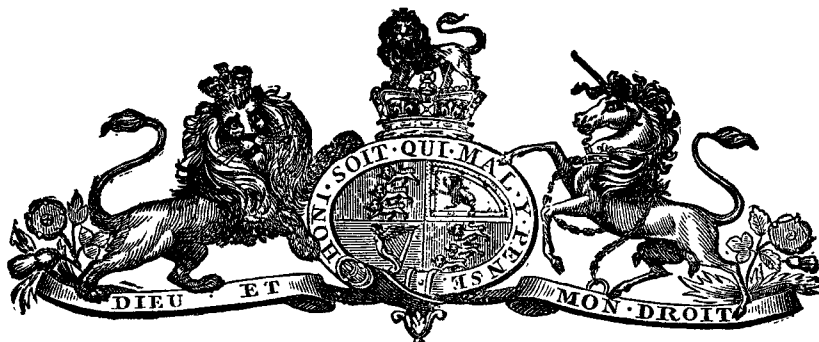


## NEW ZEALAND.



TRICESIMO QUINTO

## VICTORIÆ REGINÆ.

No. VIII.

\*\*\*\*\*

## ANALYSIS.

- |  |   |
|--|---|
| <p>Title.<br/>Preamble.</p> <p>1. Short Title.</p> <p style="text-align: center;">PART I.<br/>PRELIMINARY.</p> <p>2. Interpretation.</p> <p>3. All or any parts of Act may be extended to Highway District.</p> <p>4. Act not to apply to Westland.</p> <p style="text-align: center;">PART II.<br/>RATING OCCUPANTS OF CROWN AND NATIVE LANDS.</p> <p>5. Crown and Native lands liable to rates in certain cases. Lessee of Crown lands for pastoral purposes to be assessed at one-third of ordinary rates.</p> <p style="text-align: center;">PART III.<br/>APPEALS AGAINST RATES: RECOVERY OF RATE.</p> <p>6. Appeal against rates for certain causes to Resident Magistrate's Court or Petty Sessions.</p> <p>7. Appeal for other causes to District Court or Supreme Court.</p> <p>8. Appeal to be determined in a summary way and to be conclusive.</p> <p>9. Courts to have power to amend rates.</p> <p>10. Power to award costs.</p> <p>11. Orders not to be removed by <i>certiorari</i>.</p> <p>12. Badness of rate not to prevent recovery.</p> <p style="text-align: center;">RECOVERY OF RATE.</p> <p>13. Rate book to be evidence.</p> <p>14. If persons about to quit without paying rates Justices may issue order and distress warrant.</p> <p>15. Justices Judges &amp;c. to hear and determine though liable to be rated.</p> <p>16. Justice not to be disqualified from acting though ratepayer.</p> <p>17. Court fees not to exceed ten shillings.</p> <p style="text-align: center;">PART IV.<br/>BY-LAWS.</p> <p>18. Power to make by-laws.</p> <p>19. By-laws to be published.</p> <p>20. Power to try validity of by-law.</p> | <p style="text-align: center;">PART V.<br/>MAIN ROADS.</p> <p>21. Interpretation. Main roads. "Colonial Contribution Money."</p> <p>22. Where a main road formed up to boundary of a district and no continuous road in adjoining district governing body of either district may apply to Superintendent to order road to be made and expense to be borne by Public Works Construction Fund of the adjoining district or jointly by the Public Works Construction Funds of both districts.</p> <p>23. Before order made Superintendent to call on governing body for plans and estimates to be certified by persons appointed by Superintendent.</p> <p>24. After compliance with order is certified Superintendent empowered to issue order for payment to the contractor &amp;c. out of the district.</p> <p>25. Treasurer to issue receipt of order out of the fund.</p> <p>26. If orders not complied with Superintendent may appoint persons to effect construction who are to have the same power as governing body.</p> <p style="text-align: center;">PART VI.<br/>TRIAL OF VALIDITY OF ELECTIONS.</p> <p>27. Resident Magistrate's Court to try right to hold office in governing body.</p> <p style="text-align: center;">PART VII.<br/>POWER TO TAKE LAND FOR PERMANENT WORKS.</p> <p>28. What shall be works &amp;c. for which land may be taken &amp;c.</p> <p>29. Plans &amp;c. of permanent works to be prepared.</p> <p>30. Publication of notice. Service of notice.</p> <p>31. Objections.</p> <p>32. Power to take evidence.</p> <p>33. Order for execution of work.</p> <p>34. After confirmation work may be executed. Compensation being made.</p> <p>35. What land may not be taken.</p> <p>36. "Lands Clauses Consolidation Act 1863" incorporated.</p> |
|--|---|

Title.

AN ACT to confer on Highway Boards constituted under Provincial Laws certain Powers which cannot be conferred by Provincial Legislatures and for other Purposes. [16th November 1871.]

Preamble.

WHEREAS by the nineteenth section of the Constitution Act it is enacted that it shall not be lawful for the Superintendent and Provincial Council of any Province to make or ordain any Law or Ordinance amongst others for the following purposes that is to say—

- (1.) The establishment or abolition of any Court of Judicature of civil or criminal jurisdiction except Courts for trying and punishing such offences as by the law of New Zealand are or may be punishable in a summary way or altering the constitution jurisdiction or practice of any such Court except as aforesaid.
- (2.) Altering in any way the criminal law of New Zealand except so far as relates to the trial and punishment of such offences as are now or may be by the criminal law of New Zealand punishable in a summary way as aforesaid.
- (3.) Affecting lands of the Crown or lands to which the title of the Aboriginal Native owners has never been extinguished.

And whereas by "The Provincial Councils Powers Act 1856" it is enacted that it shall be lawful for the Superintendent and Provincial Council of any Province in New Zealand to make or ordain Laws or Ordinances for altering the civil jurisdiction of any Court of summary procedure having jurisdiction in such Province in all suits or proceedings where the debt or damage claimed shall not exceed twenty pounds and that the Superintendent and Provincial Council of any Province in New Zealand shall have power by any Acts or Ordinances to enact that certain acts or omissions contrary to the provisions of such Acts or Ordinances shall be offences within the Province to which such Act or Ordinance shall relate punishable summarily or otherwise as may thereby be directed Provided always that no felony shall be thereby created nor any punishment or penalty attached to any such act or omission which shall exceed six months' imprisonment with hard labour or one hundred pounds sterling in amount for any one offence :

And whereas under divers Provincial laws now in force Highway Boards and other bodies have been constituted in various parts of the Colony for the purpose of constructing and maintaining roads and for other similar public purposes and by such laws the bodies so constituted are generally authorized to make and levy rates on land and the owners and occupiers thereof :

And whereas by reason of the restrictions contained in the said nineteenth section of the Constitution Act Provincial Legislatures are unable to provide that persons aggrieved in or by the making of rates shall have a right of appeal to the Courts established in the Colony or to establish a Court for the hearing of such appeal :

And whereas it is expedient that provision should be made whereby persons aggrieved as aforesaid may in certain cases have an appeal :

And whereas doubts have been raised whether it is competent for such Legislatures to provide that rates may be imposed on lands sold by the Crown but of which no grant has been made or on lands leased

*Highway Boards.*

by or occupied under license from the Crown or on the occupiers or owners of lands so sold leased or occupied and it is expedient that power should be given to impose rates on such lands and the occupiers and owners thereof in some cases :

And whereas it is also expedient to enable such Boards or other bodies as aforesaid to make by-laws for certain purposes and by such by-laws to provide for the imposition of a penalty for the breach thereof and to enable such Boards or other bodies to take land compulsorily for certain purposes without first obtaining a special Act or Ordinance :

And whereas it is expedient that certain other provisions relating to such Boards and other bodies should be made by Act of the General Assembly :

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 Highway Boards Short Title. Empowering Act 1871.” It is divided into Parts as follows :—

PART I.—Preliminary.

PART II.—Rating Occupants of Crown and Native Lands.

PART III.—Appeals from Rates. Recovery of Rate.

PART IV.—By-laws.

PART V.—Main Roads.

PART VI.—Trial of Validity of Elections.

PART VII.—Power to take Lands for Permanent Works.

## PART I.

## PRELIMINARY.

2. Save where there is something in the context repugnant Interpretation. thereto or inconsistent therewith the following words and expressions shall mean and include the matters following :—

The words “Highway District” shall mean any Highway District Road District or other district howsoever denominated heretofore or hereafter to be constituted by or under any Provincial Act heretofore or hereafter to be passed and providing for the construction maintenance or repair of highways.

The words “governing body” shall mean the Council Board Trustees or the persons or body as the case may be having the management control or care of the highways in any Highway District.

Every act which the Superintendent is hereby authorized or required to perform he shall perform solely in accordance with the advice of his Executive Council for the time being if any and such advice shall be recorded on the minutes of the Council.

3. The Superintendent of any Province upon the recommendation of the Provincial Council may from time to time by Proclamation declare that any or all of the Parts of this Act numbered two three four five six and seven shall extend and apply to any Highway District constituted or to be constituted by or under any Provincial Act heretofore or hereafter to be passed or to the inhabitants rate-payers or governing body of any such district as the case may require and upon such day as shall be fixed in and by any such Proclamation the part or parts therein specified shall be in force in and as to such Highway District or with regard to the inhabitants ratepayers or governing body of such district as the case may require.

All or any parts of Act may be extended to Highway District.

*Highway Boards.*

Act not to apply to Westland.

4. This Act shall not apply to the County of Westland nor to any borough constituted under "The Municipal Corporations Act 1867" nor to any borough to which parts of the said last-mentioned Act may by law be applied.

## PART II.

## RATING OCCUPANTS OF CROWN AND NATIVE LANDS.

Crown and Native lands liable to rates in certain cases.

5. Within any Highway District in which this Part is in force in addition to any other land liable to be rated therein the land hereinafter specified shall be rateable property and the same and the owners and occupiers thereof in respect thereof shall be liable to be rated by the governing body of such district in the same manner and in like proportion as other land within such district and the owners and occupiers thereof is or are liable to be rated that is to say—

- (1.) All Waste Lands of the Crown or other Crown Lands sold or granted or contracted to be sold or granted.
- (2.) All Waste Lands of the Crown or other Crown Lands leased or occupied under license or other lawful authority otherwise than for mining for gold except such as shall be occupied or used for public purposes or by the Crown or Government of the Colony or of the Province in which the land is.
- (3.) All lands in respect of which a certificate of title has been issued under "The Native Lands Act 1865" if in the occupation of any other than an Aboriginal Native.
- (4.) All lands over which the Native title has not been extinguished if in the occupation of any other than an Aboriginal Native.

Lessee of Crown Lands for pastoral purposes to be assessed at one-third of ordinary rates.

Every person occupying any Waste Lands of the Crown or other Crown Lands for pastoral purposes only except in the case of lands held under lease the holders of which have the power of purchase or the right of preventing the lands being offered for sale shall be rated in respect of the same in proportion of one-half part only of the annual value of the same for pastoral purposes including all improvements thereon Notwithstanding any provision in the Provincial Act under which the governing body of the district is authorized to levy rates on the owners of lands within the district in default of the occupier or otherwise the Crown shall not be rated to or be liable to pay any rate.

## PART III.

## APPEALS AGAINST RATES: RECOVERY OF RATE.

Appeal against rates for certain causes to Resident Magistrate's Court or Petty Sessions.

6. If any person think himself aggrieved on the ground of unfairness or incorrectness in the valuation or in the estimation of acreage or measurement of any rateable property included in any rate made by the governing body of any district in which this Part of this Act is in force or to which it has been extended or in the amount assessed on such property he may at any time within one month after such rate is made appeal to the Resident Magistrate's Court or Court of Petty Sessions holden nearest to such rateable property but no such appeal shall be entertained by such Court unless seven days' notice in writing of such appeal be given by the aggrieved party to such governing body and at the sitting of the Court for which such notice is given or any adjournment thereof the Resident Magistrate and Justices there present shall hear and determine all matters of complaint on the ground of unfairness or incorrectness in the valuation or estimation of the acreage or measurement of such rateable property or in the amount assessed thereon of which notice has been given but no other objection and

*Highway Boards.*

their decision shall be final but such Resident Magistrate and Justices shall not have power to quash or set aside any rate: Provided that nothing herein contained shall authorize the levying after the thirtieth of June next of any rate exceeding the equivalent of any rate of five per centum upon the annual value of any property or one penny in the pound on its value for sale and any such rate imposing a contribution upon any property in excess of such amount shall upon appeal be reduced to such equivalent and that not more than one such maximum rate or smaller rates collectively amounting to a similar sum shall be levied in one year.

7. If any person think himself aggrieved for any cause of grievance not cognizable under the last section by any rate made by the governing body of any district within which this Part of this Act is in force or to which it has been extended or by any matters included in or omitted from such rate he may at any time within one month after the same is made give notice of his intention to appeal to the next sitting of the District Court for the district in which the property is wholly or partly situate holden not less than fourteen clear days after such notice but if such property is not wholly or partly within any district over which a District Court has jurisdiction the last-mentioned appeal shall be to the next sitting of the Supreme Court appointed for such appeals sitting in the Judicial District within which the property is wholly or partly situate and shall be to such Supreme Court at a sitting thereof specially appointed by the Court for appeals hereunder and if sittings of the Supreme Court be usually holden at more places than one in such Judicial District the appeal shall be to the Court holden at that place which is nearest to the rateable or rated property. Provided no such appeal shall be entertained at such Court unless seven clear days' notice in writing of such appeal stating the nature of the grounds thereof be given by the aggrieved party to the governing body of such district. Provided also that no such notice of appeal shall prevent the recovery of any such rate.

Appeal for other causes to District Court or Supreme Court.

8. The District Court or Supreme Court as the case may be shall hear and determine the appeal in a summary way at the sitting thereof for which any such notice of appeal is given or at the following sitting when the Court thinks fit to adjourn the appeal to the following sitting and the decision of the Court shall be final and conclusive on all parties.

Appeal to be determined in a summary way and to be conclusive.

9. Upon any such appeals as aforesaid where there shall appear to be just cause for giving relief the Resident Magistrate's Court or Court of Petty Sessions and the District Court and Supreme Court respectively shall have the power to amend the rate in respect of which the appeal is made by altering the sum at or upon which any person is rated therein and the said Resident Magistrate's Court District Court and Supreme Court respectively shall have similar power by inserting therein or striking out therefrom the name of any person or in any other manner which such Courts respectively shall think necessary for giving relief and without quashing or wholly setting aside such rate. Provided always that if any District Court or the Supreme Court shall be of opinion that it is necessary for the purpose of giving relief to the person appealing that the rate should be wholly quashed then such District Court or Supreme Court as the case may be may quash the same. Provided also that if such District Court or Supreme Court shall quash such rate then notwithstanding the quashing of such rate all sums of money charged by such rate on any person charged by such rate may if such Court so order be levied by such means and in the same manner as if no appeal had been made against such rate and the money which any persons charged on such

Courts to have power to amend rates.

*Highway Boards.*

rate pays or which is recovered from him shall be taken as a payment on account of the next effective rate made on him.

Power to award costs.

**10.** It shall be lawful for the Resident Magistrate's Court and Court of Petty Sessions and for the District Court and Supreme Court respectively upon any such appeal as aforesaid to order and award to the party for whom such appeal shall be determined or upon proof there to be made of notice of any appeal having been given under the provisions hereinbefore contained where the person giving such notice has not afterwards prosecuted such appeal to order and award to the person to whom such notice shall appear to have been given such costs and charges as by the Court in its discretion shall be thought reasonable and just to be paid respectively by the party against whom such appeal shall be determined or by the party so giving notice and not prosecuting as the case may be and all such costs and charges may be recovered by the like means and in like manner respectively as any costs awarded by such Court respectively in cases of appeal may lawfully be recovered Provided that no such Resident Magistrate's Court or Court of Petty Sessions shall order or award any costs to be paid to any person having appealed to it as aforesaid in any case in which the sum at or upon which such person was rated shall have been by such Court reduced by an amount less than one-fifth thereof.

Orders not to be removed by *certiorari*.

**11.** No order of the said Resident Magistrate's Court or Court of Petty Sessions or of any such District Court upon any such appeal shall be removed by *certiorari* or otherwise into the Supreme Court.

Badness of rate not to prevent recovery.

**12.** Upon any suit for the recovery of any rate from any person the invalidity or badness of the rate as a whole shall not avail to prevent such recovery.

## RECOVERY OF RATE.

Rate-book to be evidence.

**13.** In any proceeding to levy and recover or consequent on the levying or recovering of any rate made by the governing body of any district within which this Part of this Act is in force or to which it has been extended the books of rates of the governing body and all entries purporting to be made therein in the manner directed by the Provincial Act under which the rate is made shall by the production thereof alone under the hand of the Chairman or Clerk of the governing body be evidence of such rate and of the contents thereof.

If persons about to quit without paying rates Justices may issue order and distress warrant.

**14.** In addition and without prejudice to any other mode of recovery of any rates made the governing body of any district within which this Part of this Act is in force or to which it has been extended if any person quit or be about to quit any house or rateable property before he have paid any such rates as aforesaid and then payable by him in respect thereof and do not pay the same to the governing body or their collector on demand any Justice may on the complaint of the governing body or any such collector as aforesaid or any other officer of the governing body and upon such proof as shall appear satisfactory to such Justice *ex parte* or otherwise make an order directing the same to be paid by such person to the governing body or such collector or officer as aforesaid either forthwith or at such time or times as to such Justice shall seem fit and in default of immediate payment to levy for the same by distress and sale of the goods and chattels of such person.

Justices Judges &c. to hear and determine though liable to be rated.

**15.** Any Justice or Resident Magistrate and any Judge of any District Court and any Judge of the Supreme Court not being a member of the governing body notwithstanding that such Justice Resident Magistrate or Judge is liable to be rated within any Highway District within which this Part of this Act is in operation or is a resident or is owner or occupier of land within any such Highway

*Highway Boards.*

District may hold any Court or do any act matter or thing or adjudicate in the recovery of rates and in appeals against rates and may hear and determine informations and complaints and hear and adjudicate upon all other matters and things which such Justice Resident Magistrate Judge of a District Court or a Judge of a Supreme Court might hold do or adjudicate upon if he had not been liable to be so rated or had not been such resident owner or occupier.

**16.** No Justice of the Peace or Resident Magistrate shall be disqualified from acting as such in any matter by reason of his being a ratepayer of the district in respect of the recovery or otherwise of the rates of which he may be called upon to act.

Justice not to be disqualified from acting though ratepayer.

**17.** No Court fees shall be payable in respect of any action brought to recover any highway rates and the costs to be awarded in respect of any such action for any amount under twenty shillings shall not in any case exceed the sum of ten shillings.

Court fees not to exceed ten shillings.

## PART IV.

## BY-LAWS.

**18.** The governing body of any Highway District within which this Act is in force may from time to time make or revoke by-laws as they think fit for any of the purposes for which they can or may hereafter be able legally to provide And such governing body may by such by-laws impose such reasonable penalties to be recovered in a summary way upon all persons offending against such by-laws as such body think fit not exceeding twenty pounds for any one offence and every such by-law shall be so framed as to allow the Justice before whom any such penalty may be sought to be recovered to order a part only of such penalty to be paid if such Justice think fit.

Power to make by-laws.

**19.** A copy of every by-law imposing any penalty shall be transmitted to the Superintendent of the Province in which the Highway District is for his approval. The Superintendent may if he think fit approve of such by-law or refuse his approval thereof or return the copy of the by-law to the governing body of the Highway District with such amendments as he thinks ought to be made therein and if the governing body think fit it may adopt such amendments and transmit the copy of the by-law so amended for the approval of the Superintendent and on the approval of the Superintendent being given thereto the by-law shall be published in the Government *Gazette* of the Province in which such Highway District is and at the expiration of one month next after such publication but not before such by-law shall have the force of law throughout such Highway District and a copy of any by-law purporting to be a copy certified under the hand of an officer or member of such body to be a true copy and to have been duly notified shall be evidence of such by-law and the due notification thereof.

By-laws to be published.

**20.** If any person rated upon the rate last made for the time being for any such Highway District shall desire to dispute the validity of any such by-law and shall pay into the Supreme Court the sum of fifteen pounds as security for the costs of the proceedings hereinafter mentioned it shall be lawful for such person to apply to the said Court upon an affidavit of the facts for a rule calling upon the governing body of the said district to show cause why such by-law should not be quashed for the illegality thereof and the said Court may make the same absolute or discharge it with or without payment of costs as to the Court shall seem meet but if payment of costs be ordered no more than the sum of fifteen pounds shall be allowed.

Power to try validity of by-law.

*Highway Boards.*

## PART V.

## MAIN ROADS.

Interpretation.  
"Main roads."

21. The term "Main Road" when used in this Part of this Act shall mean any road or part of road which may from time to time be declared by the Governor to be for the purposes of this Part of this Act a main road.

"Colonial Contribution Money."

The expression "Colonial Contribution Money" shall mean that share of the moneys appropriated by "The Payments to Provinces Act 1871" or by any other Act of the General Assembly to Road Boards which shall be allotted under that Act to the highway district with reference to which the expression is used.

Where a main road formed up to boundary of a district and no continuous road in adjoining district governing body of either district may apply to Superintendent to order road to be made and expense to be borne by Public Works Construction Fund of the adjoining district or jointly by the Public Works Construction Funds of both districts.

22. If at any time there shall be within any Highway District within which this Part of this Act is in force a main road continuing up to the boundary of such district and there shall not be within the adjoining Highway District situate in the same Province or County whether this Part of this Act has been extended to such adjoining district or not a main road or a main road sufficiently formed continuing from such first-mentioned road through such last-mentioned district it shall be lawful for the governing body of such first-mentioned district to petition the Superintendent of the Province within which such districts lie for an order that a sufficient road shall be formed through such last-mentioned district.

Such petition shall if the governing body petitioning is willing that some portion of the Colonial Contribution Moneys of such first-mentioned district should be applied towards the formation of such road state that the governing body is willing that a portion of such moneys shall be so applied.

On the receipt of such petition the Superintendent shall transmit a copy of such petition to the other governing body and the Superintendent shall fix a time and place at which he will proceed to inquire as to the necessity for the formation of such road and give notice to the governing body of each of such districts of the time and place so fixed and shall then proceed to inquire in such manner as he shall think fit into the circumstances of the case.

If the Superintendent shall think fit it shall be lawful for him by an order in writing published in the *Government Gazette* of the Province to order that a road of such length and direction as he shall think fit shall be formed in or through the district hereinbefore in this section secondly mentioned by the governing body of such secondly mentioned district.

If the Superintendent shall think that the expense of such formation should be defrayed alone out of the Colonial Contribution Moneys of the district within which such road is to be formed he shall in the said order so declare and shall from time to time retain out of the Colonial Contribution Moneys of such district thereafter payable to such district an amount sufficient to defray such expense and apply the same as hereinafter provided.

If the Superintendent shall think that such expense should be defrayed partly out of such last-mentioned moneys and partly out of the Colonial Contribution Moneys of the other district he shall in and by such order as aforesaid direct what proportion of the cost of the construction of such road shall be defrayed out of each of such moneys and the Superintendent shall out of the Colonial Contribution Moneys of each Highway District retain such amounts as shall be sufficient to defray the proportion of the expenses to be borne by it and shall apply the same as hereinafter provided.



*Highway Boards.*

**23.** Before any order for the formation of any such road as last aforesaid shall be made such Superintendent shall notify to the governing body of the district within which such road is to be formed that it is intended to make such order and he shall describe the road or part of road which is to be the subject of such order with sufficient particularity to enable such governing body to cause a sufficient plan specification and estimate of cost of such road to be prepared.

Before order made Superintendent to call on governing body for plans and estimates to be certified by persons appointed by Superintendent.

Upon the receipt of such notification the governing body shall cause to be prepared and transmitted to the Superintendent a plan and estimate of the cost of the work together with a certificate under the hand or hands of such person or persons as the Superintendent shall for the purpose appoint (whose name or names shall be specified in the notification sent by the Superintendent) that the plan is sufficient and such certificate shall also contain a statement that the estimated cost is in the opinion of such person or persons as aforesaid fair and reasonable.

After the receipt of such plan and estimate and certificate if the Superintendent shall approve of the same it shall be lawful for him to make such order as in the last preceding section is provided and the order shall refer to the plan.

If after such notification shall have been made to such governing body such body shall neglect within such time as the Superintendent shall think reasonable to forward such plan estimate and certificate it shall be lawful for the Superintendent to cause a plan and estimate to be prepared and to make such order as aforesaid and the governing body shall comply with such order.

**24.** When any order made under the last two preceding sections shall have been complied with by the governing body bound to comply therewith and they shall have forwarded to the Superintendent a certificate by such person or persons as the Superintendent shall appoint for the purpose that such order has been complied with such Superintendent may issue his certificate to the Provincial Treasurer certifying what amount shall be paid out of the Colonial Contribution Moneys of the district in which the work is not executed to the governing body which shall have performed the work and what amount shall be paid out of the Colonial Contribution Money of the district in which the work is executed and in like manner the Superintendent may from time to time during the progress of such works authorize the Provincial Treasurer to make payments on account of such work out of the said moneys.

After compliance with order is certified Superintendent empowered to issue order for payment to the contractor &c. out of the district.

**25.** The Provincial Treasurer upon the receipt of any such certificate as aforesaid from the Superintendent of the Province authorizing him to pay any such sum as in the last preceding section mentioned shall pay such sum to the governing body which shall have formed such road or been ordered to form such road out of the Colonial Contribution Moneys of the district named in such certificate if there shall be sufficient money standing to the credit of such district or if not so much as shall then be standing to the credit of such district and shall out of any moneys which may thereafter stand to the credit of such district pay thereout the moneys so authorized to be paid or so much as shall not have theretofore been paid.

Treasurer to issue receipt of order out of the fund.

**26.** If the governing body of any district shall fail to comply with any order made under the four preceding sections of this Act within the time appointed by the order the Superintendent may if he think fit order that such person or persons as he shall think proper and appoint for the purpose shall have power to effect the construction of the works specified in such order.

If orders not complied with Superintendent may appoint persons to effect construction who are to have same power as governing body.

*Highway Boards.*

The person or persons appointed by the Superintendent to effect such construction is or are hereby authorized upon such order being made to effect such construction and such person or persons shall for the purpose aforesaid have all the powers by law vested in the governing body in that behalf and it shall be lawful for the Superintendent to notify to the Provincial Treasurer that he has made such order as last aforesaid and to request the Provincial Treasurer to retain and to pay to such person or persons aforesaid out of any Colonial Contribution Moneys of the district the governing body of which shall have failed to comply with the order as aforesaid such sum as the Superintendent shall think will be required for the formation of such road or such sum which together with any sums payable out of the Colonial Contribution Moneys of any adjoining district will be sufficient for such purpose.

The Provincial Treasurer shall then issue and pay out of the Colonial Contribution Moneys of such district to such person or persons so appointed as last aforesaid such moneys to be applied in paying the expense of such construction and there shall also be payable to the person or persons so appointed to construct such road the sum (if any) ordered to be paid out of the Colonial Contribution Moneys of any district adjoining to the district in which the road is to be formed in like manner as such moneys would have been payable to the governing body ordered to construct such road.

## PART VI.

## TRIAL OF VALIDITY OF ELECTIONS.

Resident Magistrate's Court to try right to hold office in governing body.

27. Upon proof by affidavit or otherwise that any person declared elected to be chairman or member of the governing body of any Highway District within which this Part is in force whether such election shall have been held before or after the coming into force in such district of this Part has been elected unduly or contrary to the Provincial Act under which the election has been held or any Act amending the same or that any person whether before or after the coming into force of this Part in such district has been elected to or holds or exercises such office of chairman or member being incapable under the provisions of any such Provincial Act of being or continuing such chairman or member as the case may be it shall be lawful for the Resident Magistrate's Court of the Resident Magistrate's District within which is the place where the governing body usually holds its meetings to grant a summons in such form as it shall think fit calling upon such person to show cause to the Court why he should not be adjudged by the said Court to be ousted of the said office and where upon the return of such summons it shall appear to the Court on affidavit or evidence given orally before it that such person so elected or holding or exercising such office respectively was elected unduly or contrary to any such Act or Acts or was at the time of his election or while holding or exercising such office respectively incapable under the provisions thereof of being or continuing such chairman or member as the case may be the Court may adjudge such person to be ousted of such office accordingly or if the matter shall not so appear may dismiss such summons and in either and every such case the Court may order the payment of costs to or by either party as to the Court shall seem meet and the person against whom any adjudication of ouster from office shall be made shall be deemed thereby to be ousted of such office accordingly. And in any proceeding under this section the Resident Magistrate's Court shall have and may exercise all the powers and authorities as to summoning witnesses and orders for pay-

*Highway Boards.*

ment of costs and the enforcing of such orders and otherwise as such Court has and may exercise in its ordinary jurisdiction in civil cases.

The Supreme Court shall have no jurisdiction to try any question that can under the provisions of this section be tried by Resident Magistrate's Court. No proceedings in any Resident Magistrate's Court under this section shall be removable into the Supreme Court by *certiorari* or otherwise.

## PART VII.

## POWER TO TAKE LAND FOR PERMANENT WORKS.

28. As to any Highways District within which this Part of this Act is in force the works and undertakings hereafter specified shall be deemed to be permanent works and undertakings within the meaning of this Part of this Act that is to say—

What shall be works &c. for which land may be taken &c.

The making of new public roads and the diverting altering or increasing the width of roads within the highway if approved of by the Superintendent of the Province within which the district is.

The raising lowering and alteration of the ground or soil of roads

The construction and establishment of bridges.

The making of drains for the drainage of such roads.

The erection or construction of any building structure or fence necessary for the proper formation of such roads or for the use or service of the governing body.

29. Whenever any governing body of a district within which this Part is in force shall deem it expedient to execute any such permanent work or undertaking as they are by this Part of this Act empowered to execute they shall cause their surveyor to prepare such specifications maps plans sections or elevations as may be necessary expressing the nature and extent of such work or undertaking and the exact site and admeasurements thereof and on or through what lands the same is proposed to be placed and to extend and the names of the owners or reputed owners lessees or reputed lessees and the occupiers thereof so far as known and the same when so prepared and approved by the governing body shall be deposited at the office of such governing body or such other place within the district as the body shall appoint and shall be open for inspection by all persons interested at all reasonable hours for the space of forty clear days after notice shall have been given by advertisement in the *Government Gazette* of the Province within which the district is as next hereinafter provided and any clerk or other person having the custody of the said specifications maps or other papers who shall refuse to permit such inspection shall on conviction in a summary way before any two Justices forfeit and pay for every such offence a penalty not exceeding five pounds.

Plans &c. of permanent works to be prepared.

30. The governing body shall forthwith after the said specifications maps plans sections and elevations shall have been deposited cause to be published in the said *Gazette* and twice in some newspaper appointed by such body a notice describing shortly the purport of the said specifications maps and other papers and stating that the same are deposited for inspection and the place where they are so deposited and calling upon all persons affected by the proposed work or undertaking to set forth in writing addressed to such governing body within forty days from the publication of such notice in the *Gazette* all objections which they may have to the work or undertaking and shall further within one week after such publication in the *Gazette* serve a

Publication of notice.

Service of notice.

*Highway Boards.*

notice in manner hereinafter mentioned on every owner or reputed owner lessee or reputed lessee and occupier of such lands defining in each case the particular land intended to be taken and requiring an answer stating whether the person so served assents dissents or is neuter in respect of taking such land such notice to be served—

By delivery of the same personally to the person required to be served or if such person is absent from New Zealand to his agent or when the place of abode of such person and that of his agent are unknown by publishing the same at least three times in some newspaper published in or near the district in which such work or undertaking is proposed to be made or

By leaving the same at the usual or last known place of abode of such person as aforesaid or

By forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such person.

Objections.

**31.** At the next meeting of the governing body after the expiration of forty clear days from the publication of such notice in the *Gazette* any person affected by the proposed work or undertaking or his agent or manager for the property in respect of which he is so affected who shall have set forth in writing his objections to the said work or undertaking within the time hereby limited for the purpose may appear before the governing body in support of such objections.

Power to take evidence.

**32.** The said governing body shall touching all such objections have authority to hear receive and examine evidence and by summons under the hand of the person who shall act as chairman of the meeting of the governing body to require all such persons as the governing body may think fit to appear personally before the governing body at their office at a time to be fixed in and by such summons and to produce to it all such books and papers in their possession or under their control as may appear necessary for the purpose of their examination and the person who shall act as chairman at the meeting shall administer and receive all necessary oaths affirmations and declarations.

Order for execution of work.

**33.** If after the expiration of such term of forty days and hearing all objections (if any) so set forth as aforesaid and such evidence as the governing body shall require it shall appear to them expedient to proceed with the work or undertaking they shall make an order directing the work or undertaking to be executed according to the specifications maps plans sections and elevations deposited as aforesaid and shall cause such order together with true copies of all such specifications maps plans sections and elevations and with the written objections (if any) set forth as aforesaid to be transmitted to the Superintendent and the said order before being so transmitted shall be published in the *Gazette* of the Province in which the Highway District is and in one newspaper circulating in such district and the Superintendent shall by notice published in such *Gazette* and in a newspaper circulating in such district fix a time and place for taking into consideration the said order and the objections made as aforesaid such time not being earlier than ten days from the publication of such notice and any person who shall have made any such objections may by himself or his counsel solicitor or agent appear before the Superintendent in support of such objections and the Superintendent shall touching all such objections have the like powers authorities and duties as by the thirty-second section of this Act are conferred or imposed on a governing body or the chairman thereof and the Superintendent shall consider the same respectively and the evidence adduced and may confirm the said order with or without variation or may disallow

*Highway Boards.*

such order and notice of the confirmation or variation of any such order shall be forthwith published in the *Gazette* of the Province within which the district is.

**34.** Upon the confirmation of such order as aforesaid and the payment of the compensation payable to the owners and persons interested in the lands to be taken or used and not before the governing body shall be authorized to execute the work or undertaking referred to therein and to take and use subject to the provisions hereinafter contained for the purpose of such work or undertaking all such land as shall be described in and by the said specifications maps plans and sections as being required for the said work or undertaking Provided that the governing body shall make to the owners of and all persons interested in any lands taken or used for the purposes of such work or undertaking or injuriously affected by the execution thereof full compensation for the value of the lands so taken or used, and for all damage sustained by such owners occupiers and other persons by reason of the exercise as regards such lands of the powers vested in the governing body by this Part of this Act and the amount of such compensation shall be ascertained and determined in manner hereinafter provided.

After confirmation work may be executed.

Compensation being made.

**35.** Nothing herein contained shall empower any governing body to take or use for any such work or undertaking as aforesaid any house garden yard park planted walk or avenue to a house or any enclosed ground planted or set apart as an ornament or shelter to a house or planted or set apart as a nursery for trees or any part thereof respectively without the consent of the owner or proprietor thereof in writing first had and obtained.

What land may not be taken.

**36.** "The Lands Clauses Consolidation Act 1863" and all Acts amending the same are hereby incorporated with and shall form part of this Part of this Act and be construed together herewith and shall take effect with regard to all such permanent works and undertakings as aforesaid which the governing body shall be authorized to execute and not otherwise and for such purpose the governing body shall be deemed the promoters of the undertaking and the term "special Act" where used in the said Lands Clauses Consolidation Act shall be deemed to include this Part of this Act and any order and order of confirmation thereof made under this Part of this Act.

"Lands Clauses Consolidation Act 1863" incorporated.