

Hon. Mr. Hall-Jones.

PUBLIC WORKS ACTS AMENDMENT.

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A BILL INTITULED

AN ACT to further amend "The Public Works Act, 1894," and its Amendments.

BE IT 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 Public Works Acts Amendment Act, 1898." It shall form part of and be read together with "The Public Works Act, 1894" (hereinafter called "the principal Act").

2. Section ten of the principal Act is hereby amended by inserting, next after the words "for railway or defence purposes," the words, "or for roads in connection with such purposes."

3. Section thirty-three of the principal Act is hereby amended by inserting the following additional subsections next after subsection two thereof, that is to say,—

"(3.) Subject to such terms as to rental or other payment, and such other terms and conditions as are deemed fit, and subject also in every case to the conditions as to revocation contained in subsection one hereof, Her Majesty may grant to any person any of the following easements, privileges, or concessions in respect of any railway-land, that is to say,—

- “(a.) Right-of-way or passage ;
“(b.) Right of access to any railway by gateway or otherwise ;
“(c.) Right to use water ;
“(d.) Right to lay, construct, maintain, and use any tramway, roadway, footway, level crossing, water-race, sludge- 5
channel, culvert, drain, pipe, loading-bank, weighbridge, wharf, stage, timber-slip, booms, crane, protective bank, sluice-gate, fence, or plantation ;
“(e.) Right to cut timber, flax, or grass ;
“(f.) Right to take away earth, clay, rock, ballast, gravel, or 10
sand ;
“(g.) Any other easement, privilege, or concession of a similar character.

“(4.) The powers conferred upon Her Majesty by this section may be exercised on Her behalf by the Minister for Public Works 15
or by the Minister for Railways.”

Governor may
declare road under
control of borough.

4. Section one hundred and two of the principal Act is hereby amended by inserting the following additional subsection next after subsection three thereof, that is to say,—

“(3A.) The Governor may, in like manner, declare that any road 20
constructed by the Governor within the limits of a borough shall be under the control and management of the Council of the borough.”

Repeal.

5. Section one hundred and eight of the principal Act is hereby repealed, and the following is hereby enacted in lieu thereof :—

Control and cost of
road on boundary of
borough.

“108. Where a road lies lengthways on the boundary of a 25
borough, such road, whether included in whole or in part in such borough or not, shall be under the control of and shall be constructed and maintained by the borough, and with respect to every such road the following provisions shall apply :—

- “(1.) The cost of such construction and maintenance shall be 30
borne by the Council of the borough and the local authority of every district of which such road is also a boundary, or which is benefited by the construction or maintenance thereof, in such proportions as may be mutually agreed upon. 35
“(2.) If any dispute arises respecting the apportionment of such cost, such dispute shall be decided by the Governor, who, in his discretion, from time to time may declare that the whole of such cost shall be borne by the Council of the borough, or may apportion the same among all or any 40
of the local authorities concerned, in such manner as he deems equitable.
“(3.) Prior to making such declaration or apportionment, the Governor, if he thinks fit so to do, may appoint a Com- 45
missioner to inquire and report thereon, and such Commissioner shall have the powers set forth in subsection two (d) of section one hundred and thirteen of the principal Act, or such other powers as the Governor thinks fit to confer.
“(4.) The share, if any, of such cost to be contributed by any 50
local authority as aforesaid may be recovered by the Council of the borough in any Court of competent jurisdiction.”

6. In any case where a road in one district is largely used by or for the purpose of traffic to or from another district, and the Governor is of opinion that it is equitable that the latter district should contribute towards the cost of constructing, improving, or maintaining the whole or any portion of such road in the former district, the Governor may from time to time apportion the cost of constructing, improving, or maintaining the whole or any part of such road among the local authorities of the respective districts as he thinks fit; and for that purpose, and to enable effect to be given hereto, the provisions of section one hundred and fourteen of the principal Act shall, *mutatis mutandis*, apply.

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

7. Subsection eleven of section one hundred and ten of the principal Act is hereby amended by the addition of the following words: "The foregoing shall apply to any Native land of which the ownership has not been determined, and to any unfenced and uncultivated land which is unoccupied and the owner of which is unknown or cannot readily be found; but in any such case the notice as aforesaid shall be sufficient if it is legibly written or printed and is posted up in a conspicuous position at or near to the place from which it is intended to remove such stone, gravel, or other material; and such notice shall be signed by the Chairman of the Road Board or County Council in the case of district or county roads, and by some person on behalf of the Minister in the case of Government roads."

Amendment of section 110, subsection (11), of principal Act.

8. (1.) From and after the passing of this Act it shall not be lawful for any local authority to grant permission for the erection or placing of any gate, fence, or other obstruction across or upon any road in general or frequent use for traffic with horses or vehicles, anything in any Act to the contrary notwithstanding.

Removal of fences and other obstructions on roads.

(2.) If at any time it is shown to the local authority, upon petition of any ratepayer or ratepayers, that any existing gate, fence, or other obstruction erected or placed upon or across any road is or has become a public inconvenience by reason of such road being in general or frequent use for traffic with horses or vehicles, such local authority shall forthwith serve notice in writing on the owner or occupier by whom or at whose instance the same was erected or placed as aforesaid, ordering the removal thereof within a time (not exceeding fourteen days) to be appointed in such notice.

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

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

(5.) If such notice is issued and served as aforesaid and is not duly complied with, such owner or occupier shall be liable to a penalty of one pound per day for every day during which such default continues, and the local authority or any ratepayer may remove such gate, fence, or other obstruction, and recover from such owner or occupier as a debt the cost of such removal.

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

9. Section one hundred and thirty of the principal Act is hereby amended by adding the following subsections:—

- “(6.) Any person authorised in that behalf by the Minister in respect of Government roads, or by any local authority in respect of roads under its control, may stop and detain any vehicle or machine which in his opinion infringes any by-law made under this Act until the width of the tires or the weight of such vehicle or machine, or the weight or measurement of the contents thereof, can be ascertained. 5
- “(7.) Any such by-law may prescribe the manner of ascertaining the weight or measurement of such contents by either weighing the same at any weighbridge or computing the weight or measurement from the cubical or superficial measurement of such contents or otherwise. 10
- “(8.) For the purpose of such computation such by-law may prescribe what quantity of timber, agricultural produce, mineral, or any material of any description whatever shall be deemed to weigh a specified weight, and such weight so specified shall be final and conclusive in any proceedings to recover a penalty for the breach of such by-law. 15 20
- “(9.) Any such by-law may also provide for the driver of any vehicle or machine giving such information as to the load or contents thereof, and the quantity, weight, size, or measurement of the same, or doing such acts for the purpose of enabling the same to be ascertained as such authorised person requests. 25
- “(10.) Any such by-law may also fix any penalty not exceeding *five* pounds for any breach of the provisions thereof.”

Removal or lowering of trees overshadowing road.

10. (1.) In any case where trees or hedges growing on land within the district of a local authority overshadow any road or street in the district, the local authority may, by notice in writing served on the occupier, or if there is no occupier, or if the occupier is unknown or cannot be found, then on the owner of the land, require him to remove, lower, or trim such trees or hedges to the satisfaction of the local authority within *two* months after the service of the notice. 30 35

(2.) Within *ten* days after the service of the notice, such occupier or owner may, by complaint under “The Justices of the Peace Act, 1882” (the provisions whereof shall, *mutatis mutandis*, apply), require the local authority to appear before a Stipendiary Magistrate to show cause why the notice should not be set aside. 40

(3.) On the hearing of the complaint, the Magistrate, whose decision shall be final, shall decide whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void. 45

(4.) In the case of a notice which is not set aside as aforesaid, if the occupier or owner fails to duly comply therewith within *two* months after the service thereof, he is liable to a penalty not exceeding *one* pound for every day thereafter during which such failure continues; and the local authority may cause the land to be entered upon and the work to be done at his cost and expense in all things. 50

11. In every case where the owner of land subdivides the same into allotments for the purpose of disposing of the same by way either of sale or of lease for any term which (with the term of any renewal thereby provided for) is not less than *fourteen* years it shall be his
5 duty to provide that each such allotment has, when so disposed of, a frontage to a public road or street, and for the purposes of this section the following provisions shall apply :—

Provision for compelling owner when subdividing land to provide and dedicate a public road to allotments sold.

- 10 (1.) The owner shall, in the case of every allotment which is disposed of as aforesaid, and which does not possess such frontage as aforesaid, provide and, by instrument in writing under his hand, registered by him in the office of the District Land Registrar, or, as the case may require, of the Registrar of Deeds, irrevocably dedicate as a public road or street a strip of land not less than sixty-
15 six feet in width.
- (2.) Such road or street shall be connected with an existing road or street in such manner and in such position as may be agreed upon between the local authority and the owner.
- 20 (3.) The owner shall form and metal the road or street so dedicated, and in boroughs, townships, and town districts shall also construct in connection therewith such drains, footpaths, and curbing as may be agreed upon between the owner and the local authority.
- 25 (4.) The District Land Registrar or Registrar of Deeds, as the case may require, shall refuse to register any instrument of sale or lease of the allotment unless and until he is satisfied that the owner has complied with the foregoing provisions of this section.
- 30 (5.) The road or street so dedicated shall be deemed to be vested in Her Majesty, and shall be under the control of the local authority :
- 35 Provided that, on the application of the owner or his successor in title, the local authority may by special order close such road or street if and when satisfied that for any reason, whether the withdrawal of the allotment from sale or lease, the determination of the lease, or otherwise howsoever, the allotment, either itself or as part of a larger block belonging to the same person, possesses a frontage to a public road or street independently of the road or street so dedicated, and that consequently the road or street so dedicated is not required for the purpose for which it was dedicated.
- 40 (6.) The District Land Registrar or Registrar of Deeds upon being satisfied that such special order has been made, and upon being supplied with a certified copy thereof, shall, without fee, register such copy, and thereupon the land comprised in the road or street so closed shall revert to the owner by whom the dedication was made or his successor in title, and he shall be entitled to receive a certificate of title in respect thereof.
- 50 (7.) If any question or dispute arises hereunder between the owner and a local authority, or the owner or local

authority and the District Land Registrar or Registrar of Deeds, such question or dispute shall be referred to the Minister of Lands, whose decision in writing shall be final and conclusive on all parties; and he may for the purposes of such decision cause an inquiry to be held in the manner set forth in section one hundred and fourteen of the principal Act. 5

(8.) Where the subdivision into allotments was made before the passing of this Act the foregoing provisions of this section shall apply only in the case of such of the allotments as at the time of the passing of this Act have not been sold or leased as aforesaid. 10

(9.) Any expenditure incurred hereunder by any owner (including as expenditure the value of the land comprised in any road or street dedicated by him), may, upon the application of the owner, be apportioned by the Supreme Court among any owners or beneficiaries interested in the land, in such manner as is deemed just. 15

(10.) For the purposes of this section "owner" means the owner in fee-simple, whether beneficially or as trustee, and includes a mortgagee acting in exercise of power of sale, the Public Trustee, and any local authority, Board, or other body or authority, howsoever designated, constituted, or appointed, having power to dispose of land by way of sale or lease. 20

(11.) Nothing in this section shall limit the power of a local authority to make roads or streets, or to contribute towards the cost of any road or street on private land, if such local authority is of opinion that other adjacent land will be benefited thereby. 25

12. Section one hundred and sixty-nine of the principal Act is hereby amended by inserting the following additional subsection next after subsection nine thereof, that is to say:— 30

Powers for protecting railway from overflow of river or stream.

"(10.) (a.) May from time to time, for the purpose of protecting any railway, or preventing or lessening any risk of damage thereto by overflow or outbreak of any stream or river, or by the abrading of the banks of the same, construct, maintain, alter, or reconstruct any embankment, groyne, or other protective work on any land, or on the bank of any river or stream, or divert, impound, or take away any part or the whole of the water of such river or stream, or alter the course of the same; and may also discontinue or abandon any such work as and when he thinks fit. 35

"(b.) Notwithstanding anything contained in this or any other Act, it shall not be lawful for any local authority or for any person other than the Minister to exercise upon any railway-land any of the powers by this subsection conferred upon the Minister unless by the written consent of the Minister. 40

"(c.) For the purposes of this subsection, 'Minister' means either the Minister for Public Works or the Minister for Railways." 50

13. Notwithstanding anything to the contrary contained in Part VI. of the principal Act, or in any other Act, relating to the erection of gates across roads, it is hereby declared that, with respect to every Government railway, the following special provisions shall apply:—

Special provisions as to gates on roads crossing Government railway.

- (1.) It shall not be lawful to erect or maintain across a road, where such road crosses any line of railway on the level, any gate within five chains of the centre line of such railway: Provided that the Minister for Railways, if he thinks fit, may, in any case where there are no cattle-stops at such level crossing, agree with the local authority having the control of such road to allow any such gate to be erected or maintained, under such conditions as, in the interests of public safety, he thinks fit to impose.
- (2.) At private level crossings where there are cattle-stops it shall not be lawful to erect gates so as to enclose the railway, and where there are gates connected with the fencing which encloses any railway, cattle-stops shall not be allowed in the line of railway.
- (3.) If any gate is hereafter erected in breach of this Act, then, irrespective of all other liabilities to which the person or local authority erecting the same is thereby exposed, the same may at the cost and expense in all things of such person or authority be at any time removed by the Minister for Railways, or by any Manager or Engineer of the railway, without any notice.
- (4.) With respect to every such gate as aforesaid which is in existence at the time of the coming into operation of this Act, it shall be the duty of the person or authority which erected the gate to remove the same within forty-eight hours after notice in writing so to do from the Minister for Railways, or any Manager or Engineer of the railway; and, if default is made in removing the same in terms of such notice, then the gate shall be deemed to be erected in breach of this Act, within the meaning of the *last-preceding* subsection hereof, and the provisions of that subsection shall apply accordingly.

14. The last paragraph of subsection two of section one hundred and eighty-nine of the principal Act is hereby repealed, and the following is hereby enacted in lieu thereof:—

Limit of amount that may be recovered for loss of special goods.

“And 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 each parcel in which any such special goods are packed, *fifteen* pounds in respect of each horse, *eight* pounds in respect of each head of cattle, *two* pounds in respect of each dog, *fifteen* shillings in respect of each sheep, goat, pig, or other quadruped not otherwise specified, and *three shillings and sixpence* in respect of each head of poultry or other bird.”

15. Section one hundred and eighty-nine of the principal Act is hereby further amended by inserting the following additional

Additional powers to make by-laws.

paragraphs next after paragraph (h) of subsection five thereof, that is to say,—

Regulating heavy traffic.

“(h.1.) Regulating heavy traffic, as defined by section one hundred and thirty of the principal Act, on roads and bridges over or on any railway; limiting weight on wheels, width of tires, and width between tires; making special regulations in regard to traction and other engines, and machines; issuing licenses and permits for the passage of such traffic on such terms and conditions as the Minister for Railways thinks fit, and charging fees therefor; exercising in respect of such traffic the powers conferred by subsections *six* and *seven* of section *seven* of this Act upon the Minister in respect of Government roads; requiring security for payment by any person concerned in such traffic, of compensation for damage thereby done or likely to be done to any such road or bridge; prohibiting the passage of all traffic which does not conform to the regulations, licenses, or permits respecting the same, and prohibiting also the passage of heavy traffic across any bridge over a railway in cases where a level crossing is available within a distance of five miles: 5
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Licensing drivers of vehicles, and vehicles.

“(h.2.) Providing for the grant of licenses to the drivers of vehicles plying for hire within the precincts of any railway; prescribing the conditions of such licenses (including the payment in each instance of a license-fee not exceeding *ten* shillings per annum), and also of the transfer or forfeiture thereof; making similar provision for the licensing of vehicles plying for hire as aforesaid on the payment of a license-fee not exceeding *ten* shillings per annum in respect thereof, and the conditions subject to which such licenses shall be held and may be transferred or forfeited; and providing also for the exclusion of any such licensed driver or vehicle from railway premises until there is room for his vehicle, and for the exclusion of all unlicensed drivers and vehicles plying for hire as aforesaid: 25
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Regulating admission to railway-platform.

“(h.3.) Regulating the admission to railway-platforms of passengers going to or leaving the trains, of friends of passengers, or of persons having business at the station offices; excluding from stations, offices, or platforms all persons not having business thereat; imposing such fees or tolls as he deems fit in order to give effect to this paragraph.” 40

Minister to have rights and liabilities of common carrier of passengers.

16. All references to passengers in subsection two of section one hundred and ninety-one of the principal Act are hereby repealed, and in lieu thereof the following provisions shall apply,— 45

(1.) Her Majesty shall in respect of all passengers carried on any Government railway be subject to the same liabilities and obligations, and be entitled to the same rights and protection, as common carriers of passengers are subject and entitled to by any law for the time being in force in New Zealand. 50

- (2.) Every claim or demand against Her Majesty for damages in respect of loss of life or injury to the person (whether in the case of a passenger or not), caused by any default, negligence, or wrongful act whatsoever of the Government Railways Department, or any person employed therein, shall be enforced under the provisions of "The Crown Suits Act, 1881," and not otherwise, and the maximum sum recoverable in the action shall in no case exceed two thousand pounds.
- (3.) No such action shall be maintainable unless it is commenced within six months after the cause of action arose, nor unless at least one month before the action is commenced the plaintiff gives notice in writing to the Minister stating the cause of action, the Court in which the action is to be brought, the amount claimed, and the full name and address of each plaintiff.
- (4.) In any such action Her Majesty may plead a general denial, and may also without notice give any special matter in defence at the trial.
- (5.) The Minister may make special agreements with any persons for insuring Her Majesty against liability under this section.
17. Subsection eight of section two hundred and four of the principal Act is hereby amended by inserting next after the words "sells or transfers," the following words, that is to say, "or offers to sell or transfer."
18. With respect to every lease granted under the powers in that behalf conferred by section two hundred and twelve of the principal Act the following provisions shall apply:—
- (1.) The lease may contain such provisions for the payment of compensation in respect of improvements made by the lessee, or for the renewal of the lease for a further term not exceeding twenty-one years, as the Minister for Railways thinks fit:
- Provided that the compensation shall be in respect of improvements existing on the land at the time of the expiry of the lease by effluxion of time, and also that the rental and other terms and conditions, subject to which the renewed lease is to be granted, shall be specified in the original lease: Provided further that no lessee shall be entitled to compensation for improvements on the expiry of any renewed lease.
- (2.) In every case where compensation is payable under any such lease as aforesaid, the amount thereof, if not mutually agreed upon, shall be decided by a Compensation Court, to be constituted on the application of the lessee, made within one month after the expiry of the lease, in the manner provided by Part III. of the principal Act, and the provisions of the said Part III. shall, *mutatis mutandis*, apply to any such application.
- (3.) Instead of paying direct to the lessee the amount of such compensation, the Minister for Railways may, in his

Limit of amount recoverable in actions for loss of life or personal injury.

Section 204, (8), of principal Act amended.

Provisions for payment of compensation in respect of leases under section 212.

discretion, cause the lease of the property for a further period of twenty-one years to be put up to auction, subject to the payment of such compensation by the purchaser, if other than the outgoing lessee, before he is admitted into possession; and the compensation, when received by the Treasury, shall be paid to the outgoing lessee: 5

Provided that, if the outgoing lessee is the purchaser, the new lease to be then granted to him shall be deemed to be a renewed lease. 10

- (4.) Every lease granted under the said section two hundred and twelve before the coming into operation of this Act, and containing any such provisions as aforesaid for compensation or renewal, is hereby declared to have been validly granted, and the provisions of this section shall apply thereto in like manner as if it had been granted hereunder. 15

19. Section two hundred and eighteen of the principal Act is hereby amended as follows:—

- (1.) As to subsection three thereof, by inserting next after the word "otherwise" the words "providing for proper repairs and maintenance, or": 20

- (2.) As to subsection four thereof, by repealing the subsection, and substituting in lieu thereof the following:—

"(4.) If default is made in duly paying any moneys payable under such agreement, or in duly observing any of the other terms or conditions thereof, then and in any such case, and so long as such default continues, the Minister may at any time suspend the traffic upon such branch or siding, or close the connection of such branch or siding with the railway." 25 30

20. (1.) Notwithstanding anything contained in the principal Act, or "The Tramways Act, 1894," or any other Act relating to railways or tramways, no railway or tramway shall cross any Government railway on the level except under an agreement previously entered into in that behalf between the Minister for Railways and the owner of such railway or tramway, and the said Minister is hereby empowered to enter into such agreements upon such terms and conditions as he thinks fit, and to enforce the same whenever the occasion arises. 35 40

(2.) Every such agreement shall provide that, in case default is made by the owner of such railway or tramway in carrying out the terms of any such agreement as aforesaid, the Minister may, in addition to the exercise of any other remedies prescribed by the agreement, remove the crossing, and all material used in connection therewith, from such Government railway. 45

Amendment of section 218 as to working branch railway.

No railway or tramway to cross Government railway on level except under agreement made with Minister.