



ANNO QUINTO

VICTORIÆ REGINÆ.

No. 4.

AN ACT for making and maintaining the Great Eastern Road.

*Repealed by
A. 2/14-1849*

WHEREAS it having been found expedient to make an improved communication between the City of Adelaide and the Mount Barker District and the Overland Route to New South Wales and Port Phillip the first portion of a road called the Great Eastern Road was commenced in January last through the Pass of Glen Osmond at the public expense And whereas the financial condition of the Province rendering it necessary that the said works should not be continued at the public expense the Colonial Government has been pleased to order the same to be continued in the meantime on an undertaking by parties interested therein to relieve the Government of all expense in connexion with the said road from and after the fourth day of June in the year one thousand eight hundred and forty-one on an Act of the Governor in Council being passed vesting the management of the said road in Trustees with power to levy tolls and to borrow money on the credit thereof for the purpose of repaying the advances made by the Government on account of the said road from the said last mentioned date and for making completing and keeping in repair the said road—

BE IT THEREFORE ENACTED BY HIS EXCELLENCY GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Province of South Australia by and with the advice and consent of the Legislative Council thereof as follows that is to say That it shall and may be lawful for the Trustees after named and their successors to make and form the said intended road *videlicet* commencing at the City of Adelaide and leading through the lands known as sections numbers 265 271 270 and 894 in conformity with a plan or sketch thereof exhibited at the Survey Office of the Province in the said city and from thence extending to the head of Glen Osmond and from thence by the most convenient line or lines to or near the hotel called the Norfolk Arms in the Tiers the property of David Crafer and from thence by the most easy and practicable line or lines in the direction of and to accommodate the settlers in the Three Brothers Survey and the country adjoining and also from or near the said hotel by the most easy and convenient line or

Power to make road.

lines

lines to the Village of Hahnsdorff and from thence to be extended if deemed expedient by other convenient lines to the Villages of Mount Barker Nairne and Balhannah Provided always that before any such intended line or lines of road other than the line leading from the lower entrance to the upper end of Glen Osmond now in progress shall be commenced the approval of the Governor in Council shall be first obtained and such approval with a description of such other intended line or lines shall from time to time be inserted at least once in the Government Gazette and a sketch of the same exhibited at the Survey Office for at least fourteen days before each several other portion or portions of the said intended works shall be commenced.

Appointment of Trustees.

II. And be it further Enacted That all Her Majesty's Justices of the Peace for the time being acting for the said Province or for the county or district of Adelaide together with

John Barton Hack, of Echunga
 Matthew Smillie, of the Vallies
 Duncan Macfarlane, of Mount Barker
 William Giles, of Adelaide
 Francis Davison, of Blakeston
 John Finness, of Mount Barker
 James Frew, of Strathalbyn
 Allan Macfarlane, of Glensloy
 Edward Odiarne Philcox, of Western Flat
 George Stevenson, of Adelaide
 John Rankine, of Strathalbyn
 Robert Cock, of Mount Annan
 George W. Godwin, of Oatlands
 George W. Hunter, near Nairne
 William George Field, Western Flat
 Joseph May, Western Flat
 Richard Downes, near Nairne
 William Richardson, of Balhannah
 Hughes, of Adelaide
 George Deane, of Charlton. Watergate
 Thomas Corder, of Dairy Creek
 Stanford, of the Meadows
 Nicol Mein, of Strathalbyn
 John Gemmel, of Strathalbyn
 Rev. Augustus Kavel, of Hahnsdorff
 All in the district of Adelaide, Esquires

and their successors to be appointed in manner after provided shall be and they are hereby appointed trustees for making amending diverting improving and maintaining in repair the said road or roads and for otherwise putting this Act into execution Providing always that all such trustees as are or shall be Justices of the Peace may act as such Justices in all matters under the authority of this Act notwithstanding of their being such trustees.

Succeeding Trustees.

III. And be it further Enacted That it shall and may be lawful for the said trustees and they are hereby authorised and empowered from time to time at any of their meetings to elect and appoint any number of persons to be trustees under this Act not exceeding the number of twenty-five in all exclusive of such trustees as are Justices of the Peace and such persons so elected and appointed shall be trustees for the purposes of this Act and are hereby invested with the same powers and authorities for executing this Act as if they had been herein named.

Trustees to take declaration.

IV. And be it further Enacted That no person herein named or appointed or who shall hereafter be chosen a trustee under this Act shall be qualified or capable of acting as a trustee in the execution of this Act (except in administering

administering the declaration hereinafter mentioned) unless before he shall act as such trustee he shall take and subscribe before one of the said trustees who is hereby empowered to administer the same the declaration following that is to say—

“ I, A. B. do declare that I will truly and impartially according to the best of my judgment execute and perform the several powers authorities and trusts reposed in me as a trustee by virtue of an Act of the Governor in Council 5th Victoria No. 4 intituled ‘ An Act for making and maintaining the Great Eastern Road.’ ”

V. And be it further Enacted That it shall and may be lawful for the said trustees and they are hereby authorised and empowered to make widen and divert the said road upon in over or through any private lands grounds or hereditaments making or tendering satisfaction to the owners thereof and persons interested therein for the same or for any damage they may sustain thereby and also in upon over or through any waste or unappropriated lands without making any satisfaction for such waste lands of such width or dimensions as they shall think proper not exceeding sixty feet together with such paths causeways bridges arches culverts ditches drains and fences on the line of the said road as they shall think necessary or expedient and it shall also be lawful for the said trustees and for their surveyor and workmen from time to time to enter upon the lands premises or hereditaments through which or whereupon such road footpaths causeways bridges arches culverts ditches drains and fences is or are intended to be made or pass and also upon any adjoining lands or grounds to stake out the same in such manner as the said trustees shall think necessary or expedient without being deemed trespassers and without being subject or liable to any fine penalty or punishment for entering or continuing upon such lands or premises respectively for any of the purposes of this Act and if any person shall pull up remove or destroy any of such stakes or other marks used for the purposes aforesaid every person so offending shall forfeit and pay for every such offence any sum not exceeding Five pounds. And in case of any difference concerning such satisfaction or damages to be so made or paid to the owners or persons interested in such private lands grounds or hereditaments upon in over or through which the said road may be made widened or diverted between such owners or persons interested in such lands and others and the said trustees then it shall be lawful for any two or more Justices of the Peace for the Province on ten days’ notice in writing being given by the one party to the other to settle adjudge and finally determine the matter of such satisfaction and damages and the costs of hearing and determining the same.

Power to make, widen, and divert, &c.

VI. And be it further enacted That the said trustees may and they are hereby empowered by writing under their hands to appoint such collector or collectors of the tolls arising on the said road together with a clerk treasurer and surveyor and such other officers as the said trustees shall consider necessary and such collectors clerk treasurer surveyor and other officers or any of them from time to time to remove and on removal death or resignation of any such officers to appoint others in their stead and may and are hereby authorised and empowered out of any of the moneys arising on the said road to allow and pay to the said several officers and to such other person or persons as shall be assisting them or any of them in or about the execution of this Act such salaries and allowances for their attendance care labor and services as such trustees shall deem reasonable And the said trustees if they shall so think proper shall and may take sufficient security from any treasurer and also from any other officer to be appointed by the said trustees under or by virtue of this Act for the due and faithful execution of their respective offices.

Officers.

VII. And be it further Enacted That the said trustees shall hold their first meeting at the Corporation Council room in Adelaide or at some other convenient place there on the first Monday next after the passing of this Act

Meetings.

Act or as soon after as conveniently may be and may then and from time to time thereafter meet at such time and place as to them shall seem convenient and may adjourn to meet at such times and places as they or the major part of them present at any meeting may appoint and at such meetings all acts orders and proceedings in the execution of this Act shall be made and all the powers and authorities hereby vested in the said trustees shall and may be had made done and exercised by the major part of the trustees who shall be present the whole number present not being less than three and shall have the same force and effect as if the same were executed by all the said trustees and that in case of an equal number of votes the chairman of such meeting shall have the casting or decisive vote and that no order or determination so agreed upon shall be revoked or altered at any subsequent meeting unless notice of the intention to make such revocation or alteration shall have been given at a previous meeting and entered on the minutes thereof one week at least before such meeting or unless such revocation or alteration shall be agreed to be made by a major part of the whole trustees qualified and acting Providing always that no business for the performance of which special meetings are directed to be held by this Act shall be done or performed at any ordinary casual or adjourned meetings of the said trustees unless the same shall be duly advertised as made special for such purpose or purposes.

General Meetings.

VIII. And be it further Enacted That the said trustees shall and they are hereby required to hold a general meeting of the Trust once in each year after the passing of this Act at such times and places as the said trustees assembled at their said first general meeting shall fix and determine of which meeting ten days' notice shall be given in one of the Adelaide newspapers and at such meeting the trustees assembled shall audit their accounts and report on the state of the roads under their care and superintendence to His Excellency the Governor.

Accounts.

IX. And be it further Enacted That all such officers as shall have been or shall be appointed by the said trustees shall from time to time when thereunto required deliver to such trustees or to such person as they shall for that purpose appoint true exact and perfect accounts in writing under their respective hands of all monies which they and every of them respectively shall have received to that time by virtue of this Act and how much thereof hath been paid and disbursed and for what purposes together with the proper vouchers for such payments and shall pay all such monies as shall remain in their or any of their hands to the said trustees or to such person as they shall appoint to receive the same and not otherwise within such time as such trustees shall limit or appoint and if any such officer or person shall refuse or neglect to deliver up as aforesaid within ten days after being thereunto required all the books papers or writings in his custody or power relating to the execution of this Act it shall be lawful for any two Justices of the Peace for the Province upon complaint by warrant under their hands and seals to summon such officer or other person to appear before them and upon his appearing or not being found to hear and determine the matter in a summary way and to settle the said accounts if produced and if upon confession of such officer or person or by the oath of any witness (which such Justices are hereby empowered to administer) or upon inspection of such accounts if produced it shall appear to such Justices that any of such monies shall be in the hands of any such officer or person such Justices shall and may on non-payment thereof by warrant cause such monies to be levied by distress and sale of the goods and chattels of such officer or person and in default of sufficient distress by imprisonment in the common gaol of the Province for a space not exceeding six calendar months.

And

Accounts

X. And be it further Enacted That every collector of tolls appointed under this Act shall weekly render an account of and pay over to the treasurer of the said trustees all moneys received by him during the current week and such treasurer shall thereupon duly carry the same to the credit of the trust accounts and pay the same forthwith into such Bank as the trustees may appoint and if any such collector shall fail so to account and pay over such moneys weekly he shall for every such omission forfeit and pay a penalty of Five pounds.

To erect tolls.

XI. And be it further Enacted That it shall be lawful for the said trustees to erect and set up or build or cause to be erected set up or built upon in or across the said road or any part thereof or on the sides thereof when where and as they shall judge necessary any toll-gate or toll-gates turnpike or turnpikes side-gate or side-gates side-bar or side-bars chain or chains weighing machine or weighing machines and also one or more toll-house or toll-houses with outhouses and conveniences suitable thereto at or near each gate bar chain or weighing machine and from time to time to take down and remove or alter or discontinue the same or any of them as they the said trustees shall think proper to direct or appoint.

Rate of tolls.

XII. And be it further Enacted That it shall and may be lawful for the said trustees or any person or persons to be duly authorised by them to demand and take the tolls hereinafter mentioned at the several and respective toll-gates or turnpikes or side-gates or side-bars or chains or toll-houses which shall be erected or placed by virtue of this Act in and upon across or on the side or sides of the said road and that on every day every such day to be computed from twelve of the clock at night to twelve of the clock of the next succeeding night that is to say

s. d.

For every coach chariot chaise gig hearse caravan or other carriage and every cart waggon dray or other vehicle if drawn by one horse or two bullocks	1	0
For every such carriage or vehicle drawn by two horses or four bullocks	1	6
For every such carriage or vehicle drawn by four horses or six bullocks	2	0
For every such carriage or vehicle drawn by six or more horses or eight or more bullocks	3	0
For every such carriage or vehicle drawn by one pony ass or mule not exceeding thirteen hands high	0	6
For every such carriage or vehicle drawn by two or more such ponies asses or mules	1	0
For every saddle or led horse mule or ass	0	6
For horses mules asses oxen cows or other neat cattle driven per head	0	1
For all sheep lambs calves hogs swine or goats driven each	0	1/4

which said respective sums of money or tolls shall be demanded and taken as aforesaid before any horse bullock mule ass or other beast or cattle whatsoever shall be permitted to pass through any such toll-gate or turnpike or side-gate or side-bar or chain which shall be erected or placed by virtue of this Act in upon or across the said road or any part thereof or on the sides thereof and which said respective tolls or sums of money shall be and are hereby vested in the said trustees and shall be applied for the purposes of this Act in manner hereinafter mentioned: Provided always and be it further Enacted That no more than one full toll in any one day shall be demanded or taken for or in respect of the same horse bullock or other beast drawing the same coach chaise dray waggon cart or other carriage or for or in respect of the same horse bullock mule ass or other beast or cattle laden or unladen and not

not drawing or for or in respect of the same calves swine sheep or lambs for passing or repassing through all or any of the gates along the said roads excepting always stage coaches or other public carriages plying for hire the tolls for which shall be paid and payable every time of passing or repassing along the said road: And be it further Enacted That it shall be lawful for the said trustees at a meeting to be held for that purpose of which ten days' notice shall be given in one of the Adelaide newspapers from time to time to lessen and reduce all or any of the said tolls for and during such time as they shall think proper and afterwards at any such meeting from time to time as they shall see occasion to advance all or any of the tolls so lessened to any sum or sums not exceeding the rates granted by this Act: Provided always that no such tolls shall be lessened without the consent of all persons holding undischarged mortgages of the said tolls.

Exemption from tolls.

XIII. And be it further Enacted That no toll shall be demanded or taken by virtue of this Act for any horses or carriages attending his Excellency the Governor of the Province the Surveyor-General or chief officer in command of the police department or returning therefrom or any such horses or carriages attending or returning from attending any public officer on public duty or returning therefrom having the pass of such officer or of the Colonial Secretary to that effect or from any person or persons for any horse or horses or other beast or cattle or for any waggon wain cart or other carriage employed in carrying or conveying or going empty to fetch carry or convey or returning empty from carrying or conveying having been employed only in carrying or conveying on the same day any stones bricks timber wood gravel or other materials for making or repairing the said road or for building rebuilding or repairing any present or any future bridge or bridges on the said road or of or from the surveyor of the said road when engaged in executing or proceeding to execute the powers of this Act or for any horse beast or other cattle or carriage employed in carrying or conveying having been employed only in carrying or conveying on the same day any dung soil compost or manure (save and except lime) for improving lands or any ploughs harrows or implements of husbandry (unless laden also with some other thing not hereby exempted from toll) or any hay straw fodder for cattle and corn in the straw which has grown or arisen on land or ground in the occupation of the owner of any such hay straw fodder or corn in the straw potatoes or other agricultural produce and which has not been bought sold or disposed of or is going to be sold or disposed of or for any horses or other beasts employed in husbandry going to or returning from plough or harrow or to and from pasture or watering place or going to or returning from being shod or farried such horses or other beasts not going or returning on those occasions more than two miles on the said road or of or from any person or persons going to or returning from his her or their usual place of religious worship tolerated by law on Sundays or on any day on which Divine Service is by authority ordered to be celebrated or of or from any inhabitant of any parish township or place going to or returning from attending the funeral of any person who shall die and be buried in any township or hamlet in which the said road shall lie or from any clergyman or minister of religion going to or returning from visiting any sick person or on other clerical duty or for horses carts or carriages employed only in carrying or conveying any prisoner sent by any legal warrant or returning empty after having been so employed or for any horses or carriages of whatever description employed or to be employed in conveying the mails of letters and expresses under the authority of the Postmaster-General of the province either when employed in conveying fetching or guarding such mails or expresses or in returning back from conveying or guarding the same or for the horse or horses of any officers or soldiers

soldiers on their march or on duty or for any horse or horses or other beasts or any cart carriage or waggon employed in carrying or conveying or returning empty from carrying or conveying having been employed only in carrying or conveying the arms or baggage of any such officers or soldiers or employed in conveying or carrying or returning empty from having been employed in carrying or conveying any sick wounded or disabled officers or soldiers or for any waggon wain cart or other carriage whatsoever or the horse or horses or other cattle drawing the same employed in conveying any ordinance or barrack or commissariat or other public stores of or belonging to Her Majesty or for the use of Her Majesty's forces or returning empty from having been so employed or for any carriage conveying volunteer infantry or for any horse furnished by or for any person belonging to any corps of militia yeomanry volunteer cavalry or infantry or mounted police force of the Province and rode by him in going to or returning from any place appointed for and on the days of exercise inspection or review or on other public duty provided that such person shall be dressed in the uniform of his corps according to the regulations of such corps at the time of claiming the exemption or for any horses or carriages which shall only cross the said road or shall not pass above one hundred yards thereon.

XIV. And be it further Enacted That if any person or persons shall claim or take the benefit of any of the exemptions mentioned in this Act not being entitled to the same every such person shall for every such offence forfeit any sum not exceeding Five pounds and in all cases the proof of exemption shall be upon the person claiming the same.

Penalty for wrong fully claiming the exemption.

XV. And be it further Enacted That the said trustees shall and they are hereby required to put up or cause to be put up and afterwards to be continued at every toll-gate a table painted in distinct and legible black letters on a board with a white ground or in the option of the said trustees a printed bill in large and legible characters containing at the top thereof the name of the gate at which the same shall be put up and also a list of all the tolls payable at every such gate distinguishing severally the total amount of tolls payable under this Act and the different sorts of carriages for which they are to be paid where there shall be any variation therein and also a list of the several gates which shall be wholly or partially cleared by the payment of toll at the toll-gate or bar where such table of tolls shall be affixed and the said trustees shall also provide tickets denoting the payment of toll and on such several tickets shall be specified the name of the gate at which the same respectively shall be delivered and also the names of the several gates freed by such payment one of which tickets shall be delivered gratis to the person paying the toll and on the production of such ticket at any gate or gates therein mentioned as being cleared as aforesaid by the payment of the toll at the gate where such ticket was delivered the person producing the same shall pass through the gate or gates therein mentioned without paying any further or additional toll.

Table of tolls.

XVI. And be it further Enacted That if any person subject or liable to the payment of any of the tolls under and by virtue of this Act shall after demand thereof made neglect or refuse to pay the same or any part or parts thereof it shall be lawful for the person or persons authorised or appointed to collect such tolls by himself or themselves or taking such assistance as he or they shall think necessary to seize and distrain any horse beast cattle carriage or other thing upon or in respect of which any such toll is imposed together with their respective bridles saddles gears harness or accoutrements or any carriage in respect of the horses or cattle drawing the carriage on which such toll is imposed or any of the goods or chattels of the person or persons

Power of distress, &c. for tolls.

persons so neglecting or refusing to pay and if the toll or any part thereof so neglected or refused to be paid and the reasonable charges of such seizure and distress shall not be paid within the space of four days next after such seizure and distress made the person or persons so seizing and distraining may sell the horse beast cattle carriages or things so seized and distrained or a sufficient part thereof returning the overplus of the money to arise by such sale (if any) and what shall remain unsold upon demand to the owner thereof after such tolls and the reasonable charges occasioned by such seizure distress and sale shall be deducted.

XVII. And be it further Enacted That if any dispute shall happen or arise about the amount of the tolls due or the charges of making keeping or selling any distress made for non-payment of any tolls it shall be lawful for the collector or the person distraining to retain such distress or the money arising from the sale thereof (as the case may be) until the amount of the tolls due and the charges of the making keeping and selling the distress be ascertained by some Justice of the Peace for the Province who upon application made to him for that purpose shall examine the matter on the oath of the parties or other witnesses and shall determine the amount of the tolls due and shall award such costs and charges to either party as to the said Justice shall appear right and proper all which costs and charges shall and may be levied and recovered in case of non-payment thereof forthwith by distress and sale of the goods and chattels of the person or persons so awarded or directed to pay the same by warrant under the hand and seal of such Justice rendering the overplus (if any) upon demand after deducting the costs and charges of making such distress and sale to the person or persons whose goods and chattels shall have been so distrained and sold.

Evading tolls.

XVIII. And be it further Enacted That if any person shall with any horse cattle beast or carriage go off or pass from any part of the said road through or over any land or ground near or adjoining thereto (not being a public highway and such person not being the owner or occupier or servant or one of the family of the owner or occupier of such land or ground) with intent to evade the payment of the tolls granted by this Act or if any owner or occupier of any such land or ground shall knowingly or willingly permit or suffer any person (except as aforesaid) with any horse cattle beast or carriage whatsoever to go or pass through or over such land or ground with intent to evade any such tolls or if any person shall give or receive from any person other than the collectors of the tolls or forge counterfeit or alter any note or ticket directed to be given with intent to evade the payment of the tolls or any part thereof or if any person shall fraudulently or forcibly pass through any such toll-gate with any horse cattle beast or carriage or shall leave upon the said road any horse cattle beast or carriage whatsoever by reason whereof the payment of any tolls or duties shall be avoided or lessened or shall take off or cause to be taken off any horse bullock or other beast or cattle from any carriage either before or after having passed through any toll-gate or having passed through any toll-gate shall afterwards add or put any horse or other beast to any such carriage and draw therewith upon any part of the said road so as to increase the number of horses or other beasts drawing the said carriage after the same shall have passed through any toll-gate whereby the payment of all or any of the tolls shall or may be evaded or if any person shall do any other act whatever in order or with intent to evade the payment of all or any of the tolls and whereby the same shall be evaded every such person shall for every such offence forfeit and pay any sum not exceeding Five pounds.

Power to farm tolls.

XIX. And be it further Enacted That it shall be lawful for the said trustees at a public meeting to let to farm the tolls of the several gates that may

may be erected upon the said road after causing notice to be given of the time and place for letting the same at least six days before the day to be appointed for that purpose by affixing such notice upon all the toll-gates on the said road and by insertion in one of the Adelaide newspapers and specifying that such tolls will be let by auction to the best bidder on his producing sufficient sureties for payment of the sum offered in terms of the conditions of letting and also specifying the proposed upset price and that at the time and place fixed in such notice the said tolls shall accordingly be exposed to be let by auction during the out-running of a half-hour sand-glass and the last bidder at the out-running of the said glass shall be declared the farmer or renter of the said tolls and shall forthwith enter into a proper agreement for the taking thereof and paying the money at the time specified in such notice with such surety or sureties for payment thereof and under such conditions and in such manner as the said trustees shall think fit and if the person being the last bidder shall not forthwith enter into such agreement it shall and may be lawful to put up the said tolls again immediately for another bidder and in like manner to continue putting up the same until a bidder shall be found who shall enter into such agreement and in case no bidder shall offer or in case the same shall not be let at such auction it shall be lawful for the said trustees to accept a private tender for the same and to demise or let to farm or agree to demise or to let to farm all or any of such tolls at the highest rent that can be obtained therefor or the said trustees may appoint a collector of such tolls or fix some future day for the letting thereof as they shall judge most proper upon giving such notice thereof as aforesaid and if the person or persons who shall be the farmer or renter or collector or collectors of such tolls shall take a greater or less toll from any person or persons than what is authorised or directed by this Act he or they shall for every such offence forfeit the sum of Five pounds and the said agreement for renting the tolls shall if the said trustees shall think fit to vacate the same become and be null and void Provided always that at all such lettings the said trustees shall be entitled to bid for the tolls so to be let either by themselves or their clerk or treasurer or any other person by them respectively authorised Provided also that no such tolls shall be demised or leased for any longer term than three years at one time.

XX. And be it further Enacted That in case all or any of the said tolls shall have been or shall be demised or let to farm to any person or persons in any manner whatsoever and the lessee or lessees farmer or farmers thereof shall neglect or refuse to perform the terms and conditions on which the same shall have been or shall be so demised or let or in case the rent or rents agreed to be paid by such lessee or lessees farmer or farmers shall be in arrear by the space of seven days next after any of the days on which the same ought to be paid pursuant to the agreement for letting to farm thereof or in case any such lease or agreement shall in any other manner become void then and in any of those cases it shall and may be lawful for any Justice of the Peace for the county or place by warrant under his hand and seal to order a constable or other peace officer with such assistance as may be necessary to enter upon and take possession of any toll-house or toll-houses toll-gate bar or chain or weighing machine and the buildings and appurtenances thereto belonging and to remove and put out such lessee or lessees farmer or farmers of the tolls arising thereat respectively or other person or persons who shall be found therein together with his her or their goods out of and from the possession of the said toll-house or toll-houses and from the collection of tolls and to put the said trustees or any one of them or their newly appointed officer or other person acting by or under their authority into the possession thereof and thereupon it shall be lawful for the said trustees if

Power to remove tenants.

(if they shall think fit) to vacate and determine the contract or agreement (if any) for demising or letting the said tolls to such lessee or lessees farmer or farmers and the same shall be from that time utterly void to all intents and purposes (save as to the covenants or agreements for payment up to that time of the rent or rents thereby reserved or other covenants or agreements on the lessees' part which shall have been holden) as if such demise or agreement had never been made and it shall be lawful for the said trustees in every such case to demise or let to farm the said tolls again to any other person or persons or cause them to be collected as if no former demise contract or agreement had been made relative thereto any rule of law or right to the contrary notwithstanding.

Vesting clause.

XXI. And be it further Enacted That the right interest and property of and in all the bridges tunnels tolls toll-houses weighing machines and other erections and buildings lamps bars toll-boards direction-boards posts rails fences and other things which shall be erected and provided in pursuance of this Act with the several conveniences and appurtenances thereunto respectively belonging and all materials tools and implements which shall be so provided shall be vested in the trustees hereby appointed so far as necessary for the purposes and with the intent and subject to the trusts hereby declared.

Mortgage of tolls.

XXII. And be it further Enacted That it shall be lawful for the said trustees to borrow and take up at interest on the credit of the tolls arising on the said road or roads such sum or sums of money as they shall from time to time think proper and to demise or mortgage the tolls on such road or roads or any part or parts thereof and the turnpikes and toll-houses for collecting the same the costs and charges of which mortgages shall be paid out of the tolls as a security to any person or persons or their trustees who shall advance such sum or sums of money which mortgages may be in the words or as nearly as possible to the effect following that is to say

“ By virtue of an Act passed by the Governor and Council of the Province
 “ of South Australia in the fifth year of Her Majesty Queen Victoria intituled
 “ ‘ An Act for making and maintaining the Great Eastern Road’ we whose
 “ hands and seals are hereunto subscribed and set being of the
 “ trustees for putting the said Act into execution in consideration of the sum
 “ of sterling advanced and
 “ paid by A B of
 “ to the treasurer or clerk of the said trustees do hereby grant and assign
 “ unto the said A B and his executors administrators and assigns such pro-
 “ portion of the tolls arising and to arise on the said turnpike road or roads
 “ and the toll-gates and toll-houses erected or to be erected for collecting the
 “ same as the said sum of
 “ doth or shall bear to the whole sum now or hereafter to become due and
 “ owing on the security thereof to have hold receive and take the said pro-
 “ portion of the said tolls toll-gates toll-houses and premises with the appur-
 “ tenances unto the said A B and his executors administrators and assigns
 “ for and during the residue of the term for which the said tolls are granted
 “ by the said Act unless the said sum of
 “ with interest after the rate of per centum per annum shall be
 “ sooner repaid and satisfied. Given under our hands this
 “ day of One thousand eight hundred and

And copies of all such mortgages shall be entered in a book to be kept for that purpose by the clerk of the said trustees And it shall be lawful for all persons respectively to whom any mortgage shall be made as aforesaid or who shall be from time to time entitled to the money thereby secured to assign or transfer his her or their right title and interest in and to such mortgage and the

the principal money and interest thereby secured to any person or persons whomsoever which assignment or transfer may be made in the following words or as nearly as possible to the like effect to be endorsed on such mortgage security or to be underwritten or thereunto annexed and signed in the presence of and attested by one or more credible witness or witnesses (that is to say)

" I, A B [or I, C D assignee executor or administrator of A B as the case may happen] do hereby assign and transfer this mortgage security with all my right and title to the principal money thereby secured and all interest now due and hereafter to become due upon the same unto E F his or her executors administrators and assigns. Dated this day of

One thousand eight hundred and

(Signed) " A B or C D.

" Witness G H."

Which transfer shall be produced and notified to the clerk of the said trustees within fourteen days next after the day of the date thereof who shall enter the same in the said book and such transfer shall then entitle such assignee his executors administrators and assigns to the full benefit of such mortgage security and every such assignee may in like manner assign and transfer the same and so *toties quoties* and it shall not be in the power of any person or persons (except the person or persons to whom the same shall be last transferred his her or their respective executors or administrators) to release discharge or make void the original mortgage security or the moneys due thereon or any part thereof and all persons to whom any such mortgage or transfer shall be made as aforesaid shall in proportion to the sum or sums of money thereby secured be creditors on the said tolls toll-gates and toll-houses in such order as shall be agreed upon and stipulated by the said trustees at the time of the advances respectively made.

XXIII. Provided always that the said trustees shall not be personally subject to or liable to be charged with the payment of any sum or sums of money by reason of their having signed or executed any mortgage or assignment by way of mortgage or other security to be made by virtue of this Act.

XXIV. And be it further Enacted That all moneys which shall be borrowed on the credit of this Act or which shall arise by receipt of the tolls granted by this Act shall be applied in the first instance in payment to the Colonial Government of the whole charges and expenses incurred by them in making and forming the said road or any part thereof (including the expenses of passing this Act) from and after the fourth day of June last in the year One thousand eight hundred and forty-one up to the period when the said trustees shall relieve the Government of the charge of the said road and shall take the future direction and management thereof upon themselves and thereafter all such moneys shall be applied in defraying the expenses of making amending widening diverting and improving the said road and purchasing lands and hereditaments and materials for the purpose and of erecting making or providing and keeping in repair toll-gates turnpikes bars gates chains weighing machines and toll-houses and of making erecting or providing footpaths causeways bridges ditches fences rails posts boards lamps books and other requisite matters and things and of carrying the purposes of this Act into execution and after payment of all such expenses the remainder (if any) of such moneys shall from time to time be applied in keeping down the interest of the moneys which may be borrowed on the credit of this Act and in the next place in amending and keeping in repair the said road and the bridges footpaths causeways ditches fences rails posts boards lamps and other matters and things thereon and lastly in repaying the principal money which shall be borrowed for the purposes of this Act.

Application of moneys.

And

Provision as to
fencing sections of
private parties.

XXV. And whereas certain agreements were made by the Colonial Government in contemplation of carrying the said road into execution with the proprietors of certain sections to the effect that the said road should be allowed to be carried through the said sections in conformity with a plan thereof prepared by the Surveyor-General without any price or consideration being paid for the land so to be occupied the Government becoming bound to fence the said road where it passed through the said sections at the public expense And whereas it will be incumbent on the said trustees to relieve the Colonial Government of their said obligation so soon as it may be in the power of the said trustees Be it therefore Enacted That in the event of the said fences being at any time hereafter made in whole or in part by the Colonial Government by the proprietor or proprietors of the said sections or any of them or by any other person or persons with the consent and approval of the said trustees and of the Surveyor-General for the time being the expense of such fences shall form a charge against the said trustees from the date or dates of the same being duly executed and so certified by the Surveyor-General and such expense shall bear interest from such date or dates at the rate of ten per centum per annum And the said trustees shall be bound to grant to such party or parties so constructing the said fences a mortgage or mortgages for the ascertained amount or amounts of the expense thereof Provided always that such mortgage or mortgages shall be postponed in point of priority to the sums advanced or to be advanced by the Colonial Government in making the said road from and since the said fourth day of June One thousand eight hundred and forty-one and also to any mortgage or mortgages that may be granted by the said trustees for money borrowed on the credit of the said trust to enable the trustees to defray the said advances and proceed with the further execution of the said road And further provided That all such fences after being once formed shall be kept in repair at the sole expense of the proprietor or proprietors of the land on which the same shall be respectively erected,

Destroying turn-
pike-gates, &c.

XXVI. And be it further Enacted That if any person shall unlawfully and maliciously throw down level or otherwise destroy in whole or in part any turnpike-gate or any wall chain rail post bar or other fence belonging to any turnpike-gate or any house building or weighing-machine on or connected with the said road every such offender shall be guilty of a misdemeanor and being convicted thereof shall be punished accordingly.

Penalty on resist-
ing, &c.

XXVII. And be it further Enacted That in case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this Act or shall assault any surveyor or any collector or collectors of the tolls in the execution of his or their office or offices or shall pass through any turnpike-gate or gates rail or rails chain or chains or other fence or fences to be set up under the authority of this Act without paying the toll appointed to be paid at such gate or other fence or shall hinder or make any rescue of cattle or other goods distrained by virtue of this Act every such person offending therein shall for every such offence forfeit any sum not exceeding Ten pounds at the discretion of the Justice or Justices of the Peace before whom any such person shall be convicted.

On misconduct by
Collectors.

XXVIII. And be it further Enacted That if any Collector of the said tolls shall demand or take a greater or less toll from any person than he shall be authorised to do by virtue of the powers of this Act or of the orders and resolutions of the said trustees made in pursuance thereof or shall demand or take a toll from any person who shall be exempt from the payment thereof and who shall claim such exemption or shall refuse to permit or suffer any person to read the superscriptions on the said board or shall refuse to tell his
christian

christian and surname to any person who shall demand the same on being paid the said tolls or any of them or shall in answer to such demand give a false name or shall refuse or omit to give to the person paying the toll a ticket denoting the payment thereof and otherwise in terms of this Act or upon the legal toll being paid or tendered shall unnecessarily detain or wilfully obstruct hinder or prevent any passenger from passing through any turnpike or toll gate or shall make use of any scurrilous or abusive language to any trustee traveller or passenger then and in every such case every such toll collector shall forfeit and pay any sum not exceeding five pounds for every such offence.

XXIX. And be it further Enacted That it shall be lawful for the surveyor of such road and such person as he shall appoint to remove and prevent all annoyances on every part of the said road by filth dung ashes timber stones rubbish or any other matter or thing whatever being laid down or thrown upon the said road or upon any open or waste land within thirty feet from the centre thereof and the charges of removing such annoyances to be settled by any one or more Justice or Justices of the Peace for the Province shall be reimbursed to the said surveyor by the person or persons causing the same and if after the removal of any of the said annoyances any person shall again offend in the like kind every such person shall for every such offence forfeit and pay any sum not exceeding five pounds.

Provision for nuisances, &c.

XXX. And be it further Enacted That if any person or persons shall wilfully pull down break injure or damage any table of tolls put up or fixed at any of the said toll-gates or wilfully deface or obliterate any of the letters or marks thereon or wilfully pull up throw down break injure or damage any posts rails or fences put up by order of the said trustees or their surveyor by the sides of such road or at or near any open place in order to prevent accidents or if any person or persons shall wilfully cause any damage or injury to be done to any bridge arch wall or other building erected or to be erected on any part of the said road or by the sides thereof or shall wilfully cast or throw earth rubbish or other materials into any drain ditch culvert tunnel or other watercourse so as to obstruct the water from running or draining off the said road or shall ride or drive any carriage upon any footpath by the side of the said road made for the accommodation of foot passengers or if the driver of any waggon cart coach or other carriage shall not keep his carriage on the left or near side of the road or if any person shall in any manner wilfully prevent any other person or persons from passing him or any carriage under his care upon the said road or by negligence or misbehaviour prevent hinder or interrupt the free passage of any carriage or of Her Majesty's subjects on the said road every person offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding five pounds over and above the damages occasioned thereby.

Damages, &c.

XXXI. And be it further Enacted That it shall be lawful for the surveyor to the said trustees and for such persons as he shall appoint to search for dig and carry away any materials for making or repairing the said road or roads out of any waste or public lands in the neighbourhood of the said roads without paying any thing for such materials and without being deemed trespassers the said surveyor filling up the pits or quarries or levelling the same so that they shall not be dangerous to persons or cattle and paying or tendering satisfaction for damage done by going through enclosed lands for or with such materials And also that it shall be lawful for the said surveyor and others aforesaid to search for and carry away such materials in

Taking materials

or

or out of the land of any person where the same may be found in the neighbourhood of such roads making or tendering such satisfaction for such materials and for the damage done to the owners or occupiers of such lands as the said trustees shall judge reasonable and in case of any difference between such trustees surveyors or others as aforesaid and the owners and occupiers of the said lands or any of them concerning such payments and damages as aforesaid any two or more Justices of the Peace for the said county or district of Adelaide on ten days' notice thereof being given in writing by either party to the other shall hear settle and determine the matter of such payments and damages and the costs of hearing and determining the same.

Power to make drains.

XXXII. And be it further Enacted That ditches drains or watercourses of a sufficient depth and breadth for keeping the said road dry and conveying the water from the same shall be made by the said trustees or their surveyor or other officer on the sides of the said road and also where necessary into or through any fields lands or grounds adjoining to or lying near the said road at the expense of the said trustees out of the moneys to be received by virtue of this Act the said trustees making such satisfaction to the owner or occupier of such lands so to be used for the damages which they or any of them may sustain thereby as the said trustees shall judge reasonable and in case of any difference between such owners or occupiers and such trustees touching such damages the same shall be finally settled by any two or more Justices of Peace for the Province.

To sue and be sued.

XXXIII. And be it further Enacted That the said trustees may sue and be sued in the name of any one of their number or of their clerk for the time being and that no action or suit to be brought or commenced by or against any trustee for the time being by virtue of this Act in the name of any one of such trustees or of their clerk shall abate or be discontinued by the death or removal of such trustee or clerk or any of them without the consent of the said trustees but that any one of such trustees or clerk for the time being shall always be deemed to be the plaintiff or defendant (as the case may be) in every such action or suit Provided always that every such trustee or clerk shall be reimbursed and paid out of the trust moneys all such costs charges and expenses as he shall be put to or become chargeable with by reason of his being so made plaintiff or defendant Provided also that the real and personal property of any such trustee or clerk so formally made plaintiff or defendant shall not be in any wise liable to be attached sequestered or taken in execution for the amount of any verdict recovered or for any costs damages or expenses whatsoever incident thereto nor shall the person of any such trustee or clerk be liable to be taken in execution but recourse shall be had in every such case to the funds received by the trustees for the time being for tolls and shall be paid or payable only thereout.

XXXIV. And be it further enacted that all fines penalties and forfeitures under this Act may be recovered by summary proceedings before any Resident Magistrate or any two Justices of the Peace for the Province and enforced and levied by distress sale and imprisonment in common form and shall be paid to the Treasurer of the said trustees and applied in aid of the funds for the uses of the trust Provided always that any such fines penalties or forfeitures may be remitted in whole or in part by the Governor.

Commencement and endurance.

XXXV. And be it further Enacted That this Act shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by

by all Judges Justices and others without being specially pleaded and that the same shall commence upon the passing thereof and shall continue and be in force from thence during the term of Fourteen Years.

GEORGE GREY,
Governor of South Australia.

*Passed in Council this Fifteenth }
day of July, 1841.*

A. M. MUNDY,
Clerk of Council.