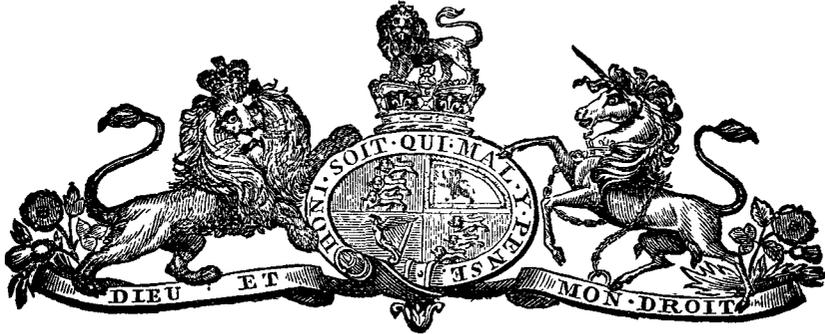


NEW ZEALAND.



QUADRAGESIMO SECUNDO
VICTORIÆ REGINÆ.
 No. 21.

ANALYSIS.

- | | |
|---|---|
| <p>Title.
 Preamble.
 1. Short Title.
 2. Interpretation.
 3. Repeal of section 12 of "District Railways Act, 1877." Provision in lieu thereof.
 4. Repeal of part of section 14 of "District Railways Act, 1877."
 5. Repeal of section 16 of "District Railways Act, 1877." Provision in lieu thereof.
 6. Amendment of section 56 of "District Railways Act, 1877."
 7. Repeal of part section 48 of "District Railways Act, 1877." Mortgages to be subject to power of purchase reserved to Governor.
 8. Mortgagee not to sell, or apply for order to sell, without first giving notice to Governor.
 9. When County Council or Borough Council neglects or refuses to levy rate, company may do so.
 10. In case of purchase by Governor, what money to be paid to company.
 11. Company not to borrow beyond four-fifths of cost of railway.
 12. Mortgagee not compelled to take mortgage money till time expired.
 13. Power to company to borrow.</p> | <p>14. Form of mortgage debenture.
 15. Time and place of payment.
 16. Interest payable not to exceed seven per cent.
 17. Debentures and coupons transferable by delivery.
 18. Agents for raising loans.
 19. Such mortgage to be first charge.
 20. Certificate as to amount of debt of company.
 21. Certificate as to amount to be borrowed.
 22. Certificate as to cost or value of railway.
 23. Penalty for falsely sealing or signing certificates.
 24. Creditors of company to have no claim on colonial revenue.
 25. Sinking fund.
 26. May be charged on net profits of company.
 27. Sinking fund to be applied to pay off loan.
 28. Company may re-borrow to pay off loans.
 29. If mortgage not paid when due, Receiver may be appointed.
 30. Company's property to vest in Receiver.
 31. Powers for recovery of rates to vest in Receiver.
 32. Receiver to give security.
 33. Application of money by Receiver.
 34. When loan paid off, Receiver's power to cease.
 35. Mortgage to be a debt of the body corporate.
 36. Appeal against classification.
 37. Amount of guaranteed interest.
 Schedules.</p> |
|---|---|

AN ACT to amend "The District Railways Act, 1877." Title.
 [29th October, 1878.]

WHEREAS it is expedient to amend "The District Railways Act, 1877" (hereinafter called "the said Act") : Preamble.

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

1. The Short Title of this Act shall be "The District Railways Act 1877 Amendment Act, 1878." Short Title.

District Railways Act 1877 Amendment.

Interpretation.

2. In the construction of the said Act and this Act,—

“Owners of any property” means the persons who, if the land were or is let at a rack-rent, would be entitled to receive such rack-rent.

“Railway” shall include all permanent works and buildings, rolling-stock, machinery, and plant of every kind.

“Mortgage” shall be held to include mortgage debentures and coupons, and any deed by which the railway as defined above is charged in security for repayment of principal money borrowed and interest thereon.

“Mortgagee” shall be held to include the creditor in any mortgage or other deed as aforesaid, and the holder of any mortgage debenture or coupon.

Repeal of section 12 of “District Railways Act, 1877.” Provision in lieu thereof.

3. Section twelve of the said Act is repealed, and the following provision shall be in lieu thereof:—

Within sixty days from the deposit of the plan and book of reference the votes of the ratepayers and owners of property within the proposed district shall be taken, as hereinafter provided, and if ratepayers and owners of property representing two-thirds or more of the value of the rateable property in the proposed district shall consent to the construction of the proposed railway, then, if the Governor shall not have previously declared his approval of the construction of such railway, he may, if he think fit, declare his approval thereof.

Repeal of part of section 14 of “District Railways Act, 1877.”

4. In section fourteen of the said Act shall be omitted all the words between the word “body” down to and including the word “property” where it secondly occurs in that section. The following words shall be added as a subsection to the said section after subsection three: “Every ratepayer and owner of property may either give his vote personally or by his attorney specially appointed for that purpose.” In subsection four of the same section all the words after the word “than” down to the end of that subsection shall be omitted, and the words “ten years to run” shall be added after the word “than.”

Repeal of section 16 of “District Railways Act, 1877.” Provision in lieu thereof.

5. Section sixteen of the said Act is repealed, and the following provision shall stand in lieu thereof:—

The company may, at any time after depositing the plan and book of reference, and transmitting to the Council of each county the particulars required by section eleven of the said Act, and either before or after taking the votes of the owners and ratepayers of property, but within ninety days after the deposit of such plan and book of reference, make application to the Governor for his approval of the construction of the railway, and shall transmit to the Minister for the information of the Governor a true copy of the plan and book of reference so deposited, accompanied with such documents as may be necessary to explain the same, including an estimate of the cost of the railway and the equipment thereof, signed by some engineer or other competent authority, together with all such particulars as are required by the eleventh section of the said Act.

The Governor may require from the company such further information as he shall deem necessary to enable him to judge of the necessity for the proposed work and the ability of the company to carry it out; and may require information as to the capital and liabilities of the company, the plant and rolling-stock available for the proposed railway, the time when it is proposed to commence and finish the same, and all such further particulars as he may deem necessary.

If the company shall have obtained the Governor’s approval, but upon taking the votes of the ratepayers and owners of property their consent to the construction of the railway is not obtained, the Governor’s approval shall be deemed revoked.

District Railways Act 1877 Amendment.

6. Section fifty-six of the said Act is amended by omitting the words "seven years" and substituting "ten years."

7. So much of section forty-eight of the said Act as commences at the word "but," and ends with the word "security" is hereby repealed. Every mortgage made or issued under the authority of the said Act or this Act shall be subject to the power of purchase reserved to the Governor by the said Act, and shall contain a provision to that effect.

8. No mortgagee shall sell or make application for an order to sell any portion of the company's property charged by any mortgage, unless and until he or they shall have first given notice in writing to the Governor of his or their intention to sell or to apply for such an order, and the Governor shall within three months next after the receipt of such notice have failed to give to such mortgagee notice of his intention to purchase, or unless he shall give to such mortgagee notice in writing that it is his intention not to purchase.

9. Where, under the provisions of the said Act, any County Council or Borough Council shall be directed to levy and raise a special rate, and such County Council or Borough Council refuses to do so, or fails for three calendar months after being so directed to levy such rate or any part thereof, then it shall be lawful for the directors of the company for whose benefit such rate is to be raised, or for a majority of such directors, to levy and raise such rate or any part thereof. Such directors, or the majority thereof, shall, so far as concerns such rate and the levying and raising thereof, have all the powers, duties, and functions which by law a County Council or Borough Council has with respect to the levying and raising of a special rate: Provided always that in no case shall such rate be greater than that proposed to be levied by the company under section eleven, subsection five, of the said Act.

10. If the Governor exercises the power of purchase conferred by section fifty-six of the said Act, and the railway works, plant, rolling-stock, implements, rights, powers, and privileges, or any part thereof purchased shall be then charged with any moneys borrowed by the company, and the moneys charged shall be less than the purchasing price determined by arbitration, pursuant to the provisions of sections fifty-six to sixty both inclusive of the said Act, the price to be paid to the company shall be the difference between the moneys charged and the price so to be determined.

If the moneys charged shall be more than the price so determined, the company shall pay to the Governor the difference between the price so determined and the money charged.

If the money charged, or any part thereof, shall bear interest at a higher rate than five per centum per annum, the arbitrators who determine the price to be paid for the purchase shall determine what, if any, is a proper sum to be allowed to the Governor as a rebate in respect of any interest on the amount charged in excess of five per centum per annum, and the amount so ascertained, if any, shall be added to the principal money, and as between the Governor and the company shall be deemed the amount charged upon the railway.

11. No company shall borrow any money on the security of the railway to an amount which shall exceed four-fifths of the cost of the railway, as defined by section eighty-five of the said Act. If any company shall borrow money at a higher rate of interest than five per centum per annum, then, in estimating such four-fifths, the interest in excess of five per centum shall be computed as principal money by some person appointed by the Governor, and the certificate of such person shall be conclusive. If the company desire to have any com-

Amendment of section 56 of "District Railways Act, 1877."

Repeal of part section 48 of "District Railways Act, 1877." Mortgages to be subject to power of purchase reserved to Governor.

Mortgagee not to sell, or apply for order to sell, without first giving notice to Governor.

When County Council or Borough Council neglects or refuses to levy rate, company may do so.

In case of purchase by Governor, what money to be paid to company.

Company not to borrow beyond four-fifths of cost of railway.

District Railways Act 1877 Amendment.

putation made previous to the borrowing of any principal money, they may submit to the Governor a statement of the rate of interest proposed to be paid, and the term of years for which the money is to be borrowed, and such other information as the Governor may require, and such computation may be made thereon accordingly.

Mortgages not compelled to take mortgage money till time expired.

12. Nothing in the said Act or this Act shall be deemed to authorize the Governor, on purchasing any railway works, plant, rolling-stock, implements, rights, powers, and privileges, charged with any moneys borrowed under the authority of the said Act or this Act, to require any person holding the charge to receive payment of the moneys so borrowed, unless and until the time mentioned in any mortgage for such repayment shall have arrived.

Power to company to borrow.

13. Any company, unless its articles of association prohibit, may borrow money on mortgage, and may issue mortgage debentures, and sell the same, in such manner as the company shall think fit.

Form of mortgage debenture.

14. Every mortgage debenture issued shall be in the form in the First Schedule, or to the effect thereof, and shall be under the common seal of the company, and signed by two directors, and shall be numbered consecutively, so that no two debentures shall at any time bear the same number, and shall be for a sum of not less than one hundred pounds each.

Time and place of payment.

15. Every such debenture shall be repayable, both as to principal and interest, at a place within or without the colony named in the debenture, and at a time named therein, being either ten, twenty, or thirty years from the issue thereof.

Interest payable not to exceed seven per cent.

16. The interest on every such debenture shall not exceed seven per centum on the amount thereof, and shall be payable half-yearly or otherwise; and separate coupons for each sum so payable, in the form in the Second Schedule, or to the effect thereof, and numbered consecutively for each debenture, shall be attached thereto, and no such debenture shall be sold at such a price as will produce to the purchasers an interest of more than seven per centum on the price paid.

Debentures and coupons transferable by delivery.

17. Mortgage debentures and coupons respectively shall be transferable by delivery; and payment to any person in possession of any such debenture or coupon of the sum named therein shall discharge the company of all liability in respect of such debenture or coupon.

No stamp duty shall be payable in respect of any such debenture or coupon.

Agents for raising loans.

18. The company may appoint any joint-stock company, or any such company and one or more persons, or two or more persons, within or without the colony, to be agents for raising and managing any loan authorized to be raised under the said Act or this Act, and such agents shall have full power to raise such loans by mortgage or otherwise, in such manner, at such times, in such parts, and upon such terms and conditions as such company shall direct; and to give and grant any necessary discharge or acquittance for the moneys raised under any such loan, or otherwise to dispose of moneys as such company shall prescribe.

Such mortgage to be first charge.

19. The principal and interest secured by such mortgage shall be a first charge on the railway, and the whole assets, including uncalled up capital or shares of the company, or upon such part or parts thereof as shall be expressed in the mortgage; but this provision is subject to the same qualification as is set forth in section seven of this Act—namely, the power reserved to the Governor by the said Act to purchase the railway.

Certificate as to amount of debt of company.

20. A certificate in the form or to the effect set forth in the Third Schedule of this Act, under the common seal of the company, and purporting to be signed by two of the directors for the time being

District Railways Act 1877 Amendment.

of the said company, stating the amount previously borrowed and then outstanding and unpaid, shall be conclusive evidence in any Court of judicature, as against the said company, that no more than the total sum of money mentioned in the said certificate had, at the date of such certificate, been previously borrowed and then remained outstanding and unpaid.

21. A certificate in the form or to the effect set forth in the Fourth Schedule of this Act, under the common seal of the company, and purporting to be signed by two directors for the time being of the said company, stating that the sum or sums named in such last-mentioned certificate are authorized to be borrowed, shall be conclusive evidence in any Court of judicature, as against the said company, that the directors of the said company are lawfully authorized to borrow the sum or sums of money named in the certificate in this section referred to, and that all conditions had been duly performed, observed, and fulfilled.

Certificate as to amount to be borrowed.

22. A certificate in the form set forth in the Fifth Schedule of this Act, under the hand of the Minister for Public Works, shall conclusively fix the cost or value of the railway for the purposes of the guarantee of interest on cost provided for in the said Act.

Certificate as to cost or value of railway.

23. If any person shall fraudulently and falsely cause the seal of the company to be placed to any such certificate as is mentioned in sections twenty, twenty-one, or twenty-two, or shall fraudulently and falsely give or sign any such certificate, he shall be guilty of a misdemeanour, and punishable by imprisonment with or without hard labour for not exceeding three years.

Penalty for falsely sealing or signing certificates.

24. No claim of any mortgagee, or of any creditor of any company, shall attach to or be paid out of the public revenues of New Zealand or by the General Government thereof.

Creditors of company to have no claim on colonial revenue.

25. Before borrowing any money on mortgage, the directors of the company may make provision for the repayment thereof,—

Sinking fund.

(1.) By making, with or without a sinking fund, the whole loan repayable at a stated period, or any parts thereof at stated periods.

26. In order to provide funds for the creation of a sinking fund, the directors of the company may permanently appropriate any portion of the net profits of the company.

May be charged on net profits of company.

27. When the principal moneys of any mortgage become payable, the accumulated sinking fund provided for repaying the same shall be applied in the payment thereof.

Sinking fund to be applied to pay off loan.

28. When the principal moneys of any mortgage become payable, it shall be lawful for the company to re-borrow moneys under the provisions of this Act, for the purpose of paying so much of the said principal moneys as is not provided for by any accumulated sinking fund for the payment thereof.

Company may re-borrow to pay off loans.

29. If the money so secured is not paid upon presentation of such mortgage at the place where and the time when the same is payable, or at such place and at any time thereafter, the mortgagee, without prejudice to his exercising any powers or remedies expressed or implied in his mortgage, may apply to a Judge of the Supreme Court, by petition in a summary way, for relief under this Act; and the Judge may, if satisfied of the truth of the matters alleged in such petition, order that such part of the company's property as is liable under the provisions of this Act for the payment of such money shall be sold, at such time or times, and either altogether or in parts, and subject to such terms and conditions as such Judge directs, and may in the meantime appoint a Receiver of the rents, income, and profits of such property.

If mortgage not paid when due, Receiver may be appointed.

District Railways Act 1877 Amendment.

Company's property
to vest in Receiver.

30. Such part of the company's property as is liable under the provisions of this Act for money so secured, and as is specified in the order of the Judge in that behalf, and all securities held by the company as accumulated sinking fund for the repayment of such loan, shall from the date of the said order vest in the Receiver, and shall cease to be vested in the company.

Powers for recovery
of rates to vest in
Receiver.

31. All powers for the recovery of rates, tolls, rents, or other moneys of the company shall, after the appointment of a Receiver, and in respect of all moneys hereby vested in him, cease to be exercised by the company, and shall be exercised by the Receiver.

Receiver to give
security.

32. Every Receiver shall, before entering on his office, give such security for the faithful execution thereof as the Judge directs.

Application of money
by Receiver.

33. All moneys arising from any sale as aforesaid, and all moneys received by the Receiver, shall be applied only under the order of a Judge of the Supreme Court, as follows :—

- (1.) In the payment of the expenses of the application and order, and of the expenses of any sale authorized as aforesaid ;
- (2.) In the payment of such remuneration to the Receiver, and in such expenses of his office, as the Judge directs ;
- (3.) In the payment of the principal moneys so secured, and interest thereon ;
- (4.) The residue shall be paid to the company ;

and the Receiver shall account for all such moneys in such manner as the Judge directs.

When loan paid off,
Receiver's power to
cease.

34. When all the money so secured is paid, or at any time by an order of the Judge of the Supreme Court upon the application of the company, the powers of the Receiver shall cease ; and he shall forthwith pay any moneys in his hands to the company.

Mortgage to be a
debt of the body
corporate.

35. The sum of money named in any mortgage and in any coupon shall, when the same respectively becomes payable, be a debt of the body corporate to the holder of such debenture or coupon for the amount named therein.

Appeal against
classification.

36. Any person claiming to be injuriously affected by the classification to be made under this Act may, within two months of the deposit of the plans, appeal in the manner provided for appeals under "The Rating Act, 1876," against such classification, on the ground that such classification is unfair towards himself, or that others are unduly favoured by it, and the Appeal Court shall, in all such cases, decide in the manner provided in "The Rating Act, 1876," in the case of appeals against rates.

Amount of
guaranteed interest.

37. For the purpose of deciding the amount of guaranteed interest to be paid on any district railway, the cost of such railway shall in no case exceed the estimate of the cost of the proposed railway and of the equipment thereof, transmitted by the company in accordance with the provisions of the eleventh section of the said Act.

District Railways Act 1877 Amendment.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

FORM OF DEBENTURE.

No. £
 Debenture for £
 Payable at [*State place of payment*], on
 Issued by the Company under "The District Railways Act 1877 Amendment Act, 1878."

ON presentation of this debenture at [*State place of payment*], on or after the day of, 18, the bearer thereof will be entitled to receive £

Interest on this debenture will cease after the day when the payment falls due, unless default is made in payment.

The amount secured by this debenture is secured upon [*State whether the whole railway, assets, and uncalled capital; or if only a portion, specify it*], as provided by section 19 of the above Act, which is as follows [*Set forth section 19*]. The holder of this debenture has no claim in respect thereof upon the Government of the Colony of New Zealand or the revenues of such colony, except such guarantee of interest as is contained in "The District Railways Act, 1877."

This debenture is subject to the power of purchase reserved to the Governor by "The District Railways Act, 1877," and "The District Railways Act 1877 Amendment Act, 1878," and to all other provisions of those Acts.

Under section 12 of "The District Railways Act 1877 Amendment Act, 1878," holders of mortgage debentures cannot be required to accept payment of sums due thereby till the period of payment has arrived, and the Governor can only purchase subject to that condition.

Issued under the corporate seal of the, the day of 18
 (L.S.) } Directors.
 A.B., }
 C.D., }

SECOND SCHEDULE.

FORM OF COUPON.

Debenture No. of the Company of New Zealand.

Issued under "The District Railways Act 1877 Amendment Act, 1878."

ON presentation of this coupon at [*State place of payment*], on or after the day of, 18, the bearer hereof will be entitled to receive £

The amount mentioned in this coupon is secured upon [*State whether the whole railway, assets, and uncalled capital; or if only a portion, specify it*], as provided by section 19 of the above Act, which is as follows [*Set forth section 19*]. The holder of this coupon has no claim in respect thereof upon the Government of the Colony of New Zealand or the revenues of such colony, except such guarantee of interest as is contained in "The District Railways Act, 1877."

This coupon is subject to all the provisions of "The District Railways Act, 1877," and "The District Railways Act 1877 Amendment Act, 1878."

(L.S.) } Directors.
 A.B., }
 C.D., }

THIRD SCHEDULE.

"DISTRICT RAILWAYS ACT, 1877," AND "DISTRICT RAILWAYS ACT 1877 AMENDMENT ACT, 1878."

Certificate of Existing Liabilities of the Company.

THIS is to certify that, prior to this the day of, 18, the Company has borrowed under the above Acts the sum of £, and no more; and that the mortgages and debentures issued in respect of the moneys so borrowed, and now outstanding and unpaid, do not exceed, in the whole, the sum of £

Issued under the seal of the Company, this day of 18

(L.S.) } Directors.
 A.B., }
 C.D., }

FOURTH SCHEDULE.

"THE DISTRICT RAILWAYS ACT, 1877," AND "THE DISTRICT RAILWAYS ACT 1877 AMENDMENT ACT, 1878."

Certificate of Authority given by the Directors of the Company to borrow Money.

THIS is to certify that the Directors of the Company are authorized to borrow the sum of £, and to issue debentures bearing interest at a rate not ex-

