

No. XXXII.

RAILWAYS.

An Act to make further provision for the Regulation of Railways. [30th November, 1855.]

Preamble.
18 Vic. No. 40.

WHEREAS by an Act passed in the eighteenth year of the reign of Her present Majesty number forty it was enacted that it should be lawful for the Governor by and with the advice of the Executive Council in the name and on behalf of Her Majesty to purchase the Railways and other works with all their buildings lands and appurtenances whatsoever belonging to the Sydney Railway Company and the Hunter River Railway Company respectively or either of them and temporary provision was thereby made for the construction by the Government of Railways in the Colony of New South Wales And whereas the Governor with the advice of the Executive Council has purchased of the said Companies respectively the Railways and all other property whatsoever belonging to them and the same are now vested in the Commissioners for Railways appointed under the authority of the said Act And whereas the existing provisions for the regulation of Railways are insufficient and it is therefore expedient to make further provision for that purpose until a more complete measure shall have

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have been passed by the Legislature Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows :—

1. The provisions of the said recited Act and of the Acts incorporated therewith and of this Act shall be construed together as one Act except so far as the provisions of the said recited Act or any Act incorporated therewith shall be inconsistent with the provisions of this Act.

Provisions of this and the recited Act to be read together.

2. It shall be lawful for the Commissioners to use and employ locomotive engines or other moving power and carriages and wagons to be drawn or propelled thereby and to carry and convey upon the Railways all such passengers and goods and other property as shall be offered to them for that purpose and to make such reasonable charges in respect thereof as they may from time to time determine upon and a separate and distinct account shall be kept by the Commissioners of all moneys received under the authority of this enactment.

Commissioners to employ locomotives &c.

3. Nothing in this Act contained shall extend to charge or make liable the Commissioners further or in any other case than where according to the laws of this Colony stage-coach proprietors and common carriers would be liable nor shall extend in any degree to deprive the Commissioners of any protection or privilege which common carriers or stage-coach proprietors may be entitled to but on the contrary the Commissioners shall at all times be entitled to the benefit of every such protection and privilege.

Commissioners not to be liable to a greater extent than common carriers.

4. Upon payment of the tolls from time to time demandable all companies and persons shall be entitled to use the Railways subject nevertheless to the regulations to be from time to time made by the Commissioners by virtue of the powers in that behalf hereby conferred upon them.

Railways to be free on payment of tolls.

5. A list of all the tolls which the Commissioners shall from time to time direct and appoint to be taken shall be published by the same being painted upon one toll-board or more in distinct black letters on a white ground or white letters on a black ground or by the same being printed or written in legible characters on paper affixed to such board and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable and if any person wilfully pull down deface or destroy any such board he shall forfeit a sum not exceeding ten pounds for every such offence.

List of tolls to be exhibited upon a board.

6. The tolls shall be paid to such persons and at such places and in such manner and under such regulations as the Commissioners shall appoint.

Tolls to be paid as directed.

7. If any person travel or attempt to travel in any carriage of the Commissioners or of any company or party using the Railway without having previously paid his fare and with intent to avoid payment thereof or if any person having paid his fare for a certain distance knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance and with intent to avoid payment thereof or if any person knowingly and wilfully refuse or neglect on arriving at the point to which he has paid his fare to quit such carriage every such person shall for every such offence forfeit to the Commissioners a sum not exceeding forty shillings.

Penalty on passengers practising frauds on the Commissioners.

8. If any person be discovered either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned all officers and servants and other persons on behalf of the Commissioners and all constables gaolers and peace officers may lawfully apprehend and detain such person until he can conveniently be taken before some Justice or until he be otherwise discharged by due course of law.

Detention of offenders.

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Penalty for bringing dangerous goods on the Railway.

9. No person shall be entitled to carry or to require the Commissioners to carry upon the Railway any aqua fortis oil of vitriol gunpowder lucifer matches or any other goods which in the judgment of the Commissioners may be of a dangerous nature and if any person send by the Railway any such goods without distinctly marking their nature on the outside of the package containing the same or otherwise giving notice in writing to the book-keeper or other servant of the Commissioners with whom the same are left at the time of so sending he shall forfeit to the Commissioners a sum not exceeding fifty pounds for every such offence and it shall be lawful for the Commissioners to refuse to take any parcel that they may suspect to contain goods of a dangerous nature or require the same to be opened to ascertain the fact.

Commissioners to regulate the use of the Railway.

10. It shall be lawful for the Commissioners from time to time to make regulations for the following purposes (that is to say) :—

For regulating the mode by which and the speed at which carriages using the Railways are to be moved or propelled

For regulating the times of the arrival and departure of any such carriages

For regulating the loading or unloading of such carriages and the weights which they are respectively to carry

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages

For preventing the smoking of tobacco and the commission of any other nuisance in or upon such carriages or in any of the stations or premises occupied by the Commissioners

And generally for regulating the travelling upon or using and working of the Railways and the maintenance of good order and the protection of the Railways and other works from trespass and injury and for regulating the conduct of the officers and servants of the Commissioners and for the providing for the due management of the affairs of the Commissioners.

Power to make regulations by by-laws.

11. For better enforcing the observance of all or any of such regulations it shall be lawful for the Commissioners subject to the provisions herein contained to make by-laws and from time to time to repeal or alter such by-laws and make others Provided that such by-laws be not repugnant to the laws of this Colony or to the provisions of this Act and such by-laws shall be reduced into writing and shall have affixed thereto the common seal of the Commissioners and any person offending against any such by-law shall forfeit for every such offence any sum not exceeding ten pounds to be imposed by the Commissioners in such by-laws as a penalty for any such offence and if the infraction or non-observance of any such by-law or other such regulation as aforesaid be attended with danger or annoyance to the public or hindrance to the Commissioners in the lawful use of the Railways it shall be lawful for the Commissioners summarily to interfere to obviate or remove such danger annoyance or hindrance and that without prejudice to any penalty incurred by the infraction of any such by-law.

Publication of by-laws.

12. All such by-laws shall be published three times at the least in the *Government Gazette* and in one or more newspapers published in the City of Sydney and when so published shall be binding upon and be observed by all parties and shall be sufficient to justify all persons acting under the same.

Commissioners power to lease the Railway.

13. It shall be lawful for the Commissioners if they shall deem it expedient so to do with the consent of the Governor and his Executive Council to lease the Railways or any of them or any part thereof to any person willing to accept the same at such rate and for such period

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period not exceeding three years as shall be agreed on and the lease to be executed shall contain all usual and proper covenants on the part of the lessee for maintaining the Railways or the portion thereof comprised in such lease in good and efficient repair and working condition during the continuance thereof and for so leaving the same at the expiration of the term thereby granted and such other provisions conditions covenants and agreements as are usually inserted in leases of a like nature Provided always that no such lease shall contain any authority for or be construed to authorize any assignment transfer or under-lease of the said Railways or demised premises or any part thereof without the assent of the said Commissioners testified by their joining in such assignment transfer or under-lease.

14. Such lease shall entitle the lessee to the free use of the Railway or portion of Railway comprised therein and during the continuance of any such lease all the powers and privileges granted to and which might otherwise be exercised and enjoyed by the Commissioners or their officers agents or servants by virtue of this Act with regard to the possession enjoyment and management of the Railway or the part thereof comprised in such lease and the tolls to be taken thereon shall be exercised and enjoyed by the lessee and the officers and servants of such lessee under the same regulations and restrictions as are by this or the said recited Act imposed on the Commissioners and their officers and servants and such lessee shall with respect to the Railway comprised in such lease be subject to all the obligations hereby imposed on the Commissioners Provided also that no by-law made by any lessee for the breach of which any penalty is affixed or imposed shall have any force or validity until the same shall have been approved of by the Commissioners and notice of such approval shall be given in the *Government Gazette* and newspapers in which such by-laws shall be published pursuant to the provisions of this Act.

Powers vested in the Commissioners may be exercised by the lessee.

15. If any person wilfully obstruct any person acting under the authority of the Commissioners in the lawful exercise of their power in setting out or in making any line of Railway or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out any line of Railway or deface or destroy any marks made for the same purpose or shall wilfully obstruct or impede any officer or agent of the Commissioners in the execution of his duty upon any Railway or upon or in any of the stations or other works or premises connected therewith or if any person shall wilfully trespass upon any such Railway or any of the stations or other works or premises therewith and shall refuse to quit the same upon request to him made by any officer or agent of the Commissioners every such person so offending and all others aiding or assisting therein shall forfeit a sum not exceeding ten pounds for every such offence.

Penalty for obstructing construction of Railway.

16. If any person shall throw any gravel stones or rubbish or any matter or thing upon any part of any Railway or shall drive or permit to wander stray or be driven upon any such Railway or the approaches thereto any horse ass sheep swine or other beast or cattle of any kind or shall wilfully obstruct hinder or prevent any person in the execution of this Act or shall do any other act matter or thing to obstruct the free passage of any such Railway or any part thereof every person so offending in any of the cases aforesaid shall forfeit and pay for every such offence any sum not exceeding fifty pounds and such penalty may be recovered before any two Justices of the Peace on complaint to them for that purpose exhibited by any person on behalf of the said Commissioners.

Penalty on persons obstructing free course of Railway.

17. If any person shall wilfully and maliciously put place cast or throw upon or across any Railway any wood stone or other matter

Persons wilfully placing wood &c. on Railways taking up

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Railways and turning machinery or shewing signals &c. with intent to commit injuries to Railway or endanger the safety of persons guilty of felony.

or thing or shall wilfully and maliciously take up remove or displace any rail sleeper or other matter or thing belonging to any Railway or shall wilfully and maliciously turn move or divert any points or other machinery belonging to any Railway or shall wilfully and maliciously make or shew hide or remove any signal or light upon or near to any Railway or shall wilfully and maliciously do or cause to be done any other matter or thing with intent in any of the cases aforesaid to obstruct upset overthrow injure or destroy any engine tender carriage or truck using such Railway or to endanger the safety of any person travelling or being upon such Railway every such offender shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be sentenced to hard labor on the roads or other public works of this Colony for any term not exceeding ten years or to be imprisoned with or without hard labor in any gaol or house of correction.

If any person shall cast wood &c. upon any Railway carriage with intent to endanger the safety of any person therein such person to be guilty of felony.

18. If any person shall wilfully and maliciously cast throw or cause to fall or strike against into or upon any engine tender carriage or truck used upon any Railway any wood stone or other matter or thing with intent to endanger the safety of any person being in or upon such engine tender carriage or truck every such offender shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be sentenced to hard labor on the roads or other public works of this Colony for any term not exceeding ten years or to be imprisoned with or without hard labor in any gaol or house of correction.

Any person wilfully setting fire to any Railway station to be guilty of felony.

19. If any person shall wilfully and maliciously set fire to any station engine-house warehouse or other building belonging or appertaining to any Railway or shall wilfully and maliciously set fire to any goods or chattels being in any building the setting fire to which is felony every such offender shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be sentenced to hard labor on the roads or other public works of this Colony for any term not exceeding ten years or to be imprisoned with or without hard labor for any time not exceeding three years in any gaol or house of correction.

Punishment for destroying works &c.

20. If any person shall wilfully and maliciously and to the prejudice of the Commissioners break injure damage throw down or destroy any part of the Railway or other works connected therewith every such person shall be judged guilty of misdemeanor and every person so offending and being thereof lawfully convicted shall be liable at the discretion of the Court to be sentenced to hard labor on the roads or other public works of this Colony for any term not exceeding ten years nor less than three years or to be imprisoned with or without hard labor in any gaol or house of correction for any period not exceeding three years.

Punishment of persons employed on Railway guilty of misconduct.

21. It shall be lawful for any officer or agent of the Commissioners or for any special constable duly appointed and all such persons as they may call to their assistance to seize and detain any engine-driver wagon-driver guard porter servant or other person employed by the Commissioners or by any company or person in conducting traffic upon the Railways belonging to the Commissioners or in repairing and maintaining the works of the said Railways who shall be found drunk whilst so employed upon the said Railway or who shall commit any offence against any of the regulations or by-laws of the Commissioners or who shall wilfully maliciously or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such Railway or the works thereof respectively shall be or might be injured or endangered or whereby the passage of any engine carriage or trains shall be or might be obstructed

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obstructed or impeded and to convey such engine-driver guard porter servant or other person so offending or any person counselling aiding or assisting in such offence with all convenient dispatch before some Justice of the Peace without any other warrant or authority than this Act and every person so offending as aforesaid and every person counselling aiding or assisting therein shall upon conviction before such Justice (upon a complaint without information in writing) in the discretion of such Justice be imprisoned with or without hard labor for any term not exceeding six months or shall in the like discretion forfeit any sum not exceeding fifty pounds and in default of payment thereof shall be imprisoned with or without hard labor for such period not exceeding six months as such Justice shall appoint unless the penalty be sooner paid.

22. Every penalty or forfeiture imposed by this Act or by any by-law made in pursuance thereof the recovery of which is not otherwise provided for may be recovered by summary proceedings before two Justices under pursuant and subject to the provisions of "The Justices Act of 1850" and the several Acts incorporated therewith.

Penalties to be summarily recovered before two Justices.

23. If through any act neglect or default on account whereof any person shall have incurred any penalty imposed by this Act any damage to the property of the Commissioners shall have been committed by such person he shall be liable to make good such damage as well as to pay such penalty and the amount of such damages shall in case of dispute be determined by the Justices by whom the party incurring such penalty shall have been convicted and on non-payment of such damages on demand the same shall be levied by distress and such Justices or one of them shall issue their warrant accordingly.

Damage to be made good in addition to penalty.

24. It shall be lawful for any officer or agent of the Commissioners and all persons called by him to his assistance to seize and detain any person who shall have committed any offence against the provisions of this Act and whose name and residence shall be unknown to such officer or agent and convey him with all convenient dispatch before some Justice without any warrant or other authority than this Act and such Justice shall proceed with all convenient dispatch to the hearing and determining of the complaint against such offender.

Transient offenders.

25. If any party shall feel aggrieved by any determination or adjudication of any Justice with respect to any penalty or forfeiture under the provisions of this Act such party may appeal to the General Quarter Sessions for the district or place in which the cause of appeal shall have arisen but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication nor unless ten days notice in writing of such appeal stating the nature and grounds thereof be given to the party against whom the appeal shall be brought nor unless the appellant forthwith after such notice enter into recognizances with two sufficient sureties before a Justice conditioned duly to prosecute such appeal and to abide the order of the Court thereon.

Parties allowed to appeal to Quarter Sessions on giving security.

26. At the Quarter Sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way or they may if they think fit adjourn it to the following Sessions and upon the hearing of such appeal the Court may if they think fit mitigate any penalty or forfeiture or they may confirm or quash the adjudication and order any money paid by the appellant or levied by distress upon his goods to be returned to him and also may order such further satisfaction to be made to the party injured as they may judge reasonable and they may make such order concerning the costs both of the adjudication and of the appeal as they may think reasonable.

Court to make such order as they think reasonable.