

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES and having this day passed as now printed is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

*House of Representatives,
27th August, 1880.*

[AS AMENDED BY THE LEGISLATIVE COUNCIL.]

Hon. Mr. Oliver.

PUBLIC WORKS.

ANALYSIS.

- | | |
|--|---|
| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Amendments of "The Public Works Act, 1876." 3. As to costs in compensation awards. 4. Repeal of section 93 of the said Act, and substitution of fresh section in lieu thereof <i>re</i> stopping of roads. 5. Repeal of section 94 of the said Act, and substitution of fresh section in lieu thereof, empowering land occupied by a road stopped to be sold. 6. Repeal of section 95 of the said Act, and substitution of fresh section in lieu <i>re</i> exchange of land occupied by road stopped for land required for new road. 7. Governor may abolish certain offices and create others. 8. Mines and minerals excluded from land taken for public works. | <ol style="list-style-type: none"> 9. Power to close roads or bridges under repair. 10. Power to construct railway on highways, or public reserves. 11. Validation of Orders in Council and Proclamations. 12. Procedure where lands taken out of Native reserves for public works. 13. Limitation of time in compensation claims. 14. New agreement to be made in respect of Kawakawa Railway. 15. County Council may contribute towards drainage of mines. Borough Councils may contribute. 16. Land taken for harbour works vested in harbour. 17. Procedure in unrepresented absentee claims. 18. Vesting the Grahamstown and Tararu Tramway in the Borough of the Thames. 19. Power to execute agreements for sale or exchange of roads. 20. |
|--|---|

A BILL INTITULED

AN ACT to amend certain Acts relating to Public Works.

Title.

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 Act, 1880."

Short Title.

5 This Act and the several Acts previously passed in amendment of "The Public Works Act, 1876" (hereinafter referred to as "the said Act"), shall be read and construed together with the said Act, and subject to the definitions and interpretations contained in the said Act.

2. The said Act is hereby amended as follows :—

Amendments of
"The Public Works
Act, 1876."

10

(1.) In section three the following words are added to the definition of "certificated surveyor," as appearing in the said section: "and authorized by him to certify plans for the purposes of any Act relating to the conveyance or transfer of land."

- (2.) In section thirty-two, after the words "under this Act," the words "or any Act repealed by this Act" are hereby added ;
- (3.) In section fifty the following words are hereby added: "but no execution of judgment shall be enforced, nor shall interest commence, until thirty days after the award has been made and the costs taxed." 5
- (4.) In section eighty-five the words following are hereby added to the first subsection thereof: "and where 'The Counties Act, 1876,' is not in operation, such bridge, ferry, or ford shall be under the control of such one of the two districts as the Minister may from time to time direct." 10
- (5.) In section one hundred and forty-five, the words following are hereby added to the first paragraph of the first subsection thereof: "or for fixing the rates of wharfage to be charged on all goods loaded or unloaded from or into lighters into or from ships lying at any wharf, pier, or jetty in connection with a railway." 15
- (6.) Subsection two of section one hundred and fifty-seven is hereby repealed and the following subsection is substituted in its place:—
- (2.) Causing or allowing any animal to wander on any portion of any railway where such portion is fenced on both sides.
- As to costs in compensation awards.** 3. In section sixty of the said Act, the following sub-section is hereby added:— 20
- If the sum awarded shall not exceed three-fourths of the amount claimed, the claimant shall not be entitled to recover any costs.
- Repeal of section 93 of the said Act, and substitution of fresh section in lieu thereof re stopping of roads.** 4. The ninety-third section of the said Act is hereby repealed, and in lieu thereof the following is enacted, that is to say,— 25
- No road shall be stopped except in the manner and upon the conditions following:—
- (a.) The Board shall have a plan prepared of the road proposed to be stopped, and a survey made and a plan prepared of the new road (if any) to be made, showing the lands through which they pass, and the owners and occupiers of such lands so far as known. 30
- (b.) The said plans shall lie open to public inspection at the office of the Board or other convenient place during twelve consecutive weeks, and the Board shall, once in each week during such twelve weeks, give public notice of the proposed alteration and of the place where the plans are on view. 35
- (c.) A notice of the proposed stoppage, printed on linen or calico, shall be fixed in a conspicuous place at each end of the road to be stopped.
- (d.) By public notice, at the same time as the last public notice required by subsection (b), the Board shall call a meeting of the ratepayers of the district for any day not less than fourteen days after such notice. 40
- "Ratepayer" means any person entitled to vote at the election of a member of the Road Board.
- (e.) The Chairman of the Road Board, or, in his absence, some other member of the Board appointed by the meeting, shall preside thereat; and such meeting shall decide by a majority of the ratepayers present whether the road shall be stopped or not. 45
- (f.) If the meeting decide that the road be not stopped, such decision shall be final, and no proceedings for stopping such road shall be taken by the Board for one year thereafter. If the meeting decide that the road may be stopped, the Board shall send the plans aforesaid, with a full description of the proposed alterations, and with their decision thereon, to the County Council. 50

377

(g.) The County Council shall, after giving regular notice thereof, hold a meeting at which they shall consider the proposed alterations and any objection made thereto by any person likely to suffer injury thereby, and shall confirm or reverse the decision of the ratepayers' meeting; and the decision of the County Council shall be final. And, if the Council reverse the decision of the ratepayers, no proceedings shall be entertained by the County Council for stopping such road for two years thereafter.

(h.) If the County Council confirm the decision of the ratepayers, the Board may declare, by public notice, that the said road is stopped; and such road shall thereafter cease to be a public highway.

(i.) If the whole of the Counties Act is not in force in any county, the term "County Council" in this section shall be taken to mean the Resident Magistrate within whose district the road proposed to be stopped is situated.

5. The ninety-fourth section of the said Act is hereby repealed, and in lieu thereof the following is enacted; that is to say,—

The land occupied by any road so stopped as aforesaid may be sold under the following conditions:—

(a.) The Chairman of the County Council, or the Resident Magistrate (as the case may be), shall, in writing under his hand, certify that the said road has been stopped as by law required, and order that the same shall be sold.

(b.) The Road Board shall cause the land proposed to be sold to be valued by one or more competent valuers and shall offer such land, at the price fixed by such valuation, first to the person then entitled to the land from which such land was originally severed; and, if he refuse it, or cannot after due inquiry be found, then to the owner of the adjacent lands; or, if there be more than one such owner, then to each of such owners in such order as the Board thinks fit; and, if no such owner accept such offer, may cause the land to be sold by public auction.

(c.) The purchase-money of lands so sold shall be paid into the District Fund, and shall form part of such fund.

(d.) Upon payment of the purchase-money the Chairman of the Road Board shall file, in the District Land Registry Office for the district in which such land is, a copy of the order directing the sale of the said land, together with a map thereof certified by a certificated surveyor, and shall indorse thereon a certificate of the payment of the purchase-money, with the name and address of the purchaser; and such copy of order so indorsed shall be deemed to be a memorandum of transfer of such land to such purchaser within the meaning of "The Land Transfer Act, 1870," or any amendment thereof, and the Registrar shall register the same, and deal therewith in the manner in the said Act provided.

6. The ninety-fifth section of the said Act is hereby repealed, and in lieu thereof the following is enacted, that is to say,—

(a.) The Board may agree with the owner or owners of any land required for a road to be made in lieu of a road stopped as herein provided, to exchange the whole or any part of the land occupied by such last-mentioned road for the whole or any part of the land so required.

(b.) The Chairman of the County Council or the Resident Magistrate as aforesaid shall certify in writing under his hand that such road has been stopped as by law required.

Repeal of section 94 of the said Act, and substitution of fresh section in lieu thereof, empowering land occupied by a road stopped to be sold.

Repeal of section 95 of the said Act, and substitution of fresh section in lieu re exchange of land occupied by road stopped for land required for new road.

(c.) The Chairman of the Road Board shall indorse on a copy of such certificate that the land occupied by such road so stopped has been exchanged for other land, and the name and address of the exchangee.

(d.) And such copy of certificate so indorsed shall when filed, together with such map as is mentioned in subsection (d) of section five of this Act, in the District Land Registry Office for the district in which such land is, be dealt with in the manner directed by the said subsection (d), and shall confer upon the exchangee the same rights and titles therein mentioned. 5

Governor may abolish certain offices and create others.

7. Notwithstanding anything contained in the nineteenth section of "The Public Works Act 1876 Amendment Act, 1878," the Governor may abolish such offices as are therein referred to, and may create such other offices in the Public Works and Railway Departments as he may deem advisable. 10

Mines and minerals excluded from land taken for public works.

8. When any land shall at any time heretofore have been or shall at any time hereafter be taken by any County Council, Road Board, or Municipal Corporation under the authority of any Act, or Provincial Ordinance, for the construction of any water-race, aqueduct, reservoir, or other waterworks, such County Council, Road Board, or Municipal Corporation shall not thereby be deemed to have heretofore acquired or hereafter to acquire any right to any mines of coal or other minerals whatsoever under any land so already taken or to be taken hereafter, except only such part or parts thereof as shall be necessary for the proper and effectual support of such water-race, aqueduct, reservoir, or other waterworks. And all such mines and minerals (excepting as aforesaid) shall be deemed to have been excepted out of the Proclamation or other instrument under the authority whereof the land shall heretofore have been taken, or shall hereafter be taken. 15 20 25

Power to close roads or bridges under repair.

9. When it is found necessary to execute such repairs to any public highway or bridge as will prevent the use of the same for traffic, it shall be lawful for the County Council or Road Board under whose control the said public highway or bridge may be, to close the same for such period as may be deemed advisable. 30

Power to construct railway on highways, or public reserves.

10. In respect of any railway authorized by a special Act, as prescribed by the one hundred and twenty-second section of the said Act, the Minister may direct that any part of such line of railway may be constructed on and along any part of any public highway; and no person or body shall be entitled to any compensation for any road or land so used or occupied, or for or in respect of any inconvenience or damage arising out of the execution of such works to any lands fronting or adjoining any such public road. 35

Validation of Orders in Council and Proclamations.

11. All Orders in Council and Proclamations made and issued, or purporting to be made and issued, under the authority of the said Act, "The Public Works Act 1876 Amendment Act, 1878," and "The Public Works Act, 1879," or "The Immigration and Public Works Act, 1870," or Acts amending the same, are hereby declared to be and to have been as from the respective times of making and issuing thereof good, valid, and effectual to all intents and purposes whatsoever, and shall be final and conclusive with respect to the existence of all requisites thereto, and shall not be impeached or disturbed at law or in equity or otherwise on any ground whatsoever: Provided always that nothing herein shall affect any claim or matter for or concerning which any action or proceeding has been brought or taken in any Court. 40 45

Procedure where lands taken out of Native reserves for public works.

12. In any claim for compensation for lands taken for any Government work out of Native reserves vested in the Governor under any Act relating to Native reserves, the Governor, for the purpose of such claims being determined 50

by a Compensation Court under Part III. of the said Act, or otherwise by arbitration, shall be the claimant, and the Minister the respondent.

The Minister may enter into agreements with the Governor for the purchase of any such lands in the manner prescribed by section twenty-one of "The Public Works Act 1876 Amendment Act, 1878."

13. Notwithstanding anything contained in section seventy-two of the said Act, the said section shall apply to all claims arising out of or under the several Acts repealed by the said Act.

Limitation of time in compensation claims.

14. Whereas by "The Immigration and Public Works Act, 1875," it is, amongst other things, enacted that, to give effect to a certain agreement therein mentioned, the Governor should cause the Kawakawa Railway to be constructed, and, upon the completion and construction thereof, for or in the name or on behalf of Her Majesty the Queen, should make and execute a valid lease to the Bay of Islands Coal Company, Limited, of a certain piece or parcel of land in the Bay of Islands in which the Kawakawa Coal Mine is situate, and also a lease of the said railway, at the rents and royalties, and subject to the conditions, stipulations, and restrictions, as by the said agreement is provided, subject, however, to the provisions of the last-named Act:

New agreement to be made in respect of Kawakawa Railway.

20 And whereas differences having arisen between the Minister for Public Works and the said Company, in reference to the interpretation of the said agreement, and upon an arbitration an award was made, rendering it necessary that a fresh agreement should be entered into between the Governor and the aforesaid Company: Be it therefore enacted as follows:—

25 Notwithstanding anything contained in sections nineteen to twenty-two of "The Immigration and Public Works Act, 1875," the Governor, in the name of Her Majesty the Queen, may, subject to the right of emption in accordance with the original agreement, enter into a fresh agreement with the Bay of Islands Coal Company, Limited, for a mining lease of certain Crown land situate in the Ruapekapeka Block, in the Bay of Islands, and also a lease of the railway in the course of construction from the said land to a certain point in the Harbour of the Bay of Islands, upon such conditions, stipulations, and restrictions as he may deem advisable: Provided that any proposed agreement shall be laid on the table of the ~~before both~~ Houses of Representatives the General Assembly within thirty days after the beginning of the next session of Parliament, and shall be binding if the same is not disapproved of by ~~the said both~~ Houses during such session.

15. It shall be lawful for the Council of ~~any~~ the Thames County to contribute out of the County Fund such sums as they may from time to time think fit, towards the expenses incurred by any company or person in draining any gold mines, situate either within the county or adjacent thereto.

County Council may contribute towards drainage of mines.

The Council of ~~any city or~~ the Borough of the Thames shall have a like power of contribution out of the ~~City or~~ Borough Funds respectively.

Borough Councils may contribute.

16. Notwithstanding anything contained in section twenty-five of the said Act, any land which has heretofore been taken or which may hereafter be taken under the said Act for the purposes of any harbour works, shall be vested in the Harbour Board of such harbour, instead of in Her Majesty, as in the said Act provided.

Land taken for harbour works vested in Harbour Board.

17. Upon the application of the Minister to a Judge of the Supreme Court, accompanied by an offer of the amount of compensation in the matter, and upon such proof as shall be satisfactory to such Judge that any person who has any right or title to prefer a claim for compensation arising under the said Act, or any Act repealed thereby, is absent from the colony, or is not known or has no

Procedure in unrepresented absentee claims.

known agent in the colony, such Judge shall direct such claim to be heard by a Compensation Court constituted under Part III. of the said Act, and shall appoint an Assessor to act in such Court on behalf of such person.

Thereupon such Court may proceed in the examination of such claim as in ordinary cases where the claimant is present.

In every such case the Public Trustee shall represent the claimant, and may act in his behalf in all matters incident to the claim or the hearing thereof; and the moneys payable as compensation shall be paid into the Public Trust Office, and shall there remain subject to the provisions of section sixty-five of the said Act.

Vesting the Grahams-
town and Tararu
Tramway in the
Borough of the
Thames.

18. Whereas the Grahamstown and Tararu Tramway was authorized to be constructed on certain conditions, and, among others, on the condition that the said tramway, with all the rights and interests pertaining thereto, should be assigned to the Superintendent of the Province of Auckland at the expiration of ten years from the first day of August, in the year one thousand eight hundred and seventy-one, in good order and condition, with the exception of the rolling-stock, which was to be paid for at the then valuation :

And whereas the Council of the Borough of the Thames have applied that the said tramway should, at the expiration of the aforesaid term, be handed over to the said borough in consideration of the expenses they have incurred in connection with the said tramway, and it is expedient that the said tramway should be vested in the said borough: Be it therefore enacted as follows :—

At the time proper for fulfilling the hereinbefore recited condition relating to the assignment of the Grahamstown and Tararu Tramway to the Superintendent aforesaid, the said tramway may and shall be assigned, by the parties proper to make the assignment, to the Corporation of the Borough of the Thames; and such assignment shall be deemed to be a good and valid fulfilment of the aforesaid condition, provided that such assignment is made in accordance with all other conditions relating thereto.

From and after the date of such assignment, the said tramway shall be deemed to be a tramway constructed by the said borough under the powers of "The Municipal Corporations Act, 1876."

Power to execute
agreements for sale
or exchange of roads.

19. Whenever it shall be made to appear to the satisfaction of the Governor that any contract has been entered into for the sale or exchange of any land for the purposes of a road, and whether such land consists wholly or in part of closed road lines, it shall be lawful for the purpose of completing and perfecting such agreement, sale, or exchange, to do execute and perform all acts, matters, and things contemplated by the twenty-sixth section of "The Public Works Act 1876 Amendment Act, 1878," as is thereby provided with respect to roads stopped in pursuance of any Act or Ordinance.

Struck out.

20. Any person (hereinafter called the "applicant") having an interest in lands which require to be drained, but have no communication readily available with any stream, watercourse, or drain, except through lands belonging to other owner or owners (hereinafter called "adjoining lands"), may drain his land through such adjoining lands subject to the following conditions, if he shall fail to arrange privately with the owners of such adjoining lands.

21. He shall cause a description to be prepared of any proposed new work or drain, or of any alteration in any existing work or drain, which he desires to make upon such adjoining land, together with a plan showing the course, dimensions, and levels of such drainage works, and shall append a statement of the time at which he proposes to commence the works and to complete the same.

22. He shall give notice in writing to the owner, and, where the owner is not the occupier, also to the occupier of such adjoining lands, that he desires such drainage works to be made, and shall append to such notice a copy of the description and plan above-mentioned.

5 23. After giving such notice, he shall make an application in writing to the nearest Resident Magistrate's Court for an order to make such drainage works, and shall append to such application the description and plan aforesaid; and he shall state in such notice the names and addresses of the owners and occupiers of such adjoining lands, and of all persons whom he believes to have any interest therein, or in any existing drain or work which may be affected thereby.

10 24. Upon the receipt of such application, any Justice may issue a summons requiring applicant and the owner and occupier of such adjoining lands, and all persons so stated to have any interest therein, to appear before two Justices of the Peace (not being personally interested) at a time and place named in such summons, being not less than thirty days after the issue thereof.

15 25. If such owner or occupier or person interested be absent from the colony, it shall be sufficient to serve such summons upon the agent or attorney, if any, of such owner, occupier, or persons interested, or to advertise such summons once weekly for four successive weeks in some newspaper circulating in the district.

20 26. The said Justices, having before them the parties so summoned, or, in their absence, upon proof of the service of summons, shall make full inquiry into the case, and hear all such evidence as any of the parties or the Justices may require.

27. Before making any order the Justices shall satisfy themselves,—

25 (a.) That the proposed drainage works are necessary for the drainage of applicant's land;

(b.) That such land may be drained in the manner proposed with the least possible injury or inconvenience to any adjoining lands;

(c.) That no injury will be done thereby to any parties for which compensation may not be made in money;

30 (d.) That due notice has been given to all interested parties, including mortgagees; and

the Justices shall require the applicant to enter into a bond, with sufficient securities, that he will carry on to completion the proposed works within a reasonable time.

35 28. The Justices shall award the amount of costs of such application and assessment, and by whom and to whom such costs, if any, shall be paid.

29. The Justices shall assess the compensation to be paid by the applicant to all persons having an interest in such adjoining lands for any damage caused by such outfall and drainage works.

04 30. If it shall appear to the Justices that the value of the improvement to such adjoining lands shall exceed the amount of such damage thereto, such Justices shall apportion the amount of the value of such improvement over such damage to be paid by the persons interested in the adjoining lands.

45 31. The cost of cleaning and maintaining in good order and repair any such outfall drains and works shall be borne in such proportion as, failing such private arrangement, the Justices shall determine, and shall be recoverable in a summary way by the party who has completed such work from the party refusing, failing, or neglecting to perform his part of such cleaning, maintenance, and keeping such works in good order and repair; and for such purpose the owner
50 may enter upon any adjoining lands after forty-eight hours' notice given by him to the owner or occupier of the adjoining lands.

32. The owner for the time being of the adjoining lands may, subject to an order being first obtained from the Justices, or the consent in writing of all parties interested in the maintenance of the drainage work, divert or alter any of the said drainage works; and any dispute as to the efficiency of the drains so altered shall be decided by any two Justices in cases where the consideration involved shall be under one hundred pounds in value; but, where the interests involved shall exceed that amount, any dispute as to such diversion or alteration shall be decided by the Judge of the District Court and two Justices, who shall have power to award costs, and order how and in what manner such alteration or diversion shall be made, or shall order that the works shall not be altered or diverted.

5

10

33. Where any works have been commenced or shall be carried on under this Act according to any plan, specification, or estimate originally approved by the Justices, and it shall appear to the said Justices that by any alteration of circumstances, or otherwise, such plans, specifications, or estimates may be improved by modification or alteration, such modification or alteration shall not invalidate any act, matter, or thing, made, done, or given under this Act.

15

New clause.

20. The power conferred upon the Crown by the one hundred and sixth section of "The Native Land Act, 1873," of taking land held under Crown grant for roads, shall extend to land owned by Natives under certificate of title or memorial of ownership, but subject to the same limitations.