

Hon. Mr. Mitchelson.

PUBLIC WORKS ACTS AMENDMENT.

ANALYSIS.

- | | |
|---|--|
| Title. | |
| 1. Short Title. | |
| 2. Interpretation. | |
| 3. Amendments of principal Act. | |
| 4. Particulars to be inserted in claim to compensation. Place where claim to be lodged. | |
| 5. Court may compel claimant to state particulars. | |
| 6. Claimant not to recover for matters not particularised in his claim. | |
| 7. Minister may declare any portion of land taken for railway purposes to be a public road or street, and vest same in a local authority. | |
| 8. Liability of local authority over road, &c., to continue notwithstanding alteration, &c., in road. | |
| 9. Removal of gorse, &c., from roads, &c. | |
| 10. Occupier or owner of land to destroy gorse and sweetbriar growing on same; and on failure after reasonable notice local authority may do so at his expense. | |
| 11. Proclamations taking land for public works may be cancelled for error or misdescription. | |
| 12. If Crown resume land under authority of general or special Act, such resumption may be effected by occupation, fencing, or | by Proclamation without complying with all the provisions set forth in enabling Act. |
| | 13. Local authority may permit swing-gates to be placed on roads in sparsely-populated districts. |
| | 14. County Councils may delegate to Road Boards the power to make new drains. |
| | 15. If a local authority wishes to construct a bridge or to establish a ferry or ford that will benefit an adjoining district the Governor may in certain cases compel local authority of such adjoining district to contribute to the cost of same. |
| | 16. Provisions of section 4 of "The Public Works Acts Amendment Act, 1887," to apply to control of bridges, &c., vested under previous Acts. |
| | 17. Proviso to section 14 of "The Public Works Acts Amendment Act, 1887." |
| | 18. Railway servants may impound trespassing cattle. |
| | 19. Powers under Part VIII. of the principal Act extended. |
| | 20. Local authorities may agree with Minister as to conversion of railway-bridge into a bridge for ordinary and railway traffic. |
| | 21. Certain powers under "The Counties Act, 1886," may be exercised from time to time. Schedule. |

A BILL INTITULED

AN ACT to further amend "The Public Works Act, 1882," and Title.
the Acts amending the same.

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

1. The Short Title of this Act is "The Public Works Acts Short Title.
Amendment Act, 1888."

No. 134—1.

Interpretation.

2. In this Act "the principal Act" means "The Public Works Act, 1882."

Amendments of principal Act.

3. The principal Act is hereby amended as follows:—

(1.) In section one hundred and fifty-six the words "knowingly and wilfully" are hereby repealed: 5

(2.) In the Fourth Schedule the words "that I am not concerned or interested in any way in the claim, and" are hereby inserted after the word "declare."

Particulars to be inserted in claim to compensation.

4. Section thirty-three, and the Second Schedule of the principal Act, are hereby repealed, and the following enacted in lieu thereof:— 10
In order to obtain compensation the claimant shall serve upon the respondent a claim, in writing, in one of the forms in the Schedule to this Act stating,—

(a.) The several areas and descriptions of the lands taken or injuriously affected in respect of which he makes his claim, and the nature and particulars of his interest therein; and if he claim as owner, and the land is encumbered, leased, or subject to any easement, he shall give particulars of such encumbrance, lease, or easement: 15

(b.) Each matter on account of which he claims compensation, with full particulars of the nature and extent of the claim: 20

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

(d.) The total amount claimed: 25

(e.) His full Christian name and surname, together with his address, which address shall be deemed to be the last known place of abode or business of the claimant within the meaning of section three of the principal Act, unless and until special notice in writing of a change of address is delivered to the respondent. 30

Place where claim to be lodged.

Such claim shall be served, in the case of the Minister, by being delivered at the Public Works Office at Wellington, or by being sent by registered letter addressed to the Minister at such office, and, in the case of the local authority, by being left at their office; and the claimant shall be entitled to receive from the officer for the time being in charge of any such office a receipt stating the day on which such claim was delivered or received, and any officer refusing to give such receipt on demand shall be liable to a penalty of not more than *five* pounds. 40

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

Court may compel claimant to state particulars.

5. If, under the *last-preceding* section, the claimant does not give full particulars of such claim, or does not specify in his claim the amount claimed in respect of each matter in respect of which such claim is made, the respondent may, by notice in writing, require him to furnish such particulars; and if such particulars are not supplied before twenty-one days from the date set down for the sitting of the Compensation Court to hear the claim, the respondent may 50

plead the service of such notice, and the Court may, if it think fit, thereupon order the claimant to furnish such particulars, and may adjourn the further hearing of the case until such particulars are supplied, and until the respondent has had reasonable time to consider the same, and may order that the costs of such adjournment shall be borne by the claimant.

6. In any case where a claim is brought before a Compensation Court in the manner provided by the principal Act the claimant shall not recover compensation for any matter that is not particularised in terms of section *five* hereof.

Claimant not to recover for matters not particularised in his claim.

7. Whenever it may be considered desirable to allocate any portion of any land taken, purchased, or otherwise acquired for a railway to the purposes of a road or street the Minister may, if he think fit, by notice gazetted, declare such portion of such land as is defined in such notice to be a road or street, and may by such notice vest the control of such road or street in the local authority most capable, in his opinion, conveniently and effectively to construct, control, and maintain the same; and from and after the date of the first gazetting of such notice such portion of land shall become a road or street, and shall be under the control of and be liable to be maintained by such local authority in like manner as other public highways are controlled and maintained by such authority.

Minister may declare any portion of land taken for railway purposes to be a public road or street, and vest same in a local authority.

8. Section one hundred and thirty-six of the principal Act is hereby amended by the addition of the following words to the first paragraph thereof:—

Liability of local authority over road, &c., to continue, notwithstanding alteration, &c., in road.

“The local authority having control and being responsible for the maintenance of such road, street, tramway, watercourse, drain, or other public work at the time of such alteration, shall, from and after the date when such alteration has been made, have the control and be responsible for the maintenance of the same, as altered, in all respects as if such alteration had been made by such local authority itself; and in any case where a water-pipe or gas-pipe belonging to a private person or company has been altered, such private person or company shall continue to have the same rights, privileges, and liabilities in respect of the same as before its alteration.”

9. Section fifteen of “The Public Works Act 1882 Amendment Act, 1884,” is hereby amended as follows:—

Removal of gorse, &c., from roads, &c.

(1.) All the words of the proviso in the first paragraph of the said section are hereby repealed.

(2.) The words “To clear away and destroy,” in subsection two of the said section, are hereby repealed, and in lieu thereof the words “To cut down and remove,” are hereby substituted.

(3.) The words “or grubbing up and removing such gorse, sweet-briar, bramble, or broom,” in the last paragraph of the said section are hereby repealed, and in lieu thereof the words “or cutting down and removing such gorse, sweet-briar, bramble, or broom then growing on such road or street,” are hereby substituted.

Occupier or owner of land to destroy gorse and sweetbriar growing on same; and on failure after reasonable notice local authority may do so at his expense.

10. The occupier or, in case there is no occupier, the owner of any land shall grub up, clear away, and destroy all gorse or sweetbriar growing on such land, and which does not form part of a *bona fide* hedge or fence of reasonable width; and on failure to do so, the local authority may order the occupier or the owner, as the case may require, to grub up and destroy the same, and if he does not grub up and destroy such gorse or sweetbriar within *three months* from the date on which such order is served upon him, he shall be subject to the penalties provided in section fifteen of "The Public Works Act 1882 Amendment Act, 1884," in the case of a person failing to remove gorse or sweetbriar growing on a road. 5

The aforesaid section fifteen and all amendments thereof shall, *mutatis mutandis*, apply and may be applied in any case where necessary to compel the grubbing up and destroying gorse or sweetbriar growing on any private land in the same manner and to the same extent as it applies in respect of gorse or sweetbriar growing on roads; and, subject to the express terms of this section, the local authority shall have and may exercise all the powers and authorities conferred by such section and the amendments thereof in any such case. 15

Proclamations taking land for public works may be cancelled for error or misdescription.

11. In any case where a Proclamation has been issued taking land for any public work, under the authority of section eleven or of section one hundred and thirty of the principal Act, and where, before such Proclamation has been registered by the District Land Registrar as required by the said Act, it is found that such Proclamation incorrectly describes the land purporting to be taken, or that any other error in form or substance exists in or in relation to such Proclamation, the Governor may by a subsequent Proclamation cancel and annul such Proclamation or any part thereof, and such Proclamation or part thereof shall be absolutely void and of none effect as from the date of the same, and shall not be deemed to have vested the land mentioned therein in Her Majesty, or in the local authority, or in the corporate body represented by such local authority, or to have discharged such land from any mortgages, charges, claims, estates, or interests of what kind soever existing in respect of such land, anything to the contrary in section eleven of the principal Act or in section six of "The Public Works Act 1882 Amendment Act, 1884," notwithstanding; but nothing herein contained shall limit the power of the Governor to take by any subsequent Proclamation the whole or any part of the land mentioned or described in any Proclamation so cancelled in whole or in part. 20 25 30 35 40

If Crown resume land under authority of general or special Act, such resumption may be effected by occupation, fencing, or by Proclamation without complying with all the provisions set forth in enabling Act.

12. In any case where Her Majesty or any person on her behalf may be entitled to resume possession of or take land for roads or railways, under the authority of any Act of the General Assembly (whether a general Act or a special Act) without payment of compensation, or on payment of a certain sum fixed by such Act, then such land shall be deemed to have been taken in any of the following cases under the authority of such Act at the times following, as the case may be; that is to say,— 45

(a.) As soon as a road or railway has been constructed on such land by Her Majesty; and in such case if the land so taken has not been fenced off by Her Majesty, the area taken for such road or railway shall be deemed to be an area of one chain wide, centreing on the middle line of such road or railway, throughout the whole of the distance traversed by the same on such land, but where the work actually occupies more than one chain wide, the actual area occupied by such work, or where there are side ditches or drains alongside the road or railway formation, then the whole width between the outside edges of such side ditches or drains, shall be deemed to have been taken; or

(b.) As soon as such land has been fenced off by Her Majesty for the purpose of constructing or after the construction of a road or railway thereon; and in such case the area of land included within such fences shall be deemed to be the area taken; or

(c.) As soon as a Proclamation under "The Public Works Act, 1882," or any Act repealed thereby, has been issued taking such land.

And such land shall be deemed to have been taken at the times aforesaid respectively under the authority of any such Act as in this section mentioned, notwithstanding that any special provisions contained in such Act as to the resumption or taking of the said land may not have been complied with.

Compensation may, however, be claimed under the principal Act in any case for any land in excess of the area authorised to be resumed or taken by Her Majesty under the enabling Act aforesaid.

This section shall extend and apply and shall be deemed to have applied to all cases where Her Majesty or any person on her behalf had the right to resume possession of or take land for roads or railways under any Act of the General Assembly as aforesaid at the time when any such land was resumed or taken in any of the ways above mentioned.

13. The local authority having the control of any road in a sparsely-populated district may, by writing, permit any person to erect a swing-gate across such road; but the local authority may, notwithstanding such permission, cause such swing-gate to be removed at any time, without payment of compensation to the person erecting the same, or to any person deriving benefit therefrom; and in any case in which a swing-gate shall be or may have been erected as aforesaid a board with the words "Public road" legibly painted thereon shall be fixed to each side of such gate, and shall at all times be maintained thereon by the person authorised to erect the same.

Local authority may permit swing-gates to be placed on roads in sparsely-populated districts.

County Councils may delegate to Road Boards the power to make new drains.

14. The Council of any county may from time to time, by a special order, delegate to any Road Board all or any of the powers granted to such Council by section one hundred and eighty-nine of the principal Act, for the purpose of enabling such Board to make new public drains within the district under its jurisdiction.

The Road Board, for the purpose aforesaid, may, from the date of such order taking effect, exercise any of the powers mentioned in the aforesaid section, and also shall have all the powers and be subject to all the liabilities given to or imposed upon County Councils by the principal Act in respect of the construction and repair of public drains.

If a local authority wishes to construct a bridge or to establish a ferry or ford that will benefit an adjoining district the Governor may in certain cases compel local authority of such adjoining district to contribute to the cost of same.

15. In any case where the local authority of any district desires to construct a bridge, or to establish a ferry or ford, in any position that will, in its opinion, be of advantage and benefit to the whole or any considerable portion of the inhabitants of an adjacent district or districts, as well as to the inhabitants of its own district, and where it is reasonable that the local authority or authorities of such district or districts whose inhabitants are to be so benefited should contribute to the cost of constructing or establishing the said bridge, ferry, or ford, the following provisions shall have effect:—

(1.) The local authority shall prepare plans, specifications, and estimates of the work, and shall send a copy of the same to the Minister and to each local authority which it is proposed should contribute to the cost of the work, together with a notice stating—

(a.) The proportion of such cost which it is proposed that each local authority should bear;

(b.) That after the expiration of two months from the date of such notice being served it is the intention of such local authority to apply to the Governor for power to construct the work, and to recover the proportion of the cost of same from the local authority or local authorities mentioned in such notice; and

(c.) That any objection to the proposal must be sent to the Governor within such period of two months.

(2.) At the expiration of the aforesaid period of two months the local authority may make application to the Governor for power to construct the work on the terms mentioned in the notice aforesaid.

(3.) Any local authority making an objection shall state in such objection the grounds thereof, and such local authority shall send a copy of such objection to the local authority proposing to construct the work.

(4.) If an objection is lodged, the Governor (with the view of determining whether or not the work should be done, or what proportion, if any, of the cost of the same should fairly be borne by any local authority or what local authority should do the work) may direct any Resident Magistrate or other person or persons to be a Commissioner or Com-

missioners to inquire into and report to him on the matter, and such Commissioner or Commissioners shall have all the powers and duties mentioned in section six of "The Public Works Acts Amendment Act, 1887," but it shall not be obligatory upon the Governor to act in accordance with the opinion that may be expressed by such Commissioner or Commissioners, nor to give effect to any recommendation that may be contained in his or their report.

5
10 (5.) If no objection be lodged within the two months aforesaid, or if, although an objection be lodged, the Governor is of opinion that the work should be done, he may, if he think fit, by warrant under his hand publicly notified and gazetted, authorise any local authority to execute such work, and may declare that a proportion of the cost thereof, to be mentioned in such warrant, shall be borne by any other local authority or local authorities, and such proportion shall be paid by such local authority or local authorities accordingly.

15
20 (6.) The local authority empowered to construct the work shall execute and construct the same accordingly, and shall, on the completion thereof, make a demand in writing on any other local authority liable to contribute to the cost of the same, and such demand shall show in detail the cost of the work and the amount demanded in respect of the same; and if such other local authority shall not, within three months from the date of such demand being made, satisfy the same, the first-mentioned local authority may recover the amount, or as much thereof as may be found to be payable, in any Court of competent jurisdiction; but the proportion to be paid as stated in the warrant of the Governor shall be conclusive and binding on such Court, and it shall not be competent for such Court to question the validity of such warrant.

25
30 (7.) After the construction of the work the control thereof shall be deemed to be vested in the local authority which constructed it; but nothing herein contained shall limit the power of the Governor at any time thereafter to make other provision in respect of such control under section four of "The Public Works Acts Amendment Act, 1887."

35
40 The provisions of section seven of "The Public Works Acts Amendment Act, 1887," shall extend and apply in respect of all matters intended to be provided for under the provisions of this section.

45 For the purposes of this section, if not inconsistent with the context,—

"District" means and includes a borough, county, town district, or road district;

"Local authority" includes the Minister in respect of the construction of a bridge or the establishment of a ferry or ford by Her Majesty on a Government road, and he shall have

and may exercise all the rights, privileges, and authorities conferred upon a local authority by this section in respect of such work;

“Work” means the construction of a bridge (including approaches and protective works in connection therewith where necessary) or the establishment of a ferry or ford, and of all works connected therewith. 5

Provisions of section 4 of “The Public Works Acts Amendment Act, 1887,” to apply to control of bridges, &c., vested under previous Acts.

16. Whenever any Proclamation or instrument has at any time heretofore been issued or made under the principal Act or any amendment thereof vesting the control of any bridge, ferry, or ford, and apportioning the cost of maintenance thereof, such Proclamation or instrument may be revoked, altered, or varied by the Governor under the provisions of section four of “The Public Works Acts Amendment Act, 1887.” 10

Proviso to section 14 of “The Public Works Acts Amendment Act, 1887.”

17. The following proviso is hereby added to section fourteen of “The Public Works Acts Amendment Act, 1887 :”— 15

Provided always that, if any person, whether a Native or European, shall have any estate of leasehold or other particular estate in, or any mortgage or charge upon, such land, the Native Land Court shall in and by the same order or orders ascertain and determine what part of the whole compensation shall be paid to such person; and no Court constituted under Part III. of “The Public Works Act, 1882,” shall have jurisdiction to entertain the claim of any such person for compensation. 20

Railway servants may impound trespassing cattle.

18. Any person employed on or about a railway which is vested in Her Majesty or any company, may impound cattle trespassing upon such railway; and any act, matter, or thing required under “The Impounding Act, 1884,” to be performed or done by the occupier of land as defined in such Act, may be performed or done in respect of a railway by any person authorised generally or particularly for that purpose by or on behalf of the General Manager of such railway. 25 30

Powers under Part VIII. of the principal Act extended.

19. The powers conferred in respect of drainage under Part VIII. of the principal Act shall extend to and include the power of making, constructing, and maintaining an outlet to any lake or other body of water, not being navigable. 35

Local authorities may agree with Minister as to conversion of railway-bridge into a bridge for ordinary and railway traffic.

20. Any local authority may agree with the Minister to pay the cost or estimated cost of converting any railway-bridge into a combined road and railway-bridge; which said work of conversion the Minister is hereby authorised to carry out, if he should so think fit; and such local authority is hereby authorised to pay annually to such Minister such further amount as may be necessary to maintain the roadway of the said combined bridge, and any approaches, gates, or other works or structures in connection therewith, and also to pay to the Minister such amount, if any, annually as may be requisite to pay the wages of one or more caretakers to the said bridge. 40 45

All moneys hereby authorised to be paid by a local authority shall be paid out of the local fund under its control, and charged accordingly.

21. All or any of the powers conferred upon the Governor by section two hundred and fifty of "The Counties Act, 1886," may be exercised from time to time as occasion may require, and any instrument issued or direction given by him under the provisions of the said section may be revoked, altered, or varied in the manner and subject to the conditions provided in the preceding section of this Act.

Certain powers under "The Counties Act, 1886," may be exercised from time to time.

SCHEDULE.

Schedules.

FORM OF CLAIM TO COMPENSATION UNDER "THE PUBLIC WORKS ACT, 1882," AND ITS AMENDMENTS.

Form A.—For Cases where Land is taken.

To [Here insert either the "Minister for Public Works" or the name of the local authority, as the case may be].

WHEREAS by a Proclamation by His Excellency the Governor, dated the _____ day of _____, 18____, the lands mentioned in Table A hereunder, in which I have an interest, as described in Table B hereunder, have been taken and vested in Her Majesty for the purposes of [Here insert the name of the public work mentioned in the Proclamation] :

And whereas the lands mentioned in Table C below, adjacent to the lands so taken, in which I have an interest as described in Table D below, will be injuriously affected by the said work by reason that [Here state items of claim, with a reference number to each, and give in each case full particulars of the nature and extent of claim].

This is to give notice that I claim the sum of £_____ as compensation for all loss arising out of the taking of the aforesaid land and the construction of the said public work, which sum is made up as follows:—

					£	.	d.
at	acres	roods	perches	of land taken			
	per acre.						
Land injuriously affected as follows: [Here state reference number, and short heading of each item of claim previously detailed, and the amount claimed in respect of each such item separately.]							
					£		
				Total claim	£		

Given under my hand, this _____ day of _____, 18____.
 Claimant: [Christian name and surname in full.]
 Address: [Address in full.]

TABLE A.

DESCRIPTION OF LANDS TAKEN.

[Here describe the area and situation of land taken, giving name of survey district, and number of block and section, as in Proclamation.]

TABLE B.

NATURE OF INTEREST IN LAND TAKEN.

[Here state in full the nature of the interest as owner in fee-simple, mortgagee, lessee, or occupier; and if the land is leased or encumbered, or subject to any easement, give particulars of such lease or encumbrance, &c., &c.]

TABLE C.
DESCRIPTION OF LAND INJURIOUSLY AFFECTED.

[Here describe the area and situation of the land injuriously affected, giving name of survey district, and number of block and section, or other means of identification.]

TABLE D.
NATURE OF INTEREST IN LAND INJURIOUSLY AFFECTED.

[Here state in full the nature of the interest as owner in fee-simple, mortgagee, lessee, or occupier; and if the land is leased or encumbered, or subject to any easement, give particulars of such lease or encumbrance, &c., &c.]

FORM OF CLAIM TO COMPENSATION UNDER "THE PUBLIC WORKS ACT, 1882," AND ITS AMENDMENTS.

Form B.—For Cases where Land is injuriously affected but where no Land is taken.

To [Here insert either the "Minister for Public Works" or the name of the local authority, as the case may be].

WHEREAS the public works mentioned in Table A hereunder have been [or, are about to be] executed by your authority, by which the lands described in Table B hereunder, in which I have an interest, as described in Table C hereunder, have been [or, will be] injuriously affected by the said works by reason that [Here state items of claim with a reference number to each, and give in each case full particulars of the nature and extent of each such item]:

This is to give notice that I claim the sum of £ _____, as compensation for all loss arising out of the construction of the said public work, which sum is made up as follows:—

	£	s.	d.
[Here state reference number, and short heading of each item of claim previously detailed, and the amount claimed in respect of each such item separately.]			
Total claim	£		

Given under my hand this _____ day of _____ 18 ____ .
 Claimant: [Christian name and surname in full.]
 Address: [Address in full.]

TABLE A.
NATURE OF THE WORKS.

[Here describe the works constructed or proposed which have caused the claim.]

TABLE B.
DESCRIPTION OF THE LANDS AFFECTED.

[Here describe the area and situation of the land affected, giving name of survey district, and number of block and section, or other means of identification.]

TABLE C.
NATURE OF INTEREST IN THE LANDS INJURIOUSLY AFFECTED.

[Here state in full the nature of the interest as owner in fee-simple, mortgagee, lessee or occupier; and if the land is leased or encumbered, or subject to any easement give particulars of such lease or encumbrance, &c., &c.]