

WESTERN AUSTRALIA

ANNO QUADRAGESIMO QUARTO

VICTORIÆ REGINÆ

No. 17

An Act to make further provision for the Management
and Working of Railways.

[Assented to 7th April, 1881.]

WHEREAS it is expedient to make further provision for the Management and Working of Railways, and to confer upon the Commissioner of Railways still further powers in the making of Regulations and By-laws than have been conferred upon him by 'The Railways Amendment Act, 1879,' and otherwise to amend the Laws relating to Railways: Be it therefore enacted by His Excellency the

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Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. This Act may be cited for all purposes as 'The Railways Amendment Act, 1881.' Short title
2. Section thirty-three of 'The Railways Act, 1878,' and the words 'but if the sum awarded shall be one-fourth less than the amount claimed, the whole costs of and incident to the arbitration and award shall be borne by the claimant, and the arbitrators shall direct the payment of the same accordingly,' occurring in the twentieth section of the same Act, are hereby repealed. Repeal of s. 33 and portion of s. 20 of 42 Vic., 31
3. This Act shall be deemed to be incorporated with 'The Railways Act, 1878,' and 'The Railways Amendment Act, 1879,' and the three Acts shall be read together as one Act. Acts to be read together
4. A list of all the tolls which the Governor in Council 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. List of tolls to be exhibited on a board
5. No tolls shall be demanded or taken by the Commissioner for the use of the Railway during any time at which the boards hereinbefore directed to be exhibited shall not be so exhibited; and if any person wilfully pull down, deface, or destroy any such board or any milepost on the line of such Railway, he shall forfeit a sum not exceeding Five pounds for every such offence. Tolls to be taken only whilst board exhibited
6. The tolls shall be paid to such persons and at such places upon or near to the Railways, and in such manner and under such regulations as the Commissioner shall, subject to law, direct. Tolls to be paid as directed
7. Every person being the owner or having the care of any goods passing or being upon the Railway shall, on demand, give to the collector of tolls at the places where he attends for the purpose of receiving goods or of collecting tolls for the part of the Railway on which such goods shall have travelled or be about to travel, an exact account in writing, signed by him, of the number or quantity of goods which have been conveyed, and of the point on the Railway from which such goods have set out or are about to set out, and at what point the same are intended to be unloaded or taken off the Railway; and if the goods which have been so conveyed or brought for conveyance as aforesaid be liable to the payment of different tolls, then such owner or other person shall specify the respective numbers or quantities thereof liable to each or any of such tolls. Account of lading, &c., to be given
8. If any such owner or other such person fail to give such account or to produce his way-bill or bill of lading to such collector or other officer or servant of the Commissioner demanding the same, or if he give a false account, or if he unload or take off any part of his lading or goods at any other place than shall be mentioned in such account, with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence forfeit to the Commissioner, on behalf of Her Majesty, a sum not exceeding Ten pounds for every ton Penalty for not giving account of lading

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of goods or for any parcel not exceeding one hundredweight, and so in proportion for any greater quantity of goods than one ton or for any parcel exceeding one hundredweight (as the case may be) which shall so be in his charge, and such penalty shall be in addition to the toll to which such goods may be liable.

Disputes as to amount of tolls chargeable

9. If any dispute arise concerning the amount of the tolls due to the Commissioner, or concerning the charges occasioned by any detention or sale thereof under the provisions of the law, the same shall be settled by a Justice of the Peace, and it shall be lawful for the Commissioner in the meanwhile to detain the goods or (if the case so require) the proceeds of the sale thereof.

Disputes as to weights, &c.

10. If any difference arise between any toll-collector or other officer or servant of the Commissioner and any owner of, or person having the charge of, any goods conveyed or to be conveyed, respecting the weight, quantity, quality, or nature of such goods, such collector or other officer may lawfully detain such goods and examine, weigh, gauge, or otherwise measure the same; and if upon such measuring or examination such goods appear to be of greater weight or quantity or of other nature than shall have been stated in the account given thereof, then the person who shall have given such account, or the owner of such goods, shall, at the option of the Commissioner, be liable to pay the costs of such measuring and examining; but if such goods appear to be of the same or less weight or quantity than, and of the same nature as, shall have been stated in such account, then the Commissioner shall pay such costs, and he shall also pay to such owner or person having charge of such goods such damage (if any) as shall appear to any Justice of the Peace, on a summary application to him for that purpose, to have arisen from such detention.

Toll-collector to be liable for wrongful detention of goods

11. If at any time it be made to appear to any Justice of the Peace upon the complaint of the Commissioner that any such detention, measuring, or examination of any goods as hereinbefore mentioned, was without reasonable ground, or that it was vexatious on the part of such collector or other officer, then the collector or other officer shall himself pay the costs of such detention, measuring, and examination, and the damage occasioned thereby, and in default of immediate payment of any such costs or damage the same may be recovered by distress of the goods of such collector, and such Justice shall issue his warrant accordingly.

Penalty on persons omitting to fasten gates

12. If any person omit to shut and fasten any gate set up at either side of the Railway as soon as he and the carriages, cattle, or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding Twenty pounds.

Penalty on passengers practising frauds on the Commissioner

13. If any person travel or attempt to travel in any carriage employed on the Railway without having previously paid his fare, and with intent to avoid payment thereof, or if any passenger by any railway do not produce or deliver up his ticket when required, 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

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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 Commissioner, on behalf of Her Majesty, a sum not exceeding Forty shillings.

14. If any person be discovered either in or after committing, or attempting to commit, any such offence as in the preceding section mentioned, all officers and servants and other persons on behalf of the Commissioner, and all constables, gaolers, and peace officers may lawfully apprehend and detain such person until he can conveniently be proceeded against as by this Act is provided, or until he be otherwise discharged by due course of law.

Detention of offenders

15. No person shall be entitled to carry or to require the Commissioner to carry upon the Railway any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which, in the judgment of the Commissioner or his officers, may be of a dangerous nature; and if any person send by 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 Commissioner with whom the same are left at the time of so sending, he shall forfeit to the Commissioner, on behalf of Her Majesty, a sum not exceeding Fifty pounds for every such offence; and it shall be lawful for the Commissioner to refuse to take any parcel that he may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Penalty for bringing dangerous goods on the Railway

16. If any person wilfully obstruct any person acting under the authority of the Commissioner in the lawful exercise of his 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 Government or of the Commissioner 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 connected therewith, every such person so offending, and all others aiding and assisting therein, shall forfeit to the Commissioner, on behalf of Her Majesty, a sum not exceeding Twenty pounds for every such offence.

Penalty for obstructing construction of Railway

17. [*Repealed by 53 Vic., No. 1.*]

Penalty for obstructing free course of Railway

18. If any person pull down or injure any board put up or affixed as required by this Act for the purpose of publishing any by-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding Five pounds, and shall defray the expenses attending the restoration of such board.

Penalty for defacing boards used for publication

19. If any person shall wilfully and maliciously, and to the prejudice of the public, break, injure, damage, throw down, or destroy any part of any Railway or other works connected therewith, every such person shall be judged guilty of misdemeanour; and every person so offending, and being thereof lawfully convicted, shall be liable, at the discretion

Punishment for destroying works

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of the Court, to be imprisoned, with or without hard labour, for any period not exceeding two years.

Punishment for persons employed on Railway guilty of misconduct

20. It shall be lawful for any Railway officer or agent, 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 upon the Railway, or in repairing and maintaining the works of the said Railway, 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 Commissioner, or who shall wilfully, maliciously, or negligently do any act, or shall be guilty of any omission of duty, 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 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 despatch before any two or more Justices of the Peace without any other warrant or authority than this Act, to be dealt with according to law; and every person so offending as aforesaid, and every person counselling, aiding, or assisting therein, shall, upon conviction before such Justices (upon a complaint in writing), in the discretion of such Justices, be imprisoned, with or without hard labour, 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 labour, for such period, not exceeding six months, as such Justices shall appoint, unless the penalty be sooner paid.

Publication of penalties

21. The Commissioner shall publish the short particulars of the several offences for which any penalty is imposed by this Act or by any by-law of the Commissioner affecting other persons than the Railway officers or servants, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed in some conspicuous part of the principal place of business of the Commissioner; and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference, and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed, and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

As to purchase money payable to parties under disability

22. All sums of money exceeding Twenty pounds which may be payable by the Commissioner in respect of the taking, using, or interfering with any lands under a Contract or Agreement with any person who shall not be entitled to dispose of such lands or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid to the Master of the Supreme Court, to be by him deposited as directed by section thirteen, or to Trustees in manner directed by section fifteen of 'The Railways Amendment Act, 1879'; and it shall not be lawful for any contracting party not entitled as

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aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Supreme Court or the said Trustees, as the case may be, to allot to any tenant for life or for any other partial or qualified estate, for his own use, a portion of the sum so paid to the Master of the Supreme Court or to such Trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance, which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Portions may
be allotted in
certain cases

23. No Justice of the Peace holding any appointment, or otherwise employed in connection with any railway, shall have or exercise any jurisdiction under 'The Railways Act, 1878,' 'The Railways Amendment Act, 1879,' or this Act.

Justices of the
Peace employed
in connection
with Railways
disqualified to
adjudicate under
Railways Acts
Recovery of
penalties

24. 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 of the Peace according to an Act passed in the fourteenth year of Her Majesty, No. 5, intituled 'An Ordinance to facilitate the performance of the duties of Justices of the Peace out of Sessions within the Colony of Western Australia, with respect to Summary Convictions and Orders,' and according to any other Act or Acts relating to summary proceedings before Justices of the Peace which may be in force for the time being.

25. If any party shall feel aggrieved by any determination or adjudication of any Justice or Justices with respect to any penalty or forfeiture under the provisions of this Act, such party may appeal from such determination or adjudication to the Supreme Court. Provided always that notice of such appeal shall be given to the convicting Justice or Justices within three weeks, and that such appeal shall be entered for hearing within two months after such determination or adjudication.

Appeal

26. Wherever the word 'Railway' is used in this Act it shall be construed to extend to any Railway, or branch or extension of any Railway, constructed or worked under the provisions of this Act, and intended for the conveyance of passengers and goods in or upon carriages drawn or impelled by engines or any other locomotive power.

Interpretation
clause

The word 'Toll' shall include any rate or charge or other payment payable for any passenger, animal, carriage, goods, merchandise, articles, matters, or things conveyed on the Railway.

The word 'Goods' shall include things of every kind conveyed upon the Railway.

WILLIAM C. F. ROBINSON,
GOVERNOR.