to vest the land within such exact limits, and all buildings, machinery, dams, sluices, reservoirs, streams, and other waterworks on such land, in His Majesty in fee-simple at law and in equity, freed and discharged from all mortgages, charges, claims, estates, and interests whatsoever theretofore affecting the same.

(3.) The Governor may also from time to time, by Proclamation, release any land outside of the exact limits so to be defined from any previous Proclamation affecting the same, whether made under the powers conferred by this Act or any other Act at present or heretofore in force.

(4.) If the land released was, at the time it was affected by the Proclamation from which it is released, Crown land, the effect of the release shall cause it to again become Crown land, and, if within a mining district, to be portion of such district.

(5.) A copy of such Proclamation, together with a map showing such limits, shall be deposited in the Warden's Court of the district.

249. Where, under the powers contained in section two hundred and forty-four hereof, or in any repealed Act relating to public works, any land has by Proclamation been declared to be a water-race, or any stream

Governor may revoke Proclamation as to water-race. 1900, No. 47, sec. 25

specified in such Proclamation has been declared to be taken for the purpose of supplying any water-race, it shall be lawful for the Governor at any time, in the event of such land or stream not being required for the purposes for which they were so proclaimed, to revoke such Proclamation, and thereupon such land or stream shall be deemed to be released from the effect of such Proclamation. 5

Water-races vested
in the Crown.
1894, No. 42, sec. 261

250. (1.) All water-races constructed under this Act shall, except as herein otherwise provided, be vested in His Majesty.

(2.) Any water-race heretofore legally vested in any local authority shall continue to be so vested, notwithstanding anything in this section 10 contained.

Powers of Minister
to construct or pur-
chase water-races.
Ibid, sec. 262

251. For the purposes of this Part of this Act the Minister may do the following things :—

- (a.) May make surveys upon any lands ;
- (b.) May make a water-race upon, over, or under any land within 15 the limits defined in a Proclamation as aforesaid ;
- (c.) May make such water-race over or under any road or through any public reserve within such limits ;
- (d.) May alter the course or level of any road for such purpose 20 within or beyond such limits ;
- (e.) May make the water-race across any stream or river, but so as not to impede the navigation upon any navigable river except under the provisions of a special Act ;
- (f.) May alter the course or level of any such stream or river, or 25 of any ditch or drain ;
- (g.) May take, impound, or divert the water from any stream specified in a Proclamation as aforesaid ;
- (h.) May make dams, sluices, reservoirs, or other waterworks in any such stream, whether within or without the limits of 30 such water-race ;
- (i.) May enter upon any lands and take therefrom any materials required for the construction or repair of a water-race ;
- (j.) May purchase or lease any water-race wholly or partially constructed, or any rights to water ;
- (k.) May construct all works, buildings, and machinery of every 35 description and material, and generally may do all things necessary for the construction, repair, maintenance, and use of any water-race.

Water-races subject
to Mining Regula-
tions.
Ibid, sec. 263

252. The construction, maintenance, and use of every water-race made under this Act shall be subject to the laws and regulations affecting 40 water-races, aqueducts, dams, or reservoirs for the time being in force in the mining district in which such water-race is.

Minister may make
regulations for
using water-races.
Ibid, sec. 264

253. (1.) The Minister may from time to time make, alter, and repeal regulations prescribing the terms and conditions upon which any water-race may be used, and prescribing the rates and charges to be 45 paid for water supplied or for the drainage of mining claims.

(2.) All such regulations shall be gazetted, and take effect from a future day to be therein named in that behalf.

(3.) All such rates and charges may be recovered by and in the name of any person duly authorised by the Minister in that behalf, as an 50 ordinary debt.

254. (1.) It shall not be lawful for any person to take or divert any water in or supplying or flowing into a stream declared in a Proclamation as aforesaid to be taken for the supply of a water-race; and any person doing or causing to be done any act whereby the water in any such stream is diverted, drawn off, or diminished in quantity, and refusing or neglecting, when so required by the Minister or any person authorised by him, to restore the waters of such stream to the state in which they were before the said act, shall be liable to a fine not exceeding five pounds: for every day during which the supply of such water is so diverted, drawn off, or diminished.

Penalty for taking water from proclaimed water-race or stream.
1894, No. 42, sec. 265

(2.) If such person refuses or neglects so to restore the waters of such stream after receiving notice from the Minister or any person authorised by him to do so, the Minister may, at any time after one week from the serving of such notice, execute all works necessary so to restore the said waters, and may, by action in his own name, recover from such person the whole cost of such works, together with the amount of any damage sustained by reason of the taking or diverting of such water.

255. (1.) Every person who wilfully or maliciously destroys or does any damage to a water-race shall be liable to a fine not exceeding one hundred pounds, and to a further sum equal to the cost of restoring such water-race or repairing the damage done thereto.

Penalty for damaging water-race.
Ibid, sec. 266

(2.) Every person who unlawfully obtains water from a water-race, or uses any sludge-channel or drain, without payment of the lawful charges, or in any other manner than as provided by any regulations for the time being in force, shall be liable to a fine not exceeding fifty pounds.

Penalty for using water-race without paying charges.
Ibid, sec. 267

256. The Governor, in the name and on behalf of His Majesty, may demise and lease any water-race to any person willing to work the same, subject to the condition that such water-race shall be kept and delivered up at the end of the lease in good and substantial repair; and all the real and personal property included in any such lease shall, during the continuance thereof and subject to the conditions thereof, be vested in the lessee.

Governor may lease water-race.
Ibid, sec. 268

257. The Governor may contract with any person to make, maintain, and work a water-race—

Governor may contract for making water-race on certain conditions.
Ibid, sec. 269

(a.) Either by agreeing to pay the contractor a subsidy, not exceeding the amount agreed to be expended and actually expended by the contractor in the construction of such water-race;

(b.) Or by agreeing to pay to the contractor year by year such sum as shall, together with the net profits of working the water-race, make up six per centum yearly upon the amount agreed to be expended and actually expended in the construction thereof:

and every such contract shall contain a condition for the purchase, whenever the Governor thinks fit, of the interest of the contractor in the water-race upon terms to be specified in such agreement.

258. A water-race constructed under the *last preceding* section shall be deemed to be a water-race made under this Act; but, so long as it continues to be worked by the contractor under and subject to the conditions of any such agreement, the property therein shall vest in the contractor.

Such water-race to be under this Act, but to vest in contractors.
Ibid, sec. 270

Moneys accruing
from water-races
to be part of
Consolidated Fund.
1894, No. 42, sec. 271
Moneys payable to
be voted by
Parliament.
Ibid, sec. 272

259. All moneys accruing from water-races constructed under this Act shall be paid into the Public Account and form part of the Consolidated Fund.

260. All moneys payable under any agreement made under this Part of this Act shall be paid out of moneys appropriated by Parliament for the purpose. 5

Water-races, &c., held under Mining Acts.

Special provisions
relating to water-
races and works
within mining
districts.
Ibid, sec. 273

261. Whenever in any case it is not expedient that the *preceding* sections of this Part of this Act relating to the proclamation and construction of water-races should be put in force, or whenever any rights to the use of water held under Acts relating to mining or mining districts (or for the construction of works connected therewith) have heretofore been acquired by or on behalf of His Majesty under such Acts, the following provisions shall have effect :— 10

- (a.) His Majesty may in any mining district apply for, receive, and hold any license or other authority to cut, construct, and use any water-race, sludge-channel, tail-race, dam, reservoir, or for any other purpose and in any manner authorised under “The Mining Act, 1898,” or any Act amending the same (which Acts and any regulations for the time being in force thereunder are hereinafter included in the expression “the said Acts”). 15
- (b.) Every such license or other authority shall confer upon His Majesty all rights, powers, remedies, and authorities, and he shall be subject to the same liabilities in respect thereof, as if such license or authority had been issued to him as a private person, except that the same shall not be liable to forfeiture for any cause whatever. 25
- (c.) The Governor may from time to time appoint some person or persons in any mining district under the said Acts, on behalf of His Majesty, to apply for and obtain the issue of any license or other authority as aforesaid under the said Acts, or for the issue of any renewal of any such license or authority. 30
- (d.) And he may in like manner appoint such person or some other person to exercise on behalf of His Majesty all such rights, remedies, and authorities, to execute all instruments or documents, and to perform all such conditions in respect of any such license or other authority in the name and on behalf of His Majesty as he might have or exercise, or could be called upon to perform, if he were a private person holding such license or authority. 40
- (e.) Every such appointment may be limited to some particular power or purpose hereinbefore mentioned, to be specified in the appointment, or may include all such powers or purposes. 45
- (f.) A notification in the *Gazette*, signed or purporting to be signed by the Minister of Mines, or some other member of the Executive Council for the time being acting for such Minister, shall be sufficient evidence that such person has been duly 50

appointed with all the powers and for all the purposes hereinbefore mentioned, unless in such notification there is expressed some limitation of the authority conferred upon him.

(g.) Where, under the provisions of any Act heretofore in force relating to mining, or under the said Acts, any right to the use of water, or any license or authority for all or any of the purposes hereinbefore mentioned, has been acquired by His Majesty or by any person on his behalf, such right shall be deemed to be and to have been, from the date or time when the same was so acquired, vested in His Majesty as effectually as if the same had been acquired by him under this Act, and shall be and be deemed to have been valid in law notwithstanding any defect or alleged defect in the title or status of the person who may have held or in any manner acquired any such right or authority as aforesaid.

(h.) Every Warden, Registrar, clerk, or other officer whose duty it may be to issue any license or other authority under the said Acts shall, upon application made to him for that purpose, and upon proof that any license or authority in respect of a right within the terms of the last preceding subsection is held on behalf of His Majesty, alter or amend, as the case may require, any existing license or other authority or any register or record kept by him, and may insert the name of His Majesty therein, and such other particulars as may be necessary to give due effect to this enactment; and this provision shall be sufficient authority for such alteration or amendment being made, any Act or regulation to the contrary notwithstanding.

(i.) It shall not be necessary for His Majesty or any person on his behalf to take out or hold any miner's right under the said Acts in order to enable him to hold any such license or authority as aforesaid; nor shall it be necessary that any such license or authority be renewed in any way, or that any annual or other fee in respect thereof be paid by or on behalf of His Majesty; but such license or authority shall, during the term for which it was granted, subsist until relinquished by His Majesty, or the original term for which it was granted has expired.

(j.) Expressions and terms used in this section of this Act shall have the like meanings as expressions and terms used in the said Acts.

Transfer of Water-races to Counties.

262. (1.) The Governor may, by Proclamation publicly notified and gazetted, declare any water-race to be vested in the corporation of the county in which such water-race is, and, if it lies in two or more counties, to be vested either jointly in the corporations of such counties or wholly in the corporation of such one as the Governor thinks fit; and, from and after a day to be named in such Proclamation, the water-race therein mentioned shall cease to be vested in His Majesty, and shall become vested as in such Proclamation set forth.

Governor may
with their consent
transfer water-races
to counties.
1894, No. 42, sec. 274

Powers, &c., there-
upon to vest in
County Councils.
1894, No. 42, sec. 275

County Councils to
keep water-races
in repair.
Ibid, sec. 276

County Councils
may purchase
water-race or make
new water-races.
Ibid, sec. 277

Revenue of water-
races to be paid to
County Fund.
Ibid, sec. 278

Use of water in lakes,
&c., for electrical
purposes to vest in
the Crown.
1903, No. 26, sec. 2
Acquisition of
existing rights or
lands.

Delegation of powers
to local authority.
Ibid, sec. 3

Power to grant
rights for certain
purposes.
Ibid, sec. 4

(2.) Provided that no water-race shall be so vested unless with the consent of the Councils of the corporations in whom the same is intended to be vested.

263. The Council or joint Councils of the corporation or corporations in which any such water-race is so vested shall, in respect of such water-race, have and be subject to all the rights, powers, obligations, and liabilities which the Governor or the Minister has or is subject to under the provisions of this Act in respect of the same. 5

264. Every water-race so vested in any such corporation or corporations shall be kept in good repair by and at the expense of the Council or Councils thereof; and, if not so kept in good repair to the satisfaction of the Minister, the Governor may from time to time cause the same to be repaired out of any subsidies or other moneys payable to such Council or Councils under any Act in force in that behalf. 10

265. (1.) The Council of any county, or the Councils of any two or more counties jointly, may purchase any water-race wholly or partially constructed therein, or make any new water-race therein, and for such purpose shall have all the powers which may be exercised by the Governor or Minister under this Part of this Act in respect of water-races. 15

(2.) All such water-races shall be deemed to be vested in the corporation of such one or more of the counties as may be agreed upon between the respective Councils thereof or as the Governor determines, as the case may be. 20

266. (1.) All moneys accruing from any water-race vested in any such corporation shall be paid into and form part of the County Fund instead of into the Consolidated Fund. 25

(2.) Where a water-race is vested jointly in two or more such corporations, such moneys shall be divided between the County Funds of such counties in such proportion as the several County Councils agree on, or, if they cannot agree, then in such proportion as the Governor determines. 30

PART XII.

WATER-POWER.

267. (1.) Subject to any rights lawfully held, the sole right to use water in lakes, falls, rivers, or streams for the purpose of generating or storing electricity or other power shall vest in His Majesty. 35

(2.) The Governor may from time to time acquire as for a public work any existing rights or any lands necessary for utilising water for the generation or storage of electrical power.

268. The Governor may from time to time, by Order in Council gazetted, delegate to any local authority, on such conditions as he thinks fit, the right to use water from any lake, fall, river, or stream for the purpose of generating electricity for lighting or motive power. 40

269. Notwithstanding anything in this Act, the Minister for Public Works, outside a mining district, may, subject to such conditions as he thinks fit, grant to any person or company the right to use water from any fall, river, or stream for the purpose of— 45

(a.) Generating electricity for lighting, to be used only for the purpose of and in connection with the business of such person

or company, and not for the purpose of sale to or use by any other person, company, or corporation ; and

- (b.) Driving any machinery used for any agricultural, industrial, or manufacturing purpose other than the generation or storage of electricity.

270. Nothing in this Part of this Act shall affect the right to the use of water for the irrigation of agricultural or pastoral lands, for the supply of water for stock, or under "The Mining Act, 1898," except the granting of water-rights for the generation of electric power for any other purpose save the applicant's own use:

Use of water for mining purposes. 1903, No. 26, sec. 5

Provided that no application to a Warden for the use of more than forty heads of water shall be granted except with the consent in writing of the Minister of Mines.

271. Nothing in this Part of this Act contained shall be deemed to invalidate or restrict any rights or privileges conferred by any Act of the General Assembly in force on the twenty-third day of November, one thousand nine hundred and three (being the date of the coming into operation of "The Water-power Act, 1903").

Rights under certain Acts reserved. Ibid, sec. 6

PART XIII.

GENERAL PROVISIONS.

272. The Governor may execute any deed or instrument for the purpose of granting and confirming any land, easement, right, privilege, concession, payment, or satisfaction which may have been or may hereafter be agreed to be granted or awarded under this or any other Act empowering such grant or award.

Governor may execute instruments. 1894, No. 42, sec. 279

273. In all cases where under this Act, or any repealed Act relating to public works, any money is authorised to be recovered from any local authority as a debt due to His Majesty, the Colonial Treasurer may deduct the same or any portion thereof from any subsidies or other moneys (if any) that may be payable by or on behalf of His Majesty from time to time to such local authority under any law for the time being in force, but without prejudice to the right of the Minister to recover the unsatisfied balance (if any) of such debt from such local authority as a debt due to His Majesty in any Court of competent jurisdiction.

Moneys due by local authority may be deducted from moneys payable to it by Government. Ibid, sec. 280

274. Every local authority shall have power to compound with any person for such sum of money or other recompense as it thinks fit in respect of the breach of any contract or of any penalty incurred thereunder, or of any debt due by or to the local authority, or of any damage done by the local authority or its servants, or to submit any such matter to arbitration, whether before or after any action or suit is brought for or in respect of the same.

Power of local authorities to settle claims. Ibid, sec. 281

275. (1.) When any person is in occupation of any land reserved, acquired, or taken, or to be reserved, acquired, or taken for any public work, without any right, title, or license, or whose right, title, or license has expired or been forfeited or cancelled, and whether such land is within or outside of any mining district, the Minister of Lands, or the Minister for Public Works, or any person appointed in writing by either or both, may enter a plaint in the Magistrate's Court nearest to the place where the land lies to recover possession thereof ; and the jurisdiction of the Court or Magistrate shall not be ousted on the plea that a question

Recovery of possession of land from persons holding illegal possession thereof. Ibid, sec. 282

of title is involved in any such case, or that the value of the premises possession whereof is sought to be recovered is above the ordinary or extended jurisdiction of such Court or Magistrate.

(2.) If upon the hearing of such plaint the defendant does not appear, or appears but fails to establish in himself an absolute right and title to the possession of such land, or if upon such hearing it is shown to the satisfaction of the Court that the title under which the defendant claims has, as between himself and the Crown, expired or become liable to forfeiture or cancellation, the Court shall declare such title to be extinguished, and may order that possession of the said land be given by the defendant to the plaintiff, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

(3.) If delivery of the land is not made in pursuance of such order, the Court or Magistrate, or any Justice of the Peace, may issue a warrant authorising and requiring the bailiff of the Court or any constable to give possession of such land to the plaintiff.

(4.) The provisions of sections one hundred and eighty-one, one hundred and eighty-two, one hundred and eighty-six, and one hundred and eighty-seven of "The Magistrates' Courts Act, 1893," shall, so far as they are not repugnant to or inconsistent with the same, apply to any proceedings taken under this section.

Penalty for obstructing workmen or destroying fences, marks, &c.
1894, No. 42, sec. 283

276. Every person who wilfully obstructs any engineer, overseer, workman, or other person in the performance of any duty, or in doing any work which he has lawful authority to do under the provisions of this Act, or wilfully and unlawfully cuts down, breaks, removes, or destroys any fence, in or upon any land taken under the provisions of this Act shall be liable to a fine not exceeding fifty pounds for every such offence.

Penalty for destroying buildings or bridges.
Ibid, sec. 284

277. Every person who wilfully and unlawfully cuts down, breaks, removes, or destroys any building or bridge in or upon any land taken under the provisions of this Act shall be liable to be imprisoned for any term not exceeding two years with or without hard labour.

Fines recoverable in a summary way.

278. All fines recoverable under the provisions of this Act may be recovered before any two Justices of the Peace in a summary way.

Ibid, sec. 285

Powers of Magistrate.

279. Where anything may be done by two Justices under this Act, the same may be done by any Magistrate.

Ibid, sec. 286

Making by-laws by local authority.

280. Any power conferred by this Act upon a local authority to make by-laws upon any subject shall be exercised in manner provided for the making of by-laws in the particular Act regulating the administration of the local affairs of the district of such authority.

Ibid, sec. 287

Validation of Orders in Council and Proclamations.
Ibid, sec. 288

281. (1.) All Orders in Council and Proclamations made and issued, or purporting to be made and issued, under the authority of any Act or Provincial Ordinance repealed by "The Public Works Act, 1894," or by any Act of a like tenor at any time theretofore in force, are hereby declared to be and to have been, as from the respective times of making and issuing thereof, good, valid, and effectual to all intents and purposes whatsoever, and shall be final and conclusive with respect to the existence of all requisites thereto and the performance of all conditions precedent or subsequent to the issue thereof, and shall not be impeached or disturbed at law or in equity or otherwise on any ground whatsoever.

(2.) All Orders in Council, by-laws, and regulations made prior to the passing of "The Public Works Act, 1894," giving to the Minister power to fix or alter scales of fares and charges, and all notices by the Minister fixing or altering scales of fares and charges are hereby declared, as on and from the making of such Orders in Council, by-laws, regulations, and notices, to have been and be good, valid, and effectual to all intents and purposes. 1894, No. 42, sec. 289

282. (1.) Any public work authorised under the authority of any Act or Ordinance now in force, or any of the compiled Acts, or any Act or Ordinance repealed by any of the compiled Acts or by any former Act, and any land required to be taken, purchased, or acquired for such work, or anything commenced under any such authority as aforesaid, may be continued, taken, purchased, or acquired, executed, carried out, enforced, and completed under the provisions of this Act. Works authorised or anything commenced under repealed enactments may be completed under those enactments, or may be completed under this Act. Ibid, sec. 291

(2.) Provided nevertheless that in any case where it may be found that the provisions of this Act are not applicable to such work, land, or thing, then for the purposes of carrying out and completing such public work, land, or thing the said repealed Acts and Ordinances shall be deemed to be in full force and operation. Proviso.

283. (1.) Subject to the provisions aforesaid, all railways and public works of every kind constructed, and all lands taken or things done, under the provisions of any Act or Ordinance now in force, or any of the compiled Acts, or any Act or Ordinance repealed by any of the compiled Acts or by any former Act, shall be deemed to have been constructed, taken, or done under this Act. Railways and public works, &c., under previous Acts to be deemed constructed under this Act. Ibid, sec. 292

(2.) And all Proclamations, Orders in Council, by-laws, regulations, and appointments issued or made under any of the compiled Acts or any Act thereby repealed, and subsisting at the commencement of this Act, shall be deemed respectively to have been issued or made under this Act, and shall have effect accordingly. Existing Proclamations, Orders, regulations, &c., to remain in force.

284. Nothing in this Act shall be deemed to repeal or alter any of the provisions of any other Act, save as herein expressly mentioned. Saving of Acts. Ibid, sec. 293

285. Whenever any unrepealed Act of the General Assembly incorporates or refers to any Part or Parts or any provisions of any of the compiled Acts or any Act thereby repealed, such unrepealed Act shall be deemed to incorporate or refer to the Part or Parts or provisions of this Act corresponding to such repealed Parts or provisions, as the case may be. References to repealed Act to apply to this Act. 1895, No. 47, sec. 4

286. Notwithstanding the repeal by "The Public Works Act, 1894," of the Acts referred to in the First Part of the Fifth Schedule thereto, so much of those Acts as is set out in the *Seventh* Schedule hereto shall continue in force and operate as if such repeal had not been made. Certain enactments continued in force. 1894, No. 42, sec. 290

287. (1.) Notwithstanding anything to the contrary contained in "The Mining Act, 1898," or any amendment thereof, or in any other Act, or in any Proclamation or Order in Council issued thereunder respectively, it shall not be lawful for any company or person constructing any tailrace to discharge or cause to be discharged any tailings, mining *débris*, or waste waters into any watercourse at any point or place within five chains from any bridge (or such shorter distance as in special instances may be prescribed by the Minister for Public Works or the local authority, as the case may be, having the control of such bridge) in such manner as to directly injure any such bridge. Tailings not to be discharged within five chains of a bridge. Ibid, sec. 294

(2.) For the purposes of this section “ bridge ” means any bridge, or the approaches thereto, open to the public or used for any railway or public tramway, or in connection with any public work whatsoever.

(3.) Every company or person committing a breach of the provisions of this section shall be liable as for committing an injury to a public work, and may be proceeded against accordingly.

5

Powers of borough
councils to acquire
land.
1904, No. 46, sec. 9

288. The powers conferred on a Council by subsection three of section two hundred and three of “The Municipal Corporations Act, 1900,” to acquire land shall not be limited to Part II. of this Act, but may be exercised in such manner provided by this Act as the circumstances of the case require.

Schedules

SCHEDULES.

Section

FIRST SCHEDULE.

ACTS COMPILED.

- 894, No. 42.—“ The Public Works Act, 1894.”
1895, No. 47.—“ The Public Works and Government Railways Acts Amendment Act, 1895.”
1900, No. 47.—“ The Public Works Acts Amendment Act, 1900.”
1903, No. 26.—“ The Water-power Act, 1903.”
1903, No. 93.— The Public Works Act, 1903.”
1904, No. 33.—“ The Mining Act Amendment Act, 1904 ” : Section 11.
1904, No. 46.—“ The Public Works Amendment Act, 1904.”

1894, No. 42, First
Schedule.
Section 7

SECOND SCHEDULE.

SCHEDULE showing the Railways on which Expenditure for Construction is authorised by this Act ; the Railways or Sections thereof on which the Expenditure is to be incurred ; the Definition and Length of such Railways or Sections ; the Estimated Expenditure required to render the same available for Use ; the Amounts appropriated for the Year ending , 19 ; and the Balances for Future Appropriation.

Railway.		The Railway or Sections thereof for which Appropriation is made in this Act.			6.	7.	8.
1. Name.	2. Estimated Length of the Whole Line.	3. From	4. To	5. Estimated Length of Section.	Estimated Ex- penditure required on the Length stated in Column 5.	Amount Appro- priated for Expenditure during the Financial Year ending 31st March, 19 .	Balance for Future Appropriation.
	M. ch.			M. ch.			

THIRD SCHEDULE.

Form A.

For Cases where Lands are taken.

1894, No. 42, Second
Schedule.
Section 43.

FORM OF CLAIM TO COMPENSATION UNDER "THE PUBLIC WORKS ACT, 1905."

To [Here insert either the Minister for Public Works or the name of the local authority, as the case may be].

WHEREAS by a Proclamation by His Excellency the Governor, dated the day of , 19 , the lands mentioned in Table A hereunder, in which I have an interest as described in Table B hereunder, have been taken and vested in His Majesty for the purposes of [Here insert the name of the public work mentioned in the Proclamation]:

And whereas the lands mentioned in Table C below, adjacent to the lands so taken, in which I have an interest as described in Table D below, will be injuriously affected by the said work by reason that [Here state items of claim, with a reference number to each, and give in each case full particulars of the nature and extent of claim]:

This is to give notice that I claim the sum of £ as compensation for all loss arising out of the taking of the aforesaid lands and the construction of the said public work, which sum is made up as follows:—

acre	roods	perches of land taken,	£	s.	d.
at	per acre				
Land injuriously affected as follows: [Here state reference number and short heading of each item of claim previously detailed, and the amount claimed in respect of each such item separately.]					
Total claim			£		

Given under my hand this day of , 19 .
Claimant: [Christian name and surname in full.]
Address: [Address in full.]

TABLE A.
DESCRIPTION OF LANDS TAKEN.

[Here describe the area and situation of lands taken, giving name of survey district, and number of block and section, as in Proclamation.]

TABLE B.
NATURE OF INTEREST IN LANDS TAKEN.

[Here state in full the nature of the interest—as owner in fee-simple, mortgagee, lessee, or occupier; and if the lands are leased or encumbered, or subject to any easement, give particulars of such lease or encumbrance, &c., &c.]

TABLE C.
DESCRIPTION OF LANDS INJURIOUSLY AFFECTED.

[Here describe the area and situation of the lands injuriously affected, giving name of survey district, and number of block and section, or other means of identification.]

TABLE D.
NATURE OF INTEREST IN LANDS INJURIOUSLY AFFECTED.

[Here state in full the nature of the interest—as owner in fee-simple, mortgagee, lessee, or occupier; and if the lands are leased or encumbered, or subject to any easement, give particulars of such lease or encumbrance, &c., &c.]

Form B.

For Cases where Lands are injuriously affected, but where No Lands are taken.

FORM OF CLAIM TO COMPENSATION UNDER "THE PUBLIC WORKS ACT, 1905."

To [Here insert either the Minister for Public Works or the name of the local authority, as the case may be].

WHEREAS the public works mentioned in Table A hereunder have been [or are about to be] executed by your authority, by which the lands described in Table B hereunder, in which I have an interest as described in Table C hereunder, have been [or will be] injuriously affected by the said works by reason that [Here state items of claim, with a reference number to each, and give in each case full particulars of the nature and extent of each such item]:

This is to give notice that I claim the sum of £ as compensation for all loss arising out of the construction of the said public work, which sum is made up as follows:—

[Here state reference number and short heading of each item of claim previously detailed, and the amount claimed in respect of each such item separately.]	£	s.	d.
Total claim	£		

Given under my hand this day of , 19 .
 Claimant . [Christian name and surname in full.]
 Address : [Address in full.]

TABLE A.

NATURE OF THE WORKS.

[Here describe the works constructed or proposed which have caused the claim.]

TABLE B.

DESCRIPTION OF THE LANDS AFFECTED.

[Here describe the area and situation of the lands affected, giving name of survey district, and number of block and section, or other means of identification.]

TABLE C.

NATURE OF INTEREST IN THE LANDS INJURIOUSLY AFFECTED.

[Here state in full the nature of the interest—as owner in fee-simple, mortgagee, lessee, or occupier; and if the lands are leased or encumbered, or subject to any easement, give particulars of such lease or encumbrance, &c., &c.]

FOURTH SCHEDULE.

FORM OF NOTICE REQUIRING CLAIM TO BE HEARD IN COMPENSATION COURT.

(Under the Authority of "The Public Works Act, 1905.")

To the Registrar [or Deputy Registrar] of the Supreme Court at [or Clerk to the Magistrate's Court at].

WHEREAS a certain claim for compensation for the amount of [Name the sum] in respect of certain lands taken [or in respect of certain lands injuriously affected] in which I have an interest, a copy of which claim is attached hereto, was made by me on the day of , 19 , upon and was duly served as by the said Act required upon, the Minister [or local authority], and the said Minister [or local authority] has refused to admit the

said claim [or has made me an offer of [*Name the sum*] in lieu of the said claim, which I do not accept]:

This is to give notice that I hereby require the said claim to be heard by a Compensation Court, as by the said Act provided; and I hereby appoint C. D., of M. N., to be an Assessor of the said Court. And I append hereto the consent and declaration of the said C. D. as by the said Act required.

Given under my hand at _____, this _____ day of _____, 19____.
A. B., Claimant.

Enclosures:

1. Copy of claim, on one of the forms in the *Third* Schedule.
2. Assent of Assessor to act, in the form provided in the *Fifth* Schedule of the Act.

FIFTH SCHEDULE.

FORM OF ASSENT OF ASSESSOR TO ACT.

1894, No. 42, Fourth
Schedule.
Section 49.

I, C. D., consent to act as Assessor in the Compensation Court to be constituted under "The Public Works Act, 1905," to hear the claim of [*Naming the claimant*] against [*Naming the respondent*] for the sum of [*Naming the amount of the claim*]; and I solemnly and sincerely declare that I am not concerned or interested in any way in the said claim, and that I will faithfully, honestly, and impartially, according to the best of my skill and ability, hear and determine the said claim.
C. D.

SIXTH SCHEDULE.

RANFURLY, Governor.

ORDER IN COUNCIL.

1900, No. 47,
Schedule.
Section 187.

At the Government House, at Wellington, this twenty-third day of July, 1900.

Present: HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

WHEREAS, in pursuance and exercise of the powers conferred by the one-hundred-and-twenty-third section of an Act of the General Assembly of New Zealand intituled "The Railways Construction and Land Act, 1881," the Governor of the Colony of New Zealand did, on or about the twenty-fifth day of May, one thousand eight hundred and ninety-five, take possession of and assume the management of two several lines of railway partly constructed by the New Zealand Midland Railway Company (Limited), and being the lines of railway from Springfield to Brunnerton and from Brunnerton to Belgrove, more particularly mentioned and described in a certain deed of contract bearing date the third day of August, one thousand eight hundred and eighty-eight, and expressed to be made between Her Majesty the Queen of the one part and the New Zealand Midland Railway Company (Limited) of the other part, which said deed was entered into and executed pursuant to the provisions of "The Midland Railway Contract Act, 1887": And whereas the said lines of railway are hereinafter referred to as "the railway": And whereas certain expenditure of public money has been entailed in and about the completion of the railway and in conducting the traffic on the railway, and accounts of the outlay and expenditure of public money so entailed and incurred, crediting the said company with all earnings and receipts of the railway, have been computed and rendered to the said company as provided by "The Railways Construction and Land Act, 1881": And whereas the said company failed after the Governor had taken possession as aforesaid to repay sums of public money which have been expended towards completing the railway and the equipment thereof, and sums of public money which have been expended on the repair and management of the railway and in connection therewith in excess of the receipts therefrom, which sums of public money have been shown to be due from the said company to the Governor by accounts computed and rendered as aforesaid after

crediting the said company as aforesaid: And whereas such failure and default by the said company had continued with respect to certain of such sums of public money for the space of more than one year at the date of the notice hereinafter referred to: And whereas by a document bearing date the eleventh day of April, one thousand nine hundred, under the hand of the Governor of the Colony of New Zealand, notice was given to the said company that at the expiration of the period of three months from the date of service thereof the Governor intended to retain the railway as Government property: And whereas the said period of three months has now expired, and the said company has failed as well during that period as before to repay the said sums of public money, and no arrangement has in the meantime been made between the Governor of the Colony of New Zealand and the said company:

Now, therefore, His Excellency the Governor of the Colony of New Zealand, by and with the advice and consent of the Executive Council of the said colony, and in exercise of the powers and authorities vested in him by the one-hundred-and-twenty-sixth section of "The Railways Construction and Land Act, 1881," and of every other power and authority him in this behalf enabling, doth hereby declare that possession of the railway has been taken as aforesaid, and will be permanently retained by the Government, and accordingly doth hereby declare and direct that the two several lines of railway from Springfield to Brunnerton and from Brunnerton to Belgrove, and the land whereon the same are constructed and that may be used therewith respectively, and all works, buildings, rolling-stock, machinery, and plant of every kind connected therewith respectively, and the right to construct and work the same respectively, and all the powers and privileges belonging and appertaining thereto respectively, and all stations connected therewith respectively, and all plant, equipments, and appurtenances belonging thereto respectively, shall become and be absolutely vested in Her Majesty the Queen.

ALEX. WILLIS,
Clerk of the Executive Council.

SEVENTH SCHEDULE.

Enactments of Former Acts continued in Force.

"THE RAILWAYS CONSTRUCTION ACT, 1878," No. 45, ss. 8, 9, 11.

(a.) Notwithstanding anything contained in "The Ellesmere and Forsyth Reclamation and Akaroa Railway Trust Act, 1876" (hereinafter called "the said Act") all moneys now standing to the credit of the special account required to be kept by the sixteenth section of the said Act, or that may be standing to the credit of the Public Trustee for the purposes of the said Act, shall be and the same are hereby transferred to the Public Account.

(b.) The whole proceeds of the sale or disposal of the fifty thousand acres of land mentioned in the said sixteenth section shall, together with all moneys transferred under the last preceding section, be paid into a separate account in the Public Account.

[Section 10 repealed.]

(c.) All moneys transferred, paid, or received under the provisions of sections eight, nine, and ten shall be applied in the construction and maintenance of a line of railway to Little River, and thence to Akaroa, from the main line from Amberley to Waitaki, or from a branch of the said line; and the Colonial Treasurer may from time to time cause all or any part of such moneys to be issued and applied accordingly.

"THE PUBLIC WORKS ACT, 1879," No. 44, s. 7.

This Act shall be deemed to be a special Act authorising the construction of each of the railways specified in the First Schedule, and such of them as have been finished shall be deemed to have been made, and such as are unfinished may be completed, under the provisions of the said Act,* "The Public Works Act 1876 Amendment Act, 1878," and this Act.

* "The Public Works Act, 1876."

1894, No. 42, Fifth
Schedule, Second
Part.
Section 286.

Moneys to credit of
Ellesmere and
Forsyth Reclama-
tion and Akaroa
Railway Trust
Account transferred
to Public Account.

Proceeds of disposal
of 50,000 acres
mentioned in said
Act to be paid into
Public Account.

Application of
moneys paid into
Public Account as
aforesaid.

Railways deemed to
be made under Act.

FIRST SCHEDULE.
Railways authorised to be constructed.

Railways authorised
to be constructed.

Short Title.	Description.
<i>North Island.</i>	
Kawakawa ..	From Kawakawa Coal-mine to the Shipping-place.
Whangarei-Kamo ..	From Kamo Coal-mine to the Shipping-place.
Kaipara-Waikato ..	From Kaukapakapa to Te Awamutu, with a branch from Auckland to Onehunga.
Waikato-Thames ..	From Waikato to the Thames, being a line from a junction with the line from Kaukapakapa to Te Awamutu, at a point near Hamilton, to Grahamstown, passing by Hamilton, Te Aroha, and Ohinemuri.
Wellington-Napier ..	From Wellington to Napier, by Woodville, with a branch from Woodside to Greytown.
Wellington-Foxton ..	From Wellington to Foxton, by Johnsonville and Porirua.
Foxton-New Plymouth ..	From Foxton to New Plymouth, with branches from the Main Line, as follows :— From Bunnythorpe to Woodville. From the Taonui Siding to the Feilding Gorge Road. From Greatford to Bulls. From a point near Kakaramea to Carlyle. From Sentry Hill to Waitara.
<i>Middle Island.</i>	
Nelson-Greymouth ..	The section from Nelson to Roundell, and the section from Greymouth to Nelson Creek, with Harbour-works at Greymouth.
Greymouth-Hokitika ..	From Greymouth to Hokitika.
Westport-Ngakawau ..	From Westport to the Ngakawau River.
Picton-Hurunui ..	The section from Picton to Awatere.
Hurunui-Waitaki ..	From the Hurunui River to the Waitaki River, passing by Amberley, Rangiora, Kaiapoi, Christchurch, Ashburton, and Timaru, with branches from the Main Line as follows :— From Rangiora to Oxford. From Kaiapoi to Eyreton. From Christchurch to Lyttelton. From the Racecourse to Southbridge, with a sub-branch to Little River, and thence to Akaroa. From Rolleston to Springfield Colliery, with a sub-branch to the White Cliffs. From the Main Line to Upper Ashburton. From the Washdyke to Opawa, Fairlie Creek, and Burke's Pass. From the Main Line to Waimate. The section from Amberley to Waikari.
Canterbury Interior Main Line	From Oxford to Temuka.
Waitaki-Bluff ..	From the Waitaki River to the Bluff, passing by Oamaru, Palmerston, Port Chalmers, Dunedin, Balclutha, and Invercargill, with branches from the Main Line as follows :— From Main Line to Duntroon. From Main Line to Ngapara, with a sub-branch to Livingston. From Main Line to Port Moeraki. From Main Line to Shag Point. From Main Line at Palmerston to Waihemo.

FIRST SCHEDULE—continued.
Railways authorised to be constructed—continued.

Short Title.	Description.
	From Sawyer's Bay to Port Chalmers. From Main Line to the Brighton Road. From Mosgiel to Outram. From Clarksville (Tokomairiro) to Lawrence. From Main Line to Catlin's River. From Waipahi to Heriot Burn. From Edendale to Toitois.
Otago Central ..	From Dunedin to Albert Town, Lake Wanaka.
Waimea-Switzers ..	From Waimea Plain to Switzers.
Invercargill-Kingston ..	From Invercargill to Kingston (Lake Wakatipu), passing by Winton, Lumsden, and Athol, with a branch from Lumsden to the Mararoa River.
Western Railways ..	From the Invercargill-Kingston Line, at the Makarewa River, to Riverton and Orepuki, with a branch to Otatau and the Nightcaps Coalfield.

“THE PUBLIC WORKS ACT, 1879,” No. 44, s. 13.

Water-races deemed to be made under Act.

This Act shall be deemed to be a special Act authorising the construction of each of the water-races specified in the Third Schedule, and such of them as have been finished shall be deemed to have been made, and such as are unfinished may be completed, under the provisions of “The Public Works Act, 1876,” “The Public Works Act 1876 Amendment Act, 1878,” and this Act.

THIRD SCHEDULE.

Water-races authorised to be constructed by the Government.

- | | |
|---|----------------------------|
| 1. Thames. | 4. Mount Ida. |
| 2. Waimea, including extension to Kumara. | 5. Waipori Sludge-channel. |
| 3. Nelson Creek. | 6. Four-mile. |
| | 7. Mikonui. |

“THE PUBLIC WORKS ACT, 1879,” No. 44, s. 32.

Governor may guarantee debentures or mortgages, to be given by any railway company mentioned in Fourth Schedule, for a sum not exceeding 75 per cent. upon construction, &c., of railway.

It shall be lawful for the Governor in Council from time to time, on being satisfied that the expenditure on any of the district railways specified in the Fourth Schedule hereto, by the company constituted for the purpose of constructing the same, has been economically expended, to guarantee upon such terms, conditions, and subject to receiving such security as the Governor in Council may approve, the debentures or mortgages to be given by any such company, for a sum in the aggregate not exceeding seventy-five per centum of the expenditure of the company upon the construction and laying of any railway-line constructed by them, and the erecting and building of any buildings and erections, and the purchase of rails or rolling-stock in connection therewith, being the property of the company; and the Governor may execute any instrument for completing or perfecting such guarantee on behalf of the colony: Provided always that the total amount of debentures or mortgages so guaranteed shall not exceed in the aggregate the sum of sixty thousand pounds.

FOURTH SCHEDULE.

Waimea Plains Railway Company (Limited).
Duntroon and Hakateramea Railway Company (Limited).
Waimate Railway Company (Limited).
Rakaia and Ashburton Forks Railway Company (Limited).

“THE PUBLIC WORKS ACTS AMENDMENT ACT, 1889,” No. 19, s. 10.

Defining land taken for railway purposes where not taken by

In any case where land has been entered upon by the Queen or the Governor, or by any person on behalf of the Queen or the Governor, prior to the thirty-first day of March, one thousand eight hundred and eighty-four, for the purpose of constructing a railway thereon, and no Proclamation taking such land for railway purposes has been

issued, and no conveyance or other instrument vesting such land in the Queen has been executed, it is hereby enacted that such land shall be deemed to have been duly taken for railway purposes to the extent hereinafter defined :

Provided, however, that in any such case where the Queen or the Governor, or any person on behalf of the Queen or the Governor, may have been entitled to resume possession of or take land for a road or a railway, under the authority of any Act of the General Assembly, without payment of compensation, or on payment of a certain sum fixed by or under such Act, then, if such land was entered upon for the purpose of the construction of a railway thereon during the currency of such authority, and prior to the thirty-first day of March, one thousand eight hundred and eighty-four, such land shall be deemed to have been duly taken for railway purposes, under the authority of such Act, to the extent hereinafter defined, at the time when it was entered upon by the Queen or the Governor, or by any person on behalf of the Queen or the Governor, for the purpose of constructing a railway thereon, notwithstanding that any special provisions contained in such Act as to the resumption or taking of such land may not have been complied with. But compensation may be claimed as hereinafter provided for any land thus taken in excess of the area authorised to be resumed or taken as aforesaid.

The word "Proclamation," where used in this section, means a Proclamation issued under the authority of the principal Act, or any Act thereby repealed, or of any Act repealed by "The Public Works Act, 1876."

In any case where compensation is payable under the provisions of this section, the time within which any person can obtain compensation for the land taken is hereby limited to a period of two years from the date of the coming into operation of this Act.

All claims in respect of such lands shall be made and dealt with as claims for compensation under the principal Act in respect of lands taken.

The boundaries on each side of the railway of the land hereby declared to have been duly taken for railway purposes are hereby defined to be—

- (a.) The outer boundary-fence of the railway, where any such boundary-fence now exists ;
- (b.) Where no such boundary-fence exists, a line parallel to and distant thirty-three feet from the centre line of the railway ; but, where the railway works and buildings now actually occupy a greater width, the boundary-line shall extend and include such works and buildings and a space of six feet beyond the same.

But no building or structure owned by any person other than the Queen or the Governor, or the New Zealand Railway Commissioners, shall be included by force of this enactment within the boundaries of land deemed to be taken for railway purposes ; nor shall anything herein be deemed to interfere with any public road or street except under and subject to the provisions of the principal Act* and its amendments ; nor shall anything herein affect any sale, lease, or other disposition by the Queen or the Governor, or the New Zealand Railway Commissioners, of any land hereby declared to have been taken for railway purposes after the occupation of such land for railway purposes by the Queen or the Governor, or the Railway Commissioners aforesaid.

If at any time within three years after the passing of this Act it is desired that any land hereby declared to have been taken for railway purposes, or any part thereof, shall cease to be part of a railway, the Governor may from time to time, by notice published in the *Gazette* defining accurately the portion desired to be retained as part of the railway, declare that the residue thereof shall cease to be part of such railway ; and such notice shall take effect accordingly ; and such residue shall thenceforth, if compensation has not been paid therefor, be deemed not to have been taken.

Nothing herein contained shall be construed to affect or limit the provisions of section twelve of "The Public Works Act Amendment Act, 1887," or any other statutory provision or any reservation whereby a greater width than one chain is prescribed or reserved for any railway.

Nothing herein shall be deemed to affect the provisions of section seventy-one of the principal Act,* nor shall anything herein be deemed to confer any right to compensation where such right does not now exist.

* "The Public Works Act, 1882."

Proclamation or conveyance, and fixing time within which compensation is payable for same.

