

AN ACT to provide for the Construction of Railways by Joint-Stock Companies, and to authorize Grants of Crown Lands to be made to such Companies. [24th September, 1881.]

RAILWAYS
CONSTRUCTION AND
LAND.
—

WHEREAS it would conduce to the more speedy settlement of the colony if provision were made enabling joint-stock companies to enter into contracts for the construction of railways, or for the construction and working thereof, upon receiving aid for all or any of such purposes by grants of Crown lands, upon the terms and in the manner provided by this 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 is "The Railways Construction and Land Act, 1881." Short Title.

2. In this Act, and in any Act wholly or partially incorporated herewith, if not inconsistent with the context,— Interpretation.

"The company" means any company heretofore or hereafter formed and duly incorporated under any Act for the time being in force providing for the incorporation of joint-stock companies for any or all of the purposes mentioned in this Act; and if the company, under the powers herein contained, assign the railway to any person, then the expression "the company" shall mean the person to whom such company shall, under the powers herein contained, assign the railway, and shall then and thereupon cease to mean the said company:

"Construction and working" includes the maintenance of a railway as herein defined:

"Contract" means any contract made under the provisions of this Act:

"Crown lands" has the same meaning as such expression has under "The Land Act, 1877:"

"Land" includes lands and hereditaments of any tenure, and any estate or interest therein, but does not include land held under Native custom:

"Minister" means the Minister for Public Works appointed under "The Public Works Act, 1876," as therein defined:

“Plan,” “section,” and “book of reference,” mean the plan, section, and book of reference respectively of the proposed railway, to be deposited as hereinafter provided :

“Railway” means any railway and the land whereon the same is constructed, or that may be used therewith, and includes all works, buildings, rolling-stock, machinery, and plant of every kind connected therewith, which may be proposed to be or may be constructed by or under the provisions of this Act, from a given point or place to another given point or place, and includes the right to construct or construct and work the same (as the case may require), and, where not inconsistent with the context, all the powers and privileges belonging and appertaining thereto :

When a thing is required to be “publicly notified,” or when “public notice” of anything is to be given, it is meant that a notice thereof shall be published in some newspaper circulating in the district in which such thing arises or to which it relates.

Division of Act.

3. This Act is divided into seven Parts, as follows :—

PART I.—Powers to Governor in Council and Companies to enter into Contracts.

PART II.—Construction of Railways by Companies.

PART III.—Power to Borrow Money.

PART IV.—Rating Powers.

PART V.—Grants of Crown Lands to Companies.

PART VI.—Management of Railways by Companies.

PART VII.—General Provisions.

PART I.

POWER TO GOVERNOR IN COUNCIL AND COMPANIES TO ENTER INTO CONTRACTS.

(1.) *Terms and Conditions of Contracts.*

Governor in Council may enter into contracts with railway companies.

4. The Governor, in the name and behalf of the Queen and with the advice of the Executive Council, may enter into a contract with any company which has been or may hereafter be formed for all or any of the purposes hereinafter set forth, or such of them as may be applicable, that is to say,—

- (1.) Providing for the construction of a line of railway wholly or partly through Crown lands which is to become the property of the company, subject to the right of purchase by the Government hereinafter mentioned, and which is to be worked and managed by the company, either for a specified term of years or otherwise :
- (2.) Providing for the construction of a like line of railway, which is to become the property of the colony :
- (3.) Providing that such railway shall be well and faithfully constructed of sound materials, by and at the expense of the company, and according to plans and specifications to form part of such contract :

- (4.) If the railway is to be constructed by the company for the colony, setting forth the terms upon which it shall be handed over to the Government after such construction :
- (5.) If it is to be maintained and worked by the company, stating the time within which the railway may be purchased or taken over by the Government :
- (6.) Providing what area of Crown land shall be set apart on each or either side of the line of railway to be dealt with under Part V. of this Act, and the mode and times in and at which the selection of such land shall take place, after the construction of the railway :
- (7.) Providing where land shall be selected, when there is not a sufficient area of land available for the purposes of the contract on either side of the line, subject, however, to the provisions of Part V. of this Act :
- (8.) Any other terms or conditions which the Governor in Council may think necessary for the purposes of this Act, and which are not in conflict with the provisions thereof.

5. No contract shall be made in respect of a line which shall not be intended to directly connect with some other railway constructed by the Government.

No contract to be made for any line which does not connect with a Government railway.

6. Any contract made for all or any of the purposes aforesaid may include any railway works begun by or on behalf of the Government, and which may not have been completed, and may make provision for the reclamation of any land from the sea, and the grant thereof to the company, and also for the grant of any plant or materials used or intended to be used in the construction of such works or reclamation, and may provide for any other object or purpose that may be necessary to complete or perfect such railway works ; and the Governor in Council, on behalf of Her Majesty, and the directors of the company, on its behalf, may enter into any agreement accordingly.

Railway works partially made may be included in contracts.

7. Any contract which a company is authorized to enter into under this Act shall, except where express provision is made to the contrary, be made in the name and under the seal of the company, in such manner as it may be authorized by law to enter into such contracts.

Contracts entered into by company to be under seal.

8. Before any such contract shall be entered into, the Minister may require the company to transmit for the information of the Governor a plan of the railway, showing generally the line and direction of the same, accompanied with such documents as may be necessary to explain such plan, and an estimate of the cost of the railway and the equipment thereof, signed by some competent engineer.

Company to transmit plan of railway to Minister.

9. 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.

Governor may require company to furnish all information, &c.

When contract entered into, Governor to gazette general purport of such contract.

Power to Governor to cause company to give security.

Power to directors, with consent of majority of shareholders, to give security.

Contracts not to take effect till approved by General Assembly.

Contracts to be binding unless either House of Assembly passes a resolution disapproving thereof.

Proviso that Governor in Council may allow certain privileges before approval.

Notwithstanding anything hereinbefore contained, companies may

10. Whenever the Governor in Council shall have entered into a contract with any company under this Act, he shall, by notice gazetted, state the general purport of such contract in such manner and form as he may think expedient.

11. It may be part of any contract made under this Act that the company shall give to the Governor in Council such security as he shall think sufficient for the due carrying out of all the works mentioned in the contract, including the cost of compensation payable to owners or occupiers of land proposed to be taken, or that may be injuriously affected by the construction of the railway.

12. The directors of every such company, with consent of a majority of shareholders in number and value given at a special meeting, are hereby authorized to give any such security, and to pledge or mortgage the capital and credit of the company and the property thereof, and to make and execute on behalf of the company any deed or contract for that purpose, although the same may not be authorized by the articles of association or other instrument setting forth and declaring the powers of such directors.

(2.) *Contracts to be laid before General Assembly.*

13. No contract shall be of any force or effect unless and until the same has been laid before both Houses of the General Assembly during the next session thereof after the making of such contract :

Provided that, if such contract be made during a session of the General Assembly, then it shall be laid before both Houses thereof during the session in which it is so made; but no resolution shall be passed in respect thereof under the next succeeding section during that session, unless such contract has been laid before the Assembly for a period of at least fourteen days.

14. Every such contract shall be binding and effectual as therein expressed, unless either of the Houses of the General Assembly passes a resolution during the session in which the contract is laid before them disapproving thereof. But if any contract shall be laid before either House of the Assembly for a period less than fourteen days before the end of the session, such contract shall not be deemed to be approved till the lapse of a period of fourteen days in the next succeeding session.

If such resolution be passed by either House, then the contract and every article and thing therein contained shall be void and of no effect, so far as the Queen or the Government of the colony may be concerned :

Provided, however, that, before a contract has been laid before the General Assembly as aforesaid, the Governor in Council may, on the application of the company, make an order authorizing the company,—

- (1.) To make the necessary surveys for the railway, and for that purpose to enter upon any public or private lands along the line of the intended railway;
- (2.) To take all other necessary preliminary steps for the future construction of the railway.

15. Notwithstanding anything hereinbefore contained, the Governor in Council may, at any time prior to the first day of the session of the General Assembly now next ensuing, contract, under the provisions

of this Act, with companies formed for the construction of the lines of railway mentioned in the First Schedule hereto.

Any contract so made shall be valid and effectual to all intents and purposes, and shall not be avoidable by any resolutions passed as aforesaid unless such contract shall be repugnant to any other provisions of this Act; and the company contracted with shall, immediately after the making of such contract, be entitled to proceed with the construction of the line of railway to be constructed by it:

contract for formation of the lines of railway mentioned in First Schedule.

Provided that in case any contract so entered into shall be lawfully avoided by reason of such repugnancy as aforesaid, such company shall not be entitled to any claim for compensation against or from Her Majesty the Queen or the Government of the colony by reason of such avoidance, or by reason of anything done by the company under the provisions thereof, or under the provisions of this Act in respect thereof:

Provided also that the allocation of the land to be granted to such company shall be subject to the approval of the General Assembly in the manner prescribed by sections thirteen and fourteen of this Act.

16. If an Order in Council is made under section fourteen, and subject to the terms thereof, all the provisions of this Act from section seventeen to section twenty-eight, inclusive, shall be deemed to apply to any company availing itself of such Order; and all the provisions respecting compensation for damage done by the exercise of the powers conferred by this Act shall apply to all private lands within the terms of any such Order which may be entered upon for the purposes of survey as aforesaid.

If Order in Council made, then certain provisions of Act as to entry and compensation applicable.

PART II.

CONSTRUCTION OF RAILWAYS BY COMPANIES.

(1.) *Plans to be Deposited and Notices Given.*

17. Whenever any company has entered into a contract under this Act, it shall cause the middle line and direction of the railway to be set forth on a plan and described in a book of reference, showing the lands required to be taken for the same, and the names of the owners and occupiers of such lands so far as they can be ascertained.

Company to cause plan of railway and book of reference to be made.

Every such plan shall be made on a scale of ten chains to an inch, and shall show the limits of deviation, being a distance of not exceeding one hundred yards on either side of the said line, and passing through over or under the several lands, streets, roads, and places enumerated in the said plan and book of reference.

18. Copies of every plan and book of reference mentioned in the last preceding section shall be deposited in some public place in each borough (if any) in the district within which the railway is intended to be constructed, and at such other public places as the Governor may determine.

Copies to be deposited.

19. Every such plan and book of reference shall be open to public inspection at each such place without any fee at all reasonable hours, and if any person having custody thereof refuses or obstructs in-

To be open to public inspection.

spection thereof he shall be liable to a penalty not exceeding five pounds.

Notice of deposit to be gazetted and published.

20. The company shall, within seven days after the deposit of the plan and book of reference as aforesaid, cause notice thereof to be published in at least two newspapers circulating in the district, in addition to any local newspaper printed in such district through which the railway is proposed to be constructed; and every such notice shall be published at intervals of not more than three days, for four consecutive weeks from the date of such deposit.

Copies of notice to be given to owners and occupiers of land.

21. Copies of every such notice shall be given to each owner or occupier of any land whose name is set forth in the book of reference in the manner hereinafter prescribed by this Act.

How notices may be given.

22. 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.

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

(2.) If such person is not known, or has no known agent in the colony, and the notice relates to any land or buildings, the notice shall be deemed to be sent if it is affixed in a conspicuous place on or to such land or building.

(3.) 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.

(2.) *Surveys.*

Surveyor may enter upon land for the purpose of making survey.

23. Any surveyor appointed by the company may from time to time enter upon any land (whether before or after the deposit of a plan and book of reference as before provided), with such assistance as he thinks fit, for the purpose of making any survey of any line or intended line of railway, and to fix or set up thereon survey pegs, marks, or poles, and to dig or bore into such land so as to ascertain the nature of the soil, and to set out the lines of any works thereon.

Notice to be given to owner or occupier.

24. In all cases notice shall be given to the owner or occupier of the land to be entered upon before such entry is made, and the surveyor shall, when required to do so, produce to the owner or occupier of any land on which he is authorized to enter the written authority of the secretary or manager of the company under whose authority he is making the survey.

Damage caused by such entry to be made good.

25. In case any damage shall be done by any surveyor in exercise of the powers hereby conferred upon him, the company shall be liable to make good the same, and the amount thereof shall be ascertained in the mode hereinafter provided as to the assessment of compensation for land taken or affected by the works of the railway.

(3.) *Powers of Entry upon and Taking Land.*

Company may enter upon and take lands.

26. Subject to the provisions of this Act, the company may exercise all or any of the powers hereby conferred by this Act for the construction of the railway, and may enter upon or cause to be entered upon all lands which they are authorized to use or acquire under this Act for the purpose of making such surveys as may be

necessary, and may take and use all such lands as the company shall have permission to use as hereinafter provided, and subject as aforesaid may take and hold all the lands specified in the plan and book of reference and required for the railway along the line to be so set forth and described as aforesaid, or within the limits of deviation, and may temporarily occupy and use such lands as may be necessary on either side of the railway during the construction thereof.

27. Nothing in this Act shall authorize the commencement of any work, or the removal of any fencing upon any private lands, until fences have been first made, so that all private 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.

Fences to be erected in certain cases before entry.

28. Nothing in this Act contained shall authorize the entry upon any land occupied by any building or yard, or *bonâ fide* used and occupied as a garden, orchard, vineyard, plantation, ornamental park or pleasure-ground, or the cutting or injuring of any ornamental tree or shrub, or the taking of any stone or other material from any quarry, brick-field, or like place commonly used for the taking material therefrom for sale, without the consent in writing of the owner first obtained.

Certain lands not to be entered on without consent.

(4.) *Compensation.*

29. All persons being owners of or having any less estate or interest in any lands taken under authority of this Act, or which may be damaged by the construction of the railway, shall be entitled to receive compensation for such land or damage, the amount whereof shall be ascertained in the manner set forth in Part III. of "The Public Works Act, 1876," which said Part, as amended by any other Act and so far as applicable, and subject to the provisions of this Act, is incorporated with and shall form part of this Act:

Compensation to be given for land taken or affected.

Provided that in respect of land taken under this Act the words "mortgage debt" in the sixty-ninth section of "The Public Works Act, 1876," shall not include the interest payable on such mortgage up to six months beyond the day on which notice was received by the mortgagee, but it shall include the capitalized value of the difference between five per centum and the rate of interest payable on the mortgage, to be calculated up to the time when the principal due on the mortgage can be paid off.

Proviso.

30. In the application of Part III. of "The Public Works Act, 1876," the company shall be the respondent to any claim made for compensation under this Act.

Construction of Part III. of "The Public Works Act, 1876."

31. The Court awarding the compensation may, after payment thereof in accordance with this Act, and on application by the company for that purpose, make an order in the form or to the effect set forth in the Second Schedule hereto; and such order shall have the effect following:—

Upon ascertaining amount of compensation, and on payment thereof, Court may grant an order. Effect of order of Court.

Second Schedule.

- (1.) It shall vest the land in respect of which the same is made in the company in fee-simple, and free from all mortgages, charges, claims, estates, or interests of any kind whatsoever.
- (2.) If the property mentioned in the order is not subject to the provisions of "The Land Transfer Act, 1870," the order, with a map or plan of the land taken, may be registered

with the Registrar of Deeds for the registration district in which such land is situated, and such Registrar shall cause an entry of the order and map to be made under the proper head or title of the Deeds Registry Office, and shall cause the same to be duly recorded.

In the case herein provided for, the order shall operate as a conveyance to the company.

- (3.) If the property is subject to the provisions of "The Land Transfer Act, 1870," the order and map shall be filed with the District Land Registrar of the district in which the property is, and such Registrar shall register the order and map against the land.

(a.) In the case herein provided for, the District Land Registrar shall issue a certificate of title to the company.

(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 of not more than 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 the same is not Crown-granted.

- (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.

When title doubtful, or owner absent, compensation to be paid to Public Trustee.

32. If any doubt or dispute arise as to the right or title of any person to receive any compensation, or in case the person entitled thereto shall be absent from the colony, the moneys payable as such compensation shall be paid into the Public Trust Office by the company, as provided in Part III. of "The Public Works Act, 1876," and may be dealt with thereunder.

Out of what funds compensation to be paid.

33. Moneys payable as compensation or as costs under the preceding provisions of this Act shall be paid out of the capital funds of the company.

(5.) *Company's Powers of Construction.*

Company's powers of construction.

34. Subject to the restrictions herein specified, the company may do the following things in respect of any railway authorized under this Act:—

- (1.) May make the railway upon, over, or under any land necessary for the construction thereof, lying along the middle line defined in any plans deposited as before provided, or within a distance of one hundred yards on either side thereof; and, for this purpose, may construct works

of every description and of every material necessary to the working thereof :

- (2.) May make the railway upon, over, or under any road or tramway, or public reserve along such line, and may alter the level of any road or tramway for such purpose :
- (3.) May make the railway across any river or stream, but so as not to impede the navigation upon any navigable river, except as provided by a special Act :
- (4.) May alter the course or the level of any river not navigable, or of any stream, watercourse, ditch, or drain :
- (5.) 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 :
- (6.) 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 :
- (7.) May make all such buildings, stations, engines, machinery, piers, wharves, roads, approaches, and other works in connection with the railway, as may be thought necessary :
- (8.) May do all acts necessary for making, maintaining, altering, repairing, and using the railway.

35. The gauge of every railway to be constructed under this Act shall be of the width of three feet six inches. Gauge of railways.

36. Where any part of a road, except where it crosses a railway on a level, is taken for a railway, such part of the road shall thereafter cease to be a highway ; and, where a road crosses a railway on a level, the public right of way at such crossing shall cease whenever any engine or carriages on the railway are approaching and within a distance of 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. Right of way at railway crossings.

37. Where it is found necessary for the construction of a railway to alter any road, tramway, watercourse, sewer, 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 before such alteration. Alteration of roads, &c., to be made without detriment to the public or to owners.

38. Before commencing any such alteration, the company shall cause a plan thereof to be prepared, and to be submitted to the County Council or Road Board under whose control the work proposed to be altered is, or to the owner of such sewer, drain, water- or gas-pipe, or other work as the case may be ; and if such Council, Board, or owner object to the proposed alteration, the company shall appoint a competent engineer to confer with such Council, Board, or owner, and to agree with them or him as to the manner in which such alteration shall be made. Plans of such alterations to be agreed upon with owners.

If no agreement can be come to between the parties, the matter shall be referred to two Justices of the Peace, who shall make such If no agreement, two Justices to settle disputes.

order therein as they think fit; and the alteration shall be made in accordance with such order.

(6.) *Temporary Occupation of Land.*

Land may be occupied temporarily.

39. Except as and subject to the conditions hereinafter provided, the company may temporarily occupy and use any lands for the purpose of constructing or repairing a railway, and may do the following things thereon:—

- (1.) May take therefrom stone, gravel, earth, and other materials;
- (2.) May deposit thereon any such material;
- (3.) May form and use temporary roads thereon;
- (4.) May manufacture bricks or other materials thereon;
- (5.) May erect workshops, sheds, and other buildings of a temporary nature thereon.

Previous notice of occupation to be given.

40. 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.

Justices to decide if occupation necessary, and settle conditions.

41. 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, for the following purposes:—

- (1.) If it appears to the 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 Justices may, by writing under their hands, order that the lands in question shall not be occupied or used in the manner proposed;
- (2.) Or the Justices may in such order direct that the said lands may be occupied and used, or material taken therefrom, in such 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.

Crown lands, how occupied.

42. No such proceeding shall be necessary in respect of Crown lands, nor shall any compensation be payable for the exercise of any of the privileges conferred upon a company by the preceding sections in respect of such land; but in every contract entered into under this Act provision shall be made regulating the mode in which the powers hereinbefore conferred may be exercised upon Crown lands.

(7.) *Company may Deviate.*

Company may make deviations.

43. The company in constructing the railway may deviate from the line of works laid down in the plan, but may not take or use for the purpose of such deviation any land not comprised within the limits of deviation set forth in the plan and book of reference without the consent in writing of the owner of such land.

44. No advantage shall be taken of or against the company, or any interruption be given during or after the making of the railway, on account of any error or omission in such plan or book of reference, in any case in which it shall appear to two Justices, to be certified in writing under their hands, that such error or omission proceeded from mistake.

No advantage to be taken of errors in plan or book of reference in certain cases.

(8.) *Possession of Crown Lands.*

45. Within such period as may be limited in any contract made under Part I. of this Act, the Governor shall deliver to the company, or any contractor, engineer, servants, or workmen authorized by it, possession of all Crown lands the use of which the Governor has agreed to give to the company for the construction of the permanent-way of the railway, and for workshops, stations, and other necessary buildings to be used for or in connection with the railway.

Governor to give possession of land to company.

46. As soon as conveniently may be after a contract has become capable of taking effect under this Act, the Governor may, in the name and on behalf of Her Majesty, make and execute to the company a Crown grant in fee-simple of all such Crown lands as may, in the opinion of the Governor, be necessary for the construction thereon of the railway, and all buildings to be used upon the same or in connection therewith, subject, however, to any reasonable conditions or restrictions he may think fit to insert in such grant.

Governor may, subject to restrictions, grant to company lands necessary for the construction thereon of the railway.

47. The company shall, without any inexcusable delay, immediately after possession shall be given by the Governor as aforesaid, commence or resume the construction of the railway works in accordance with the plans forming part of the contract, and shall prosecute the same to completion without delay or intermission, unless hindered or prevented by some unforeseen cause or impediment.

Company to proceed forthwith with construction of works.

The company shall also in like manner, and as the state of the said railway works shall permit and require, proceed with the erection of all buildings, and supply the necessary accommodation for the safe, proper, and convenient conduct of passengers and goods traffic on the said railway.

(9.) *Governor's Powers of Inspection.*

48. During the construction of the said railway and the execution of the works connected therewith, and after the completion thereof, the Governor shall be at liberty at all reasonable times to direct any engineer to inspect the works, the rolling-stock, and buildings of the company, and upon or after such inspection may require that such additions, alterations, or repairs shall be made by the company, in such manner as the Governor shall be advised are necessary or desirable for the utility or safety of the line of railway.

Powers of Governor as to inspection of railway, &c.

(10.) *Miscellaneous Provisions.*

49. 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 company 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. But if such owner has other land adjoining, into which such small parcel may be conveniently thrown, the company

Owner may require small parcel of land severed to be taken.

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.

Owner may require land temporarily occupied to be taken.

50. The owner of any land temporarily occupied as provided by the thirty-ninth section may, at any time during such occupation, give notice in writing to the company that he 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; and, 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 this Part of this Act.

Land not wanted may be sold by company.

51. If it is found that any land taken under this Act is not required for the purposes of the railway, the company may, with the consent of the Minister publicly notified and gazetted, cause the same to be sold by public auction, or with the like consent may cause such lands to be leased for any term not exceeding twenty-one years, at such rent and upon such terms and conditions as the company thinks fit.

Proceeds of sale to form part of capital.

The proceeds of any sale, and all rents or moneys derived from any such lease, shall be paid to and form part of the capital funds of the company.

PART III.

POWER TO BORROW MONEY.

(1.) *Mode of Borrowing.*

Borrowing power of company.

52. Any company may, in the manner prescribed by its articles of association, borrow and take up at interest such sum or sums of money as may thereby or in any other manner be lawfully authorized; and for the purpose of securing repayment thereof, with interest in the meantime, may convey, assign, or otherwise charge the railway, and the whole or any portion of the lands granted or to be granted to it under Part V. of this Act, or such part thereof as may be agreed upon, by way of mortgage, with all usual and necessary powers and remedies to the mortgagee, including a power of sale in case of default in payment of such principal or interest, or any part thereof.

Every mortgage made or issued under the authority of this Act shall be subject to the power of purchase reserved to the Governor by this Act.

For the purposes of this Act, and if not inconsistent with the context,—

“Mortgage” includes mortgage-debentures and coupons, and any deed by which the railway as herein defined is charged as security for repayment of principal money and the interest thereon:

“Mortgagee” includes the creditor in any mortgage or other deed as aforesaid, and the holder of any mortgage-debenture or coupon.

Form of mortgage-debenture.
Third Schedule.

53. Every mortgage-debenture issued shall be in the form in the Third 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.

54. 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, not exceeding the term of twenty-five years from the issue thereof.

Time and place of payment.

55. The interest on every such debenture shall not exceed six 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 Fourth 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 six per centum on the price paid.

Interest payable not to exceed 6 per cent.

Fourth Schedule.

56. 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.

Debentures and coupons transferable by delivery.

57. 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 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.

Agents for raising loans.

(2.) *Effect of Mortgages.*

58. The principal and interest secured by any mortgage over a railway shall be a charge not only on the railway but over everything pertaining thereto, or upon such part or parts thereof as shall be expressed in the mortgage, and, subject to any special provision in that behalf to the contrary, every such mortgage shall be a charge upon the prospective grants of the fee-simple of and in the land upon which the railway is constructed, and to which the company may be entitled under this Act or any contract made thereunder.

Such mortgage to be a first charge.

Every mortgage made under this Act shall be construed as if an express covenant had been inserted therein on the part of the company, its successors and assigns, that such company will not do, permit, or suffer any act, matter, or thing to be done, made, executed, or entered into which may defeat or prejudice any charge created by and contained in any such mortgage, or arising thereout, so long as any principal or interest moneys may be due thereon or thereunder, without the consent of the mortgagee for the time being.

59. A certificate in the form or to the effect set forth in the Fifth 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 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

Certificate as to amount of debt of company.
Fifth Schedule.

date of such certificate, been previously borrowed and then remained outstanding and unpaid.

Certificate as to amount to be borrowed. Sixth Schedule.

60. A certificate in the form or to the effect set forth in the Sixth 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.

Penalty for falsely sealing or signing certificates.

61. 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 fifty-nine or sixty, 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.

Creditors of company to have no claim on colonial revenue.

62. 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 Government thereof.

Sinking fund.

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

By making, with or without a sinking fund, the whole loan repayable at a stated period, or any parts thereof at stated periods, together with interest thereon in the meantime, not exceeding the rate hereinbefore mentioned.

May be charged on net profits of company.

64. 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.

Sinking fund to be applied to pay off loan.

65. 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.

Company may re-borrow to pay off loans.

66. 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.

(3.) *Rights of Mortgagees.*

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

67. If the money so secured is not paid upon presentation of such mortgage at the place where and at 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 any special deed of mortgage or other security he may hold, 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 absolutely sold, at such time or times, place or places, 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.

68. 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, by virtue thereof and without any deed or other instrument whatever, vest in the Receiver, and shall cease to be vested in the company.

Company's property to vest in Receiver.

69. 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.

Powers for recovery of rates to vest in Receiver.

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

Receiver to give security.

71. 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:—

Application of money by Receiver.

(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:

Provided that in the distribution of the assets of the company, arising from such sale or otherwise, no mortgage debenture-holder shall have any preference over any other debenture-holder by reason of any priority of date, by obtaining the order named in section sixty-seven of this Act, or otherwise howsoever, but all debenture-holders shall rank alike, and be entitled to a share of such assets in proportion to the number and value of their shares.

72. 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.

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

(4.) *Miscellaneous Provisions.*

73. 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.

Mortgage to be a debt of the body corporate.

74. Nothing in this Act shall be deemed to authorize the Governor, on purchasing any railway under the authority of this Act, to require any person holding a mortgage to receive payment of the principal moneys secured thereby, unless and until the time prescribed in such mortgage for repayment has arrived.

Act not to authorize Governor to require mortgagee to receive principal moneys before term agreed upon.

75. No mortgagee shall sell, or make application for an order to sell under the sixty-seventh section hereof, any portion of the company's property charged by any mortgage unless and until he or they

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

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 unless 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 previously give to such mortgagee notice in writing that it is his intention not to purchase.

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

76. If the Governor exercises the power of purchase conferred by this Act, and the railway 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 one hundred and fourteen to one hundred and nineteen of this Act both inclusive, 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.

PART IV.

RATING POWERS.

(1.) *Railway Districts and Classification of Lands.*

Company proposing to take rating powers to publicly notify same.

77. When a company desires to avail itself of the powers contained in this Part of this Act, it shall, by notification duly published in one or more newspapers circulating in the district proposed to be created under the powers herein contained, notify that it proposes to adopt the provisions of this Part of this Act, and shall also state the area it is proposed to constitute a railway district for the purposes of this Part of this Act, and shall describe the boundaries of such proposed district.

No such district shall extend for more than fifteen miles on each side of the proposed middle line of the railway.

The company shall also set forth generally in such notice the particulars required by the eightieth section of this Part of this Act, and shall state the manner in which it is proposed the lands included in such district shall be classified for the purposes of this Act, and shall set forth the relative proportions of the rate to be paid by the several classes.

Classification of lands to be made for rating purposes.

78. The classification of lands for the purposes of this Part of this Act shall be in some one or more of the following classes:—

- (1.) Lands receiving or supposed to receive immediate and direct benefit from the construction of the railway.
- (2.) Lands receiving or supposed to receive less direct benefit.
- (3.) Lands receiving only the benefit incidental to or derived generally from the construction of such railway.
- (4.) All other lands (if any) affected.

79. All lands situated within such district, which may from time to time be granted to the company under the provisions of Part V. of this Act, shall, so soon as they shall have been so granted, be subject to be rated under this Part of this Act, and shall for such purposes be classified in manner herein provided.

Lands granted to companies to be classified and rated.

80. Within thirty days after such notice, the company shall transmit to the Council of each borough and county, wholly or partly comprised in the proposed district, the following documents and particulars:—

Company to apply to County and Borough Councils for approval of proposals.

- (1.) A plan and book of reference and an estimate of the cost of the proposed railway and of the equipment thereof;
- (2.) A statement of the maximum rate of tolls and charges for the carriage of animals, goods, merchandise, and passengers, proposed to be charged on such railway;
- (3.) A statement of the maximum rent or charge to be made for the storage of goods, produce, or merchandise;
- (4.) A statement of the minimum number of trains to be run daily;
- (5.) A specification of the rate it is proposed to levy in respect of the various classes of land hereinbefore mentioned under the powers hereinafter contained, and the amount of the rate in the pound sterling on the rateable value of the land.

81. The several Councils shall forthwith serve on all the persons so classified as aforesaid a notice in writing, setting forth in each case the class in which the person to whom such notice is addressed is placed, the total amount of rate proposed to be levied, and the amount at which such person is assessed.

Notice to be served on persons classified.

The notice may be served personally on or left at the last known place of abode of the person to whom it is addressed, or be sent to him through the post in a registered letter.

No rate shall be levied until the expiration of one month after such service, nor until all appeals (if any) have been adjudicated on.

82. Any person claiming to be injuriously affected by the classification to be made under this Act may, within one month after the service of the above-mentioned notice, 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.

Appeal against classification.

(2.) *Votes of Owners and Ratepayers.*

83. Within sixty days from the transmission of the plan and book of reference as aforesaid, the votes of the ratepayers and owners of property within the proposed district shall be taken, as hereinafter provided; and if a majority of the whole body of ratepayers and owners of property, representing at least two-thirds in number and value of the rateable property in the said district, shall consent to the adoption by the company of this Part of this Act, then the company may adopt the provisions of this Part of this Act; but if the majority of such ratepayers and owners representing such proportion in number and value as aforesaid shall not so consent,

Ratepayers in railway district to vote whether this Part of the Act may be adopted by the company.

then the company shall take no further proceedings for the adoption of this Part of this Act.

Who entitled to vote.

84. The votes of the ratepayers and owners of property shall be ascertained in accordance with the provisions of this Part of this Act, and any regulations made under its authority.

Councils may inspect company's books.

85. Prior to the collection of any rate, it shall be competent for the borough or counties interested therein to appoint some suitable person or persons to inspect the books of the company, with the view of ascertaining whether the rate proposed to be levied is necessary, and should any difference of opinion arise thereon, the matter in dispute shall be referred to the Minister, whose decision shall be final.

Mode of ascertaining votes.

86. For the purposes of this Part of this Act the whole of the ratepayers and owners of property in the proposed district at the time the votes are taken shall be deemed to be one body, so that the question to be decided under this Act shall be decided by the majority of the votes of such ratepayers and owners of property, in the proportion hereinbefore specified; but in ascertaining such votes the following provisions shall have effect:—

- (1.) The ratepayers and owners of property in any borough comprised within the proposed district shall vote only within such borough:
- (2.) The ratepayers and owners of property in a road or highway district comprised as aforesaid shall vote only within such road or highway district:
- (3.) Where any part of the proposed district is not included within a borough, or a road or highway district, the ratepayers and owners of property in the county in such part of the proposed district shall vote therein:
- (4.) No ratepayer who is such ratepayer by virtue of his being a tenant or occupier of any land or premises in respect of which he claims to vote under this Part of this Act shall be entitled so to vote unless such land or premises is held upon a lease which shall at the time of the vote being taken have not less than seven years to run, or of which he has been in possession for three years or upwards next before the date of voting:
- (5.) The Governor may from time to time, on the application of a company, by warrant duly gazetted, make general regulations providing for the formation of lists of persons entitled to vote under this Part of this Act, and for ascertaining the names and qualifications of persons so entitled, and for the authentication and use of the lists so to be made, and for the appointment, conduct, and duties of persons before whom votes shall be taken, and generally for carrying out and giving effect to the provisions of this Act:
- (6.) Subject as aforesaid, the Governor may from time to time, by warrant duly gazetted, order and direct at what times and places, and in what manner and form, the ratepayers and owners of property shall vote within the proposed railway district:
- (7.) If from any cause it shall not be practicable to take

the votes within the period of sixty days hereinbefore mentioned, the Governor may extend the time for such period as he thinks fit, not exceeding twenty-one days from the expiration of such period of sixty days :

- (8.) All the costs, charges, and expenses of and incidental to the taking of such votes shall be paid and payable by the company.

87. The Governor shall be the sole judge whether the provisions of the last preceding section have been duly complied with, and may from time to time appoint such person or persons as he thinks fit to ascertain the result of the voting under this Part of this Act, and may direct in what manner the result of such voting shall be made known.

Governor to be sole judge that last section has been complied with.

A notification made in the manner directed by the Governor shall be conclusive evidence that the result therein stated has been arrived at, and that this Part of this Act has been adopted.

(3.) *Special Rate.*

88. Every company entitled to adopt the provisions of this Part of this Act shall be guaranteed the whole or (as the case may require) any deficiency of interest on the cost of the railway at a rate not exceeding five per centum per annum, and such interest shall be raised by means of a rate, in manner hereafter provided :—

Guarantee of interest on cost of railway by a special rate.

Such guaranteed interest shall be payable as follows :—

- (1.) On the whole cost of the railway from the date on which the whole line shall be opened for traffic ;
- (2.) On the cost of any complete part or section of a railway from the date on which such part or section is opened for traffic, but in the proportion which the cost of such complete part or section bears to the cost of the whole railway ;
- (3.) No guarantee shall exceed the interest on any expenditure on construction exceeding five thousand pounds a mile.
- (4.) Such guarantee shall only attach when and so long as the railway is open for traffic ;
- (5.) The guarantee created by this Act shall only subsist for a period of fifteen years from the date when the same first becomes payable.

89. The company shall yearly, as and whenever it may be necessary for the purposes of this Act, forthwith raise, by means of a rate upon all rateable property within the railway district, such sum of money as may be required to make up the whole or the deficiency of interest guaranteed under this Part of this Act : Provided that the sum of money to be so raised shall not in any one year exceed five pounds per centum per annum on the estimated cost of the railway, as defined in section eighty, nor shall it exceed the rate proposed to be levied by the company in accordance with the provisions of the said section.

Rate to be levied by the company.

90. For the purpose of making, levying, and collecting any and every such rate as aforesaid, the company shall be deemed a local body within the meaning of "The Rating Act, 1876," and of every other Act for the time being in force regulating the making and levying of rates ; and accordingly the provisions of "The Rating

Powers of company for that purpose.

Act, 1876," and of every other such amended Act as aforesaid, shall extend to and be made applicable and available for the making, levying, and collecting by the company of any and every such rate as aforesaid, but subject to the following express provisions, that is to say,—

- (1.) That it shall not be necessary for the company to make any valuation roll for the purposes of such rate as aforesaid, but it may adopt for those purposes all such valuation rolls of the several local bodies within the railway district as shall be for the time being in force, and the rate may be made on the basis of the valuation rolls so adopted :
- (2.) That a separate rate-book shall be prepared in respect of each of the classes of land into which the railway district shall have been divided for the purposes of this Part of this Act :
- (3.) That each rate shall be made payable in two equal instalments, on the thirtieth day of June and the thirty-first day of December respectively, in the year in which it shall be made :
- (4.) That in every case in which the boundary of the jurisdiction of any local body within the railway district is or shall not be coincident with the boundary of the railway district, so that any rateable property within the jurisdiction of such local body shall be intersected by the boundary of the railway district, then the company shall apportion the rateable value of such property, so that such portion thereof as lies within the railway district may be fairly rated for the purposes of the said Acts and this Act; and the company shall insert in each rate-book applicable to such portion of the said property as aforesaid the fact and nature of such apportionment, which shall then be binding to and for all intents and purposes.

Rate to vary according to classification of land.

91. The amount in the pound of every rate authorized to be levied as before provided shall vary proportionately according to the class in which the rateable property in respect whereof it is made shall be comprised under the classification of lands for the purposes of the railway district, but so that the amount in the pound levied shall not exceed in respect of each class that proposed by the company in respect thereof under the eightieth section of this Act.

Cost of levying rate to be paid by company.

92. The costs, charges, and expenses of making, levying, and collecting every such rate as aforesaid shall be borne and paid by the company on whose behalf the same was made, and the amount of such costs, charges, and expenses shall, for the purpose of determining the amount of guaranteed interest to be raised in any year, be deemed part of the working expenses of the railway for the year immediately preceding that in which the rate was made.

Application of rate.

93. All moneys received by the company under any such rate as aforesaid shall be applied first in or towards payment of the costs, charges, and expenses of making, levying, and collecting such rate; secondly, in or towards payment of all existing arrears (if any)

of principal or interest secured by any mortgage, debenture, or coupon issued by the company, and the surplus, if any, shall be retained by such company, in order to be applied to any future deficiency.

PART V.

GRANTS OF CROWN LANDS TO COMPANIES.

94. Whenever a company has been formed for any of the purposes authorized by this Act, the Governor in Council may, on the application of the company, forthwith cause a sufficient area of Crown lands for a distance not exceeding fifteen miles on each side of such proposed line of railway, or, if there shall not be any or sufficient land on each side, then upon one side of the proposed line of such railway, to be withdrawn from sale.

When company formed, Governor may cause withdrawal from sale of Crown lands adjoining proposed line.

95. Such lands shall be withdrawn from sale by Order in Council to be published in the *Gazette*, which order shall set out a general description of the lands thereby affected, and such lands may be so withdrawn from time to time as may be necessary.

Lands to be withdrawn by Order in Council gazetted.

96. Whenever a contract has become capable of taking effect under this Act, the Governor shall cause all such lands to be surveyed into such convenient blocks as may be specified in any contract.

Land to be surveyed.

Every such block shall be rectangular, except as hereinafter provided: Provided that no block shall have a greater frontage to the line of railway than one mile. The cost of surveying the blocks of land so to be surveyed as aforesaid shall be borne one-half by the Government and the other half by the company.

Size and shape of blocks.

97. The company shall only be entitled to an alternate choice of the blocks of land so surveyed as aforesaid in such manner as may be provided by the contract; and in no case shall the land so granted to the company include more than one-half the frontage to the line.

Company entitled to each alternate section.

98. When it is desirable to secure natural boundaries, the Governor in Council may alter the boundary of any rectangular block; but no such block shall be altered so as to have a greater frontage to a watercourse than one-half the depth of such block.

Natural boundaries may be taken advantage of.

99. Whenever a contract has been made under this Act for the construction of a railway, or for the construction and working thereof, and for the granting of land to the constructors of such railway under the powers herein contained, and the Minister is satisfied that the whole line of railway, or any section thereof which can be usefully worked for public traffic, has been well and faithfully constructed under the provisions of this Act, and in accordance with the contract and the plans and specifications forming part thereof, and that the same is complete and fit for public traffic, the Governor may, from the several blocks of land provided to be set aside under this Part of this Act, allow the company to select an acreage that will be proportionate to the total percentage of land to be granted to it for the entire line.

Progress selection by company for land when complete sections of railway finished.

100. Upon the selection of every individual block, and simultaneously therewith, and prior to any further selection by the company, the Minister, or some one person appointed by him from time to time, shall have the right to select a block of land equal in size to that previously selected by the company, or as near thereto as possible.

Right of Crown to select for equal area.

If no land adjoining line available, then land in neighbourhood benefited by construction of railway to be set aside.

How value of land to be calculated.

Company to pay value of improvements to persons holding land as tenant or licensee of the Crown.

Issue of Crown grants to company, and terms thereof.

101. If there is not any or sufficient Crown land adjoining the line of railway, then Crown land in the neighbourhood of the line, or which is or will be benefited by the construction of the railway, shall be set aside in such places as shall be provided in the contract; and the preceding provisions so far as applicable shall apply, except that it shall not be necessary to survey the land into blocks, and the company shall be entitled to the whole land so withdrawn, so long as the same does not exceed the quantity agreed to be granted.

102. The value of the land to be granted under this Act shall be calculated upon the estimated market value thereof immediately prior to the making of any contract under this Act, irrespective of any Land Act or regulations made thereunder, and without regard to any prospective value that will be given to such lands by the proposed undertaking.

Such value shall be ascertained by the Surveyor-General on behalf of the Governor and some person to be appointed by the company, and, in case of their disagreement, by some person to be chosen by the Surveyor-General and such first-mentioned person; and their certificate, or that of any two of them, in writing of such value, given for the purposes of any contract under this Act, shall be binding and conclusive both upon the Governor in Council and the company.

103. Whenever any land for which the company may be entitled to a grant under this Act is in the lawful occupation of any person as a tenant or licensee of the Crown, the company shall, before receiving the grant thereof, be required by the Minister either to pay to the owner for the time being the value of improvements, to be determined as hereinafter provided, or to select instead of such block an equal area of available Crown land adjacent thereto.

104. Crown grants shall be issued for the blocks or sections to which the company may be entitled, as soon as conveniently may be after the selection thereof, in accordance with this Act.

(1.) If any land comprised in any such grant shall at any time be found to contain coal, then the company shall pay to Her Majesty, in respect of every ton of coal raised or gotten thereout, a royalty or sum not exceeding a maximum sum to be specified in the grant.

(2.) If any such land shall be found to contain gold or silver, such land shall be subject in all respects to the provisions of "The Resumption of Land for Mining Purposes Act, 1873," but the value of the gold or silver in or on such land shall not be taken into account in ascertaining or allowing compensation to the company.

Every Crown grant issued under this Act shall contain the necessary reservation to give effect to these provisions, and shall also contain a power to the Governor on behalf of the Crown at any time within five years from the issue of the grant to take and lay off for roads or streets through any land comprised therein such part of such land not exceeding five per centum as the Governor may think fit.

All other provisions of any Act for the time being in force and generally applicable to grants of land from the Crown shall extend and apply to grants made under this Act.

105. Any grant made under this Act may include all such sites for railway stations, stores, and other buildings connected with or used by the railway, as may be provided for by the contract or may be deemed reasonably necessary for the purposes of the company.

Such grants may include sites for stations, &c.

106. The value of the Crown lands to be granted to any company under the authority of this Act, or any contract made thereunder, shall not exceed thirty per centum of the cost of such line of railway, as estimated in the contract entered into between the Governor in Council and the company; but the estimated cost of the construction of such line of railway shall not, for the purposes of this section, exceed an average of five thousand pounds a mile:

Value of Crown lands to be granted to company not to exceed 30 per cent. of cost of railway.

Provided that such value shall not include the value of any land granted gratuitously for the construction of the permanent-way, or as sites for railway-stations, stores, or other buildings.

PART VI.

MANAGEMENT OF RAILWAYS BY COMPANIES.

(1.) *Regulations for Traffic.*

107. When a company has agreed to construct and work a line under Part I. of this Act, then, subject to the terms of the contract, the company may from time to time make, alter, and revoke by-laws and regulations in respect of a railway open for traffic upon the following subjects:—

Company may make regulations, and prescribe tolls, &c.

- (1.) Fixing the tolls, rates, fares, and rent to be charged for the carriage by the railway of passengers, produce, animals, goods, merchandise, articles, matters, and things, and for the storage of goods in any of the company's sheds or warehouses:
But such tolls, rates, fares, and rents shall not in any case exceed the maximum of the tolls, rates, fares, rents, or charges proposed by the company and approved by the Governor, and as set forth in the contract entered into under Part I. of this Act.
- (2.) Regulating the number of trains to run each day, such number not being less than the number stated in the company's proposals and approved as aforesaid, and the time of their arrival and departure from the terminal and intermediate stations.
- (3.) For regulating the loading and unloading of carriages and wagons, and the receipt and delivery of goods, and the storing and delivery of the same.
- (4.) For the use of cranes, hoists, or other machinery for the loading or unloading of goods, and all fees to be paid for the same.
- (5.) For preventing the smoking of tobacco and committing nuisances on railways.
- (6.) Generally for regulating the traffic on railways, and the conduct of all persons employed on or about the same, or travelling thereon.

All tolls, rates, fares, fees, and rent, fixed as aforesaid, shall be deemed to be authorized by this Act.

Railway to be open to the public.

Governor may reduce maximum of fares, &c., under certain conditions.

Certain provisions of "The Public Works Act, 1876," incorporated.

The railway shall at all reasonable times be open to and freely used by every person who complies with the regulations for the time being in force on the line.

108. If it shall be made to appear to the Governor that the railway is earning a clear profit exceeding seven per centum, he may, by warrant duly gazetted, reduce the maximum of such tolls, rates, fares, and rents as aforesaid, in such manner and to such extent as shall provide that the said clear profit shall not be less than seven pounds per centum per annum, and thereupon the company shall alter their by-laws and regulations as may be necessary; but no such reduction shall be made till after one month's notice in writing has been given to the company by the Minister for Public Works.

109. The following provisions of "The Public Works Act, 1876," shall, so far as applicable, be deemed to be incorporated with this Act, that is to say,—

Sections one hundred and forty-six to one hundred and fifty, both inclusive :

Sections one hundred and fifty-five to one hundred and sixty-one, inclusive.

Wherever in such sections any power, duty, or function is given to or imposed upon the Minister, such power, duty, or function shall be given to, imposed upon, and may be exercised by the company.

Whenever any thing is required by such sections to be gazetted, it shall be sufficient if such thing be notified in a newspaper circulating at the place where the same is to have effect.

(2.) *Carriage of Goods, &c.*

Provisions as to custody, carriage, and delivery of goods.

110. In respect to the receiving, custody, and delivery of goods upon or from a railway, the following provisions shall apply:—

(1.) All goods received upon any railway shall, subject to any by-laws in that behalf, be deemed to be in the custody of the company until delivered to the consignee thereof.

The word "goods" means goods and chattels of every description, including live animals.

(2.) The Governor in Council may, by any regulations, from time to time declare certain kinds of goods of a nature liable to injury, or goods over and above a certain value, to be special goods; all other goods shall be deemed to be ordinary goods.

(3.) Every person, before delivering any special goods at any railway station, shall first give to the person in charge of such station a statement in writing declaring the nature and value of such special goods, and the person so in charge shall give a receipt for the same, specifying the nature and value so declared.

(4.) No person, unless he has first delivered such statement and obtained such receipt, shall be entitled to recover, in respect to any loss or damage of or to any such special goods, any greater sum than ten pounds in respect of any such parcel in which any such special goods are packed, fifteen pounds per head in respect of any horses, eight

pounds per head in respect of any neat cattle, and fifteen shillings per head in respect of any sheep or swine.

- (5.) The Governor may, by any regulations, from time to time declare what additional sum, over and above the charges payable in respect of ordinary goods, shall be payable in respect of special goods in proportion to the value thereof.
- (6.) In respect of all ordinary goods, and, to the extent of the value declared as above provided in respect of all special goods, and in respect of all passengers carried upon any railway, the company shall be subject to the same liabilities and obligations, and shall be entitled to the same rights and protection, as common carriers are subject or entitled to by any laws for the time being in force in New Zealand.
- (7.) Nothing herein shall be interpreted to subject the company to any liability in respect of any goods which, by any by-law made under this Act, are left on the premises of a railway at the risk of the person leaving the same.
- (8.) No action shall be brought against the company for any loss or damage of or to any goods in their custody on a railway unless the same is brought within three months after such loss or damage occurs.
- (9.) No such action shall be commenced until one calendar month after a notice in writing is given to the company stating the cause of action, the Court in which such action is intended to be brought, and the name and residence of the parties about to sue.
- (10.) In any such action the company may plead a general denial of the allegations contained in the declaration or plaint, and at the time of settling the issues may propose any special matter of defence for issue upon such plea, or in any inferior Court may give any special matter of defence in evidence at the trial without notice.

111. If any person knowingly and wilfully makes a false statement as to the nature, quantity, and value of any goods delivered upon a railway, in any way-bill or other document which by this Act, or by any regulation made thereunder, he is required to deliver in respect to such goods, he shall be liable to a penalty not exceeding fifty pounds.

Penalty for giving false way-bill.

PART VII.

GENERAL PROVISIONS.

(1.) *Agreements with Companies.*

112. The Governor may from time to time enter on behalf of Her Majesty the Queen into an agreement with any company, upon such terms and conditions as may be agreed, providing that any trains or rolling-stock the property of Her Majesty or the Government of the colony may be run upon the railway after the completion thereof, and that any trains or rolling-stock the property of the company may be run upon any line or lines of railway the property of Her Majesty or the Government of the colony.

Governor may agree with companies for running powers over lines, &c.

In any such agreement provision may be made as to stoppage at the terminal and other stations on any line of railway, as may be

specified in any such agreement: Provided that no such agreement shall be for a period of more than one year.

And also as to payments to be made under such agreements, &c.

113. The Governor and the company may also, from time to time in the manner aforesaid, agree as to the payments to be made by the one to the other of them of such rates of charges as may be fixed in that behalf, and as to the time and mode of payment of such charges, and the keeping of accounts between the Governor and the company in respect of any such agreement, and generally may enter into and agree upon such terms and conditions as may be necessary to give effect to this section of this Act.

(2.) *Power of Purchase by the Governor.*

Power to Governor to purchase railways on giving notice.

114. Subject to the terms of any contract made under this Act, the Governor shall be entitled at any time after the expiration of ten years from the date the entire line of railway provided for in the contract is opened for traffic, upon giving twelve months' notice in writing to the company, to purchase the railway at a price to be determined by arbitration, the award being that of three arbitrators, or any two of them, one arbitrator being chosen by the Governor, another by the company, and a third arbitrator by the two other arbitrators.

But this provision shall not restrict the exercise of the powers conferred by section one hundred and twenty-two of this Act.

Price to be determined by arbitration.

115. In determining the price to be paid to the company, the said arbitrators shall abide by and observe the following provisions:—

They shall not award any compensation to the company in respect of the lands the use of which for the line of railway shall have been acquired from the Governor under the provisions of this Act, or which may have been gratuitously granted to the company for the construction of the permanent-way of the line, but the company shall require, in respect of such lands, and be entitled to, the fair value of all improvements made by them on such lands, to be ascertained as hereinafter provided.

Company to convey and assign upon payment of price agreed upon.

116. Upon payment of the compensation to be awarded under the provisions hereof, the company shall convey, assign, and transfer to Her Majesty all their estate, property, and interest in the said railway works, plant, rolling-stock, and everything appurtenant thereto.

Mortgagee to join in conveyance on being paid his principal and interest.

If the railway and property of the company shall be subject to any mortgage under the powers hereinbefore contained, the mortgagee shall, on being paid his principal and interest, join in and execute such conveyance, assignment, and transfer as may be necessary to give effect to this provision.

How value of railway to be ascertained.

117. No compensation whatever shall be paid for the goodwill of any railway; but the arbitrators, in determining the price to be paid to the company aforesaid, shall take as a basis of the valuation the cost of other similar railway works, plant, and rolling-stock at the time when the works forming the subject of such arbitration were constructed, or the plant or rolling-stock was acquired, as the case may be.

The arbitrators shall also take into consideration the depreciation in the permanent-way, plant, and rolling-stock, buildings, and other works of the railway, including therein any onerous or burden-

some provisions respecting the use of the said railway or the works thereof, or any easements, rights, or privileges in connection therewith.

118. If such power shall be exercised by the Governor as aforesaid between the periods hereinafter respectively mentioned, after the railway has been open for traffic, there shall be added to the amount of compensation to be ascertained as before provided the percentage hereinafter mentioned, that is to say,—

If power of taking exercised within certain period, a percentage to be added to compensation.

Seven years and not exceeding fourteen years, five per centum ;
Fourteen years and not exceeding twenty-one years, ten per centum.

The amount of such percentage, as the case may require, shall be ascertained by the arbitrators, and shall be deemed to be and shall be paid as part of such compensation.

119. The compensation so ascertained as aforesaid shall be accepted by the company in full of all claims and demands in respect of the purchase of the railway works, plant, rolling-stock, implements, and all the rights, powers, and privileges of the company in respect thereof, and shall be paid out of moneys appropriated for that purpose by the General Assembly :

Compensation as ascertained to be accepted by company.

Provided that until the General Assembly has appropriated money for such purpose no agreement made by the Governor to purchase any railway constructed under this Act shall be binding on the colony.

Proviso. General Assembly must first appropriate money for purchase.

120. Every railway purchased by the Governor under the provisions of this Act shall be and become subject to all laws, by-laws, and regulations in force at the time of such purchase in respect of any railway the property of the Crown or the Government of the colony.

Railways purchased to become subject to by-laws in force on Government railways.

(3.) *Miscellaneous Provisions.*

121. Whenever the Native Land Court shall be satisfied that any piece of Native land required for the permanent-way of a railway under this Act has been ceded to the company by the owners thereof, it may make an order reciting the instrument of purchase or other method by which the cession is testified, and vesting the land in the company, its successors, and assigns : Provided that the inquiry of the Court shall be conducted according to the rules and practice of its ordinary procedure.

As to Native land, when any piece has been ceded to company by owners, Native Land Court may make order vesting same in company.

Such order may be registered, and shall be valid and effectual against Her Majesty, and all persons whomsoever, according to the terms thereof.

122. The company, with the consent in writing of the Governor first had and obtained, may at any time sell, lease, assign, or part with the railway.

Company not to sell or assign without consent.

But this provision shall not interfere with the special powers of sale or lease conferred under section fifty-one of this Act.

123. The Governor shall have and may exercise the powers hereinafter set forth in the cases therein provided for :—

Power to Governor to take possession of railways in case of delay in works or neglect to run trains.

(1.) In the event of any unreasonable or inexcusable delay by the company in the prosecution of the works connected with any railway, or in the event of the company, after the completion of the said works in whole or in part, so

that the whole or any complete part or section of such railway may be used for the purposes of traffic, failing or neglecting for the space of twenty-one clear days, without reasonable excuse, to run trains at the times and in the manner fixed and determined by or in any regulation to be made by the Governor under this Act; or

- (2.) If the company shall, in the opinion of the Governor, commit or suffer a wilful breach of any contract made with the Governor in Council or the Governor under this Act:

The Governor may take possession and assume the management of such railway, and, if he think fit, complete the same, and conduct the traffic thereon, charging the company with all outlay and expenditure which may be entailed, and crediting the company with all earnings and receipts.

In such event, there shall be paid by the company to the Governor, and by the Governor to the company, the balance which shall thereafter be found to be due from the one to the other of them from time to time, the accounts being computed and rendered at intervals of not less than six calendar months, or the Governor may restore the possession of the railway to the company, or waive any breach in any contract as aforesaid, upon such terms and conditions as he may think fit.

Any action taken under this provision shall not prejudice any security taken for the due performance of a contract by any company, as hereinbefore provided.

Provision for application to the Supreme Court.

124. If the Governor shall exercise the powers vested in him by the last preceding section, any company interested or affected by the action of the Governor may apply to the Supreme Court as hereinafter provided.

Every such application shall be heard and determined by a Judge of the Supreme Court in a summary way; and such application shall be limited to the question whether there has been such unreasonable or inexcusable delay, or such a wilful breach of any contract as aforesaid, as to justify the exercise of such powers by the Governor, or any of them.

The Judge shall, in such manner as he thinks fit, hear and receive evidence either oral or by affidavit as to the matters upon which his decision is sought; and any order made by a Judge shall set forth whether in his opinion the power conferred by the one hundred and twenty-third section was rightly exercised; and every such order shall be final and conclusive on the Governor and the company. In all other respects the procedure and practice in force for the time in the Supreme Court shall apply to all proceedings authorized by this provision.

If company fails to pay sums due, Governor may give three months' notice, and if not paid retain railway.

125. If the company, for the space of one year after the Governor has taken possession as aforesaid, shall fail to repay all sums of public money which have been expended in or towards completing the said railway and the equipment thereof, and all sums of public money which shall have been expended on the repair or management of the railway or in connection therewith in excess of the receipts therefrom, it shall be lawful for the Governor, at any time after the expiration of

the one year, to give three months' notice to the company that he intends to retain the said railway as Government property.

126. On the publication of an Order in Council at any time after the expiration of the said three months, to the effect that possession has been taken as aforesaid and will be permanently retained by the Government, the said railway and stations, and all plant, equipments, and appurtenances belonging thereto, shall, unless a satisfactory arrangement be in the meantime made between the Government and the company, become and be absolutely vested in Her Majesty the Queen, without any conveyance or transfer whatsoever.

On publication of Order in Council, railway, &c., vested in Her Majesty.

127. Every railway constructed under this Act shall be subject to the provisions of "The Railways Regulation and Inspection Act, 1873," which shall be deemed to be incorporated with this Act.

Railways constructed under this Act to be subject to "The Railways Regulation and Inspection Act, 1873."

128. Nothing in this Act contained shall be deemed to give any company any further or more extensive powers than shall be necessary to carry out the purposes for which such company shall have been incorporated.

Act not to give company greater powers than those for which it is incorporated.

129. No stamp duty shall be chargeable upon or in respect of any contract entered into between the Governor in Council and any company, nor upon any debenture or coupon issued by a company under this Act.

Stamp duty not payable upon certain contracts or debentures, &c.

130. If the company is of opinion that any tree on land adjacent to a railway is likely by falling or otherwise to obstruct the traffic or endanger the travellers thereon, the company may cause notice to be given to the owner or occupier of such land to remove such tree; and in default of such removal the company 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 may be removed.

131. Any person trespassing upon any railway after the same has been constructed, or while it is 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 penalty not exceeding two pounds.

Penalties for trespassing on railways.

Any person riding or driving any animal or vehicle upon any such railway or land without lawful authority shall be liable to a penalty not exceeding five pounds.

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.

132. Subject to the provisions herein contained, all lands purchased or acquired by the company from any person for the purposes of the railway, and all property, real or personal, of what description soever, belonging or appertaining to the said railway, shall be and are hereby declared to be vested in and shall be deemed to be the property of the company.

Lands purchased to be the property of the company.

But if the company shall sell or assign the railway to any person after they shall have purchased or acquired any lands or property under the powers herein contained, it shall be lawful for the company to convey any lands or real property so purchased or acquired by or

vested in them, and to assign or transfer any personal property so acquired by or vested in them to the person to whom the undertaking shall be so sold.

Penalty for obstructing person in discharge of his duty.

133. Any person who wilfully obstructs any engineer, surveyor, overseer, workman, or other person in the performance of any duty, or in doing any work which he has lawful authority to do under or by virtue of the provisions of this Act, shall be liable to a penalty of not more than fifty pounds for every such offence.

Penalties recoverable summarily.

134. All penalties recoverable under the provisions of this Act, or any by-laws or regulations made thereunder, may be recovered before any two Justices of the Peace in a summary way.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

Sec. 15.

SCHEDULE OF LINES, FOR THE CONSTRUCTION OF WHICH GOVERNMENT MAY CONTRACT UNDER SECTION 15.

Waikato—Thames Railway to Rotorua.	East and West Coast, Middle Island,
Wellington to Manawatu.	by Waiiau and Reefton.
Belgrove to Nelson Creek.	Otago Central.

SECOND SCHEDULE.

Sec. 31.

ORDER BY COMPENSATION COURT.

WHEREAS, under the provisions of "The Railways Construction and Land Act, 1881," the land described in the plan drawn in the margin of this order [or indorsed upon the order, or attached thereto] was taken by the [Name of Company] for the purposes of a railway from to : And whereas the compensation payable in respect of the interest of [Owner of land] in the said land has been assessed at £ , and such compensation has been paid by the Company [State mode of payment] : In exercise of the authority conferred upon it by the said Act, this Court doth therefore order that the parcel of land described in the said plan shall be vested in the said Company for the purposes of the said Act.

Dated this day of 188 .

(Plan.)

A.B.,

President of the Compensation Court.

Sec. 53.

THIRD SCHEDULE.

FORM OF DEBENTURE.

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.

No. Debenture for £ . £ .

Payable at [State place of payment], on .

Issued by the [Name of Company] under "The Railways Construction and Land Act, 1881."

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.

