



ANNO QUARTO

VICTORIÆ REGINÆ,

No. 35.

By His Excellency SIR JOHN FRANKLIN, Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in Her Majesty's Royal Navy, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT for the making altering improving and defining the Main and other Roads of this Island.

WHEREAS it is expedient to provide for the making altering improving and defining the Main and other Roads in this Island and for the appointment of Commissioners to mark off and determine the approved lines of road in certain cases and to provide also in such cases for the expense of making repairing and maintaining such Roads and for the payment in certain cases of any damage that may be sustained by landed proprietors through whose lands the said lines of road shall pass—**BE IT THEREFORE ENACTED** by His Excellency SIR JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer and a Captain in Her Majesty's Royal Navy Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that from and after the First day of February One thousand eight hundred and forty-one the several Roads in this Island shall for the purposes of this Act be deemed and taken to be the Main Road the Cross and the Bye Roads of which the Main and Cross shall be the only Public Roads.

PREAMBLE.

II. AND BE IT ENACTED that the Main Road shall be deemed and taken to be the Road as the same has been laid out by the authority of the Government and leading from Hobart Town to Launceston in this Island that is to say the Road leading thereto by Bridgewater Oatlands Campbell Town and Perth.

What shall be the Main Road.

What Cross
Roads.

III. AND BE IT ENACTED that the Cross Roads shall be deemed and taken to be those Roads which have been heretofore advertised as Public Roads in the Gazette and which have been allowed or which are now in use as Public Roads or which shall hereafter under the provisions of this Act be sanctioned by the Commissioners and which lead from township to township or from a township into the Main Road—PROVIDED ALWAYS that the said Cross Roads shall not include or form any part of the Main Road.

Proviso.

What Bye Roads.

IV. AND BE IT ENACTED that the Bye Roads shall be deemed and taken to be those which lead from any farm or farms through any other person's lands to the Main Cross or any Bye Road and which may have been already proclaimed as such in the Gazette or which may hereafter be sanctioned by the Commissioners appointed under this Act.

Width of Roads.

V. AND BE IT ENACTED that the Main Road shall in all places be Sixty Feet in width of clear passable Road including footpaths and exclusive of any bank ditch or fence on either side thereof and that the Cross Roads shall be of the width of Forty Feet of clear passable Road including footpaths and that the Bye Roads shall be of the width of Thirty Feet.

Main Road under
the Management
of Director-Gener-
al.

VI. AND BE IT ENACTED that the Main Road shall be placed under the control and management of the Director-General of Roads by whom until further provision in that behalf be made the said Road shall be made and kept in repair.

Notice of altering
new Roads or
altering old ones
to be given in the
Gazette.

VII. AND BE IT ENACTED that the Director-General of Roads whensoever he is desirous of altering any part of the Main Road shall cause a notice to be inserted in the Government Gazette for three successive months and which notice shall contain the exact line of the intended alteration in the old Road and in addition thereto shall by notice in writing under his hand cause to be personally served upon every landlord or tenant in possession of any lands through which the alteration in the old line of Road is intended to be made a copy of the notice contained in the Government Gazette within Ten Days after its first publication.

Proceedings
thereupon.

VIII. AND BE IT ENACTED that after the expiration of three months as aforesaid the Director-General shall have authority to enter upon the said land and to define and make the line of road according to the notice which shall have been so given and such line whenever defined shall under this Act be taken to be part of the Main Road and upon the completion thereof the old line of road in the place of which such new line of road hath been made shall be discontinued and cease to be a part of the Main Road—PROVIDED ALWAYS that it shall not be lawful for the Director-General of Roads to alter the line of the Main Road so as to cause it to pass through the property of any person whatsoever in which the right of making a Road has not been reserved by the Crown unless Compensation be made to the party through whose land such new line of Road may pass such Com-

compensation to be ascertained by arbitration as is hereinafter provided—
AND PROVIDED ALSO that in all cases where by the authority of the said Director-General any fencing is removed for the purpose of altering any part of the Main Road the land from which the fence hath been so removed shall be protected by a temporary fence which the said Director-General shall cause to be made and continued during the progress of such alteration in the Main Road.

IX. AND BE IT ENACTED that it shall and may be lawful for the Director-General or any other person acting under him to enter upon any land in this Island adjoining the Main Road for the purpose of constructing or repairing any drains or culverts or performing any repairs that may be required to the Main Road.

After notice
Director-General
may enter on lands
for the purpose of
constructing
drains &c.

X. AND BE IT ENACTED that it shall be lawful for the Director-General or any person acting under him to make use of any uncultivated land for the purpose of constructing a temporary Road while the Main Road is undergoing repair—PROVIDED ALWAYS that the temporary Road so used shall be fenced in or otherwise so secured as to afford to the person through whose land such temporary Road may pass an equal protection against trespass as was possessed by such person previously to the construction of such temporary Road.

Temporary Road.

XI. AND BE IT ENACTED that in all cases where an alteration in the Main line of Road or a new Cross Road is made through lands previously fenced such lands shall be with an equally substantial fence fenced on both sides by the Director-General or the Commissioners as the case may be.

In what cases
lands are to be
fenced by the
Director-General
or Commissioners.

XII. AND BE IT ENACTED that it shall and may be lawful for the Director-General or any person or persons appointed by him in such behalf for the purposes of tracing making opening altering turning repairing or improving any part of the Main Road as aforesaid in and through any land adjacent thereto—not being an orchard garden cultivated ground yard park plantation or avenue leading to any house—to enter with all necessary and proper carriages oxen and horses upon any such lands and to take without paying for the same and to carry away the same through the ground of any person without being deemed a trespasser or trespassers such materials as may be required for making and repairing such Main Road as aforesaid or for constructing or repairing any drain or culvert or performing other work necessary thereto.

Power given to
Director-General
to take materials
from private lands
for purpose of
making or repair-
ing Roads.

XIII. PROVIDED ALWAYS AND BE IT FURTHER ENACTED that the said Director-General or any other person employed under him shall cause to be filled up or in other respects rendered secure all pits or quarries that may have been opened or used by him for the purposes aforesaid—AND PROVIDED ALSO that all fences taken down in the prosecution of such work shall so soon as such work is completed be well and sufficiently restored by and at the expense of the said Director-General.

Pits or quarries to
be rendered secure.

All fences taken
down to be re-
placed.

Growing timber may be cut down within 80 feet of centre of Road.

XIV. AND BE IT ENACTED that it shall and may be lawful for the Director-General of Roads or any other person employed by him to cut down all timber growing or standing within eighty feet of the centre of the Main Road (the same not being within a garden lawn or nursery for trees) doing nevertheless no unnecessary damage or injury to the fences hedges ditches walls or any other thing.

Compensation to be made in case of the Director-General carrying the Main Road through cultivated land.

XV. AND BE IT ENACTED that whenever the Director-General shall be desirous of carrying the line of the Main Road through any cultivated land it shall be lawful for him by notice in writing under his hand which notice may be in the form contained in the Schedule to this Act annexed marked A to inform the owner or tenant in possession of the cultivated land through which he is desirous of carrying the line of the Main Road of such intention on his part and to nominate some person as an Arbitrator to act jointly with the Arbitrator of the party to whom such notice is given in ascertaining the amount of compensation to be paid to the owner or tenant in possession of any such cultivated land through which the Director-General shall be so desirous of carrying the line of the Main Road.

How to be determined.

Director-General not to make use of any garden yard &c. without owner's consent.

XVI. PROVIDED ALWAYS AND BE IT FURTHER ENACTED that nothing in the former Section contained shall be taken to authorise the Director-General to take in or make use of any garden yard or any park planted walk or avenue to a house or any enclosed ground planted as an ornament or shelter to a house or planted and set apart as a nursery for trees or any part thereof respectively without the consent of the owner or proprietor thereof in writing first had and obtained.

Absence of Owners.

XVII. AND BE IT ENACTED that where the owner of any such cultivated land as aforesaid is under legal disability or absent from the Colony every such notice may be given either by or to (as the case may be) an agent or any other person who shall be in that behalf authorised for such owner and every person having the actual possession of land whether as tenant or otherwise shall for the purpose of receiving any such notice be deemed an agent of the owner of such land.

Appointment of Arbitrators.

XVIII. AND BE IT ENACTED that within thirty days next after the receipt of any such notice as aforesaid the owner of any such cultivated land or in his default the persons by whom such notice shall have been so received or some other person on his behalf shall nominate some person as an Arbitrator to act jointly with the Arbitrator nominated by the Director-General and shall inform the said Director-General of the name of the person so nominated and also by writing at the same time delivered to the said Director-General (under the hand of the Arbitrators so nominated) appoint a time and place for proceeding on the matter of the Arbitration and in default of such nomination or information or of such appointment of a time and place the Arbitrator named by the said Director-General shall be the sole Arbitrator of and for both parties and the said two Arbitrators or sole Arbitrator (as the case may be)

shall enquire into and determine the several matters hereinafter in that behalf mentioned—PROVIDED that before such two Arbitrators shall enter upon such enquiry they shall by writing under their hands appoint some third person as and to be the Umpire or person by whom alone the said matters shall be determined upon in case of any difference between them—PROVIDED ALSO that the time so appointed as aforesaid shall be not less than Seven nor more than Twenty Days next after notice of such appointment given nor the place so appointed be more than Ten Miles distant from the cultivated land through which it is proposed by the said Director-General to carry the line of the Main Road.

XIX. AND BE IT ENACTED that every Award or Umpirage under this Act shall or may be in the form or to the effect of the form contained in the Schedule to this Act marked B and shall be signed by the party or parties making the same in duplicate in the presence of not less than two witnesses who shall thereupon attest the same and the Arbitrator Arbitrators or Umpire as the case may be making any such Award or Umpirage shall have power to award and determine the several particulars next mentioned that is to say first the amount of injury likely to be occasioned to the owner of the cultivated land and the sum to be paid to such owner and secondly what portion of the amount of such estimated injury should be paid to the tenant when at the time of the making of any such award the cultivated land through which it is proposed to carry the Main Road is under lease.

Contents of Award.

XX. AND BE IT ENACTED that the term "Award" used in this Act shall be invariably construed to extend to and include equally an "Umpirage" and the term "Arbitrators" to extend to and include equally any single Arbitrator or Umpire except in cases where it is otherwise distinctly expressed or there is something in the context repugnant to such construction.

General Rule.

XXI. AND BE IT ENACTED that every person beneficially entitled to land or to have a grant thereof whether legally or equitably and whether as mortgagor or mortgagee tenant in fee or for life or as tenant for years only (if for a term exceeding fourteen years unexpired at the time of the giving of any such notice under this Act as first aforesaid) which said person shall at the time of the making of the Award be by himself his agents or tenants in the actual possession of such land shall for the purposes of this Act be deemed the Owner of such land.

Term "Owner."

XXII. AND BE IT ENACTED that in all cases where Compensation shall as is hereinbefore provided be awarded the amount shall be paid to the party or parties under such award entitled thereto under the Warrant of His Excellency the Lieutenant-Governor from the Treasury of this Island within Six Months from the date of the Award and thereupon the land in respect to which such Compensation shall be so paid as aforesaid shall become subject to the provisions of the Eighth Section

Compensation how and when to be paid.

of this Act—PROVIDED ALWAYS that nothing herein contained shall empower the Lieutenant-Governor to issue any warrant for the payment of money as a compensation as aforesaid in any case where the amount awarded as aforesaid shall exceed Two hundred Pounds unless with the advice and consent of the Legislative Council of this Island.

Payment of Compensation before land entered upon.

XXIII. AND BE IT ENACTED that every such payment shall be made as aforesaid before the Director-General of Roads or any other person employed by him in that behalf shall enter upon or occupy the land in respect of which such Compensation shall have been awarded as aforesaid and if such payment shall not be made within Six calendar Months after the Award shall have been made every such Award and all the proceedings had prior and subsequent thereto under the authority of this Act shall be void and of no effect.

Award void if payment not made within six months.

Obstruction of Director-General of Roads.

XXIV. AND BE IT ENACTED that if any person shall obstruct or attempt to obstruct in any manner the Director-General of Roads or any person acting under him in the performance of any act or thing whatever which such Director-General or other person acting under him is authorized to do or perform under or by virtue of this Act such person shall upon conviction forfeit and pay for every such offence a penalty not exceeding Fifty Pounds.

Persons obstructing or altering ditches culverts &c. to make good the same.

XXV. AND BE IT ENACTED that if any owner occupier or other person shall (in such a manner as to damage) alter obstruct fill in or in any other manner interfere with any culverts ditches gutters drains or watercourses after the same shall have been made by or taken under the charge of the Director-General without his authority or consent whether the same be within the fences of the Road or not shall be liable to reimburse all charges and expenses which may be occasioned by making good the work so altered obstructed or interfered with and shall also forfeit any sum not exceeding three times the amount of such charges and expenses.

Penalty for taking away materials.

XXVI. AND BE IT ENACTED that if any person shall without the consent of the Director-General take away any materials out of any quarry which shall have been made dug or opened by the Director-General or any person acting under him for the purpose of getting materials for the Main Road before the Director-General shall have discontinued working therein (except the owner of any private ground in which such quarry is situated and persons authorized by such owner to get materials in such quarry for his own private use and not for sale) every person so offending shall for every such offence forfeit and pay upon conviction thereof any sum not exceeding Ten Pounds.

Clearing of Public Roads.

XXVII. AND BE IT ENACTED that whenever any gate or timber stone bricks hay straw manure lime rubbish or any other matter or thing whatsoever shall be upon the Main Road and shall not be removed within a reasonable time after notice given by the said Director-General or person authorized by him so to do it shall and may be lawful for such

Director-General to clear the Road by removing the said gate timber stone bricks hay straw manure lime rubbish or other matter or thing as aforesaid and to dispose of the same and to apply the proceeds arising therefrom towards the repairs of the said Road.

XXVIII. AND BE IT ENACTED that the Cross and Bye Roads under this Act shall be placed under the management of District Commissioners to be elected as hereinafter is provided.

Cross and Bye Roads under the management of Commissioners.

XXIX. AND BE IT ENACTED that it shall be lawful for the Commissioners and they are hereby empowered whenever they shall be desirous of so doing to make through any part of their respective Districts a new Cross Road where none hath hitherto been made or to alter the line of any existing Cross Road or to stop up any Road heretofore gazetted and allowed or heretofore used as a Cross Road—PROVIDED ALWAYS that in every such case as aforesaid the Commissioners shall cause a notice to be inserted in the Government Gazette for Three successive Months which Notice shall contain the exact course which it is intended such new line of Cross Road should take or the alteration proposed to be made in the old Cross Road or the old Cross Road which it is intended to stop up as the case may be and shall in addition thereto by notice in writing under the hand of the Chairman of such Commissioners cause to be personally served upon every landlord or tenant in possession of any land through which it is intended to carry the new line of Cross Road or the alteration proposed to be made in the old Cross Road or the old Cross Road it is intended to stop up a copy of the Notice contained in the Government Gazette within Twenty-one Days after its first publication.

Commissioners may make alter or stop up Cross Roads.

Proviso.

XXX. AND BE IT ENACTED that for the purposes of this Act the several Districts within this Island shall be taken to be the Districts of Hobart Launceston George Town Morven Norfolk Plains Westbury Campbell Town Avoca Oatlands Bothwell New Norfolk Hamilton Richmond Waterloo Point Brighton and Spring Bay the extent and limits of which Districts shall be defined and made public by a proclamation to be for that purpose issued by His Excellency the Lieutenant-Governor.

Districts named but to be defined by Proclamation.

XXXI. AND BE IT ENACTED that no person shall be qualified to hold the office of a District Commissioner under this Act unless he be competent to sit as a Special Juror under the provisions of an Act of this Island intituled *An Act for the Extension of Trial by Jury and to regulate the Constitution of Juries.*

Qualification for the office of District Commissioner.

XXXII. AND BE IT ENACTED that it shall be lawful for any number of inhabitants in any District not less than Ten and qualified as hereinafter is provided to vote for the election of a Commissioner to present to the Police Magistrate or Assistant Police Magistrate of the District as aforesaid a requisition to call a meeting of the inhabitants of such District for the purpose of electing Commissioners for the same

Who shall be elected by qualified persons and in what manner the Election is to take place.

and upon such requisition being presented it shall be lawful for such Police Magistrate or Assistant Police Magistrate to fix some time and place for a Public Meeting for the purpose of such Election.

Who shall be allowed to vote.

XXXIII. AND BE IT ENACTED that at the said meeting for the Election of Commissioners so to be holden as last aforesaid all persons shall be admitted to vote who possess within the District for which such Election takes place Real Property to the amount of Ten Pounds per annum—PROVIDED ALWAYS that no person whatsoever shall be admitted to vote at such Election who has not at least Four Days before the day on which such Election takes place registered his qualification to vote with the Police Clerk in such District for which registration such Police Clerk shall be entitled to a fee of One Shilling from each Elector and no more—AND PROVIDED ALSO that no person shall be allowed to vote who has not paid to the person authorized to receive the same under this Act the sum assessed by the Commissioners on the annual rental or annual valued rental of his land buildings and tenements as the case may be.

Proviso.

Voters how returned.

XXXIV. AND BE IT ENACTED that a List of the Voters so registered shall be presented by the Police Clerk of the District to the Senior Justice present at the Election of Commissioners such Justice being a resident within the same District and such Justice shall thereupon preside at such election.

Number of Commissioners for each District.

XXXV. AND BE IT ENACTED that there shall for each District within the Island be elected not less than Five and not more than Seven Commissioners of whom Three shall be a quorum which Commissioners when so elected shall as soon after as conveniently may be appoint from amongst themselves one Commissioner as Chairman and such Commissioners shall meet from time to time as the Chairman shall direct and at all such meetings the Chairman shall notwithstanding his office as Chairman be entitled to vote.

Election to be finished in One Day.

XXXVI. AND BE IT ENACTED that such Election of Commissioners so to be held as aforesaid shall be finished in One Day without any adjournment whatever and every vote tendered on that day and objected to by any person qualified to vote at such meeting shall within that day be decided upon by the person presiding.

Commissioners to continue in office for One Year.

XXXVII. AND BE IT ENACTED that the Commissioners so appointed shall continue and remain in office for the period of One Year then next ensuing and at the expiration of such term of One Year a new Election shall be had in the manner aforesaid for the appointment of Commissioners for the said District for the succeeding One Year and so from time to time at the expiration of every One Year Elections shall be holden in manner aforesaid for the appointment of Commissioners for the said District for the succeeding term of One Year.

XXXVIII. AND BE IT ENACTED that the Commissioners appointed under this Act as aforesaid may sue and be sued in the name of any one of such Commissioners and that no action or suit to be brought by or against any of the said Commissioners in the name of any one of such Commissioners shall abate or be discontinued by the death or removal of such Commissioner but that any one of the said Commissioners shall always be deemed to be the Plaintiff or Defendant (as the case may be) in every such action or suit—PROVIDED ALWAYS that nothing herein contained shall be deemed construed or taken to extend to make the Commissioners personally liable or their respective estates lands or tenements goods and chattels but that the costs charges and expenses of every such Commissioner by reason of having been made Plaintiff or Defendant or for any contract act matter or thing whatsoever made or entered into in the *bonâ fide* execution of this Act shall from time to time be defrayed by the said Commissioners out of the moneys which they are authorized to levy under the provisions of this Act.

Actions not to abate by change of Commissioners.

XXXIX. AND BE IT ENACTED that the Commissioners within their respective Districts shall have possess and enjoy power to ascertain the annual rental or annual valued rental of the lands buildings and other tenements owned or occupied by the proprietors or occupiers respectively within such Districts.

Commissioners authorised to ascertain the value of property within their Districts.

XL. AND BE IT ENACTED that the Commissioners within their respective Districts may and they are hereby authorised for the purposes of this Act to have and demand from the proprietors or occupiers respectively of all lands buildings and tenements within their respective Districts the sum of sixpence in the pound on the annual rental or annual valued rental of such lands buildings and tenements.

Commissioners authorised to receive sixpence in the pound on the annual rental or annual valued rental of lands &c. within their Districts.

XLI. PROVIDED ALWAYS AND BE IT FURTHER ENACTED that it shall be lawful for the Commissioners in all cases in which a lesser rate than that of sixpence in the pound on such annual rental or annual valued rental as aforesaid is sufficient for the purposes of this Act to lower such rate from time to time and for such periods as to them shall seem fit.

Commissioners empowered to lower rates.

XLII. AND BE IT ENACTED that in all cases in which the Commissioners of Roads are desirous of making a new Road or of diverting shortening varying altering or improving the course of any of the Cross Roads under their care and management so as that such new Cross Road or alteration in the line of such Cross Road shall pass through any cultivated land then and in every such case it shall be lawful for the Commissioners to proceed in the same manner as is directed by this Act in all cases in which the Director-General is desirous of carrying the line of the Main Road through any cultivated land—PROVIDED ALWAYS that the amount of the compensation which may be determined upon by the Arbitrator or Arbitrators as the case may be between the owner of such land and the Commissioners shall

How Compensation is to be had for Cross Roads made through cultivated land by Commissioners no reserved right to make them being in existence.

within six months from the date of the award be paid to the owner or occupier as the case may be out of the rates levied under and by virtue of this Act.

No Road to be made by the Commissioners without compensation unless the right so to do be reserved to the Crown.

XLIII. PROVIDED ALSO AND BE IT ENACTED that it shall not be lawful for the Commissioners to make any Road through the property of any person whatsoever in which the right of making such Road has not been reserved by the Crown unless Compensation be made to the party through whose land such Road may pass such Compensation to be ascertained by Arbitration as is hereinbefore provided in cases where the Director-General carries the line of the Main Road through any cultivated land any thing in this Act to the contrary notwithstanding.

Commissioners not to make use of any garden yard &c. for any Cross Road without owner's consent.

XLIV. PROVIDED ALWAYS AND BE IT FURTHER ENACTED that in all cases wherein the Commissioners of Roads are or shall be empowered to make new Cross Roads through their respective Districts it shall not be lawful for them to take in or make use of any garden yard or any park planted walk or avenue to a house or any enclosed ground planted as an ornament or shelter to a house or planted and set apart as a nursery for trees or any part thereof respectively without the consent of the owner or proprietor thereof in writing first had and obtained.

Assessments &c. to form a fund in the hands of the Treasurer at the disposal of the Commissioners.

XLV. AND BE IT ENACTED that all monies that shall be so assessed and levied under and by virtue of this Act and paid into the hands of the Treasurer as hereinafter mentioned by the Commissioners of the District in respect of which the same shall have been so assessed and levied shall form a fund to be applied in furtherance of the provisions of this Act within such District—AND the said Treasurer shall and he is hereby required to pay all such monies in such sums and to such persons as shall be mentioned in any order in writing signed by at least Two of the said Commissioners of whom One shall be the Chairman.

Commissioners to appoint Collectors of Assessments who are to pay the same to the Treasurer.

XLVI. AND BE IT ENACTED that the money or moneys to be collected and levied under the provisions of this Act shall be paid by the respective occupants of the lands so to be assessed as aforesaid to the Collectors of the said Assessments to be appointed by the Commissioners of each District in respect of which the same shall be made as hereinafter mentioned and such Collector shall pay over the same to the Treasurer appointed by the Commissioners as aforesaid and if any such occupant shall neglect or refuse to pay to any such Collector the money so assessed upon his lands buildings and other tenements for the space of Fourteen Days next after the same shall have been demanded by such Collector either personally or by a written Notice left at the last or usual place of abode of such occupant as aforesaid if such place can be found but if not then on the lands so assessed such money shall be so levied on and recovered from every such occupant so neglecting or refusing to pay the same by distress and sale of the goods and

Payment of Assessments to be enforced by distress against occupants of land.

chattels of such occupant so in default by warrant under the hand and seal of any Justice of the Peace on proof upon oath of such Collector of such neglect and refusal and the surplus if any of the monies raised by such distress and sale shall be paid on demand to the owner of the goods and chattels so distressed and sold after deducting all costs charges and expenses attending on such distress and sale the same to be ascertained by such Justice.

XLVII. AND BE IT ENACTED that the sum for which the lands buildings and tenements of any person not being the owner thereof within the meaning of this Act may be assessed and shall be payable by the tenant in the occupation of the same and one moiety thereof may be by him set off in any action brought against such tenant for rent as money advanced by him to the use of the landlord.

Tenants may charge their landlords with half such Assessments.

XLVIII. AND BE IT ENACTED that the Chairman of the Commissioners in their several Districts respectively shall and he is hereby authorised in case of non-payment of the sum for which the lands of any person within such District is assessed to apply to any Justice within such District to issue a warrant which warrant such Justice is hereby authorised and empowered to issue to some person to be named therein to levy the same by distress and sale of the goods and chattels of the person occupying the property so rated and assessed—PROVIDED ALWAYS that no sale of such goods and chattels shall take place until after the expiration of Three Days from the seizure thereof and all such sums levied in pursuance of such Rate shall be paid over to the Treasurer as hereinafter appointed and shall be applied to all necessary purposes under and by virtue of this Act.

Proceedings to obtain Assessments by distress.

Proviso.

XLIX. AND BE IT ENACTED that the Chairman of the Commissioners in their respective Districts throughout this Island shall at the expiration of every Three calendar Months cause to be published in the Government Gazette a full and accurate account of all sums of money received by such Commissioners and the manner in which such sums of money have been expended.

Account of monies received and expended to be published quarterly.

L. AND BE IT ENACTED that the said Commissioners shall and may and they are hereby authorised to appoint fit and proper persons to act as Surveyors of such Districts respectively and also so many fit and proper persons as may be necessary to act as Treasurers Collectors Clerks or other necessary Officers at such moderate Salaries as they may think fit and from time to time to remove them or any of them and to appoint others or another in their or his stead—PROVIDED ALWAYS that no person shall be deemed a competent Surveyor under this Act unless he has obtained a certificate from the Director-General of Roads or the Surveyor-General of his being in their opinion duly qualified to act as a Surveyor of Roads—AND PROVIDED ALSO that such certificate be inserted in the Gazette.

Commissioners to appoint Surveyors &c.

Proviso.
Who shall be deemed a competent Surveyor.

LI. AND BE IT ENACTED that the Commissioners or any of them and any person acting under them shall have possess and enjoy

Commissioners and those ap-

pointed by them to have over the Cross and Bye Roads the like powers as are vested in the Director-General in respect to the Main Road.

within such District as aforesaid all every and the like powers and authority and receive and enjoy the like immunities advantages and protection as regards the construction or alteration of Cross Roads within such District as are in respect to the alteration of any part of the Main Road given to enjoyed by and vested in the Director-General of Roads for this Island and those acting under him by and under the provisions of this present Act.

LII. AND BE IT ENACTED that if any person be desirous of obtaining a Bye Road through the land of another or of stopping up an old Bye Road through his own land he shall having given Fourteen Days' previous notice of such his intention by Advertisement in the Government Gazette and in at least one newspaper published in Hobart Town or Launceston as such town may be nearest to the proposed new Road or old Road meant to be discontinued make an application for either purpose to the Commissioners at their first meeting after such notice and the Commissioners shall thereupon finally decide upon such application—PROVIDED ALWAYS that it shall be competent to the said Commissioners to adjourn such their decision until their next day of meeting and no longer.

Appeal given to the Sessions against Rates.

LIII. AND BE IT ENACTED that it shall be lawful for any person to appeal to the Justices of the Peace at any General or Quarter Sessions to be held for the District within which the property of the party complaining is situated against any Rate by which he may be affected either as regards his being over-rated or some other person residing within the District being under-rated or omitted altogether from the Rate and the said Justices are hereby empowered to hear and finally determine the same and either to confirm such parts of the Rate as have been appealed against or to correct such inequalities disproportions or omissions as shall be proved to exist therein in such manner as shall to them the said Justices appear fair just and equitable—PROVIDED ALWAYS that no such Rate upon any such appeal shall be quashed or destroyed unless the Justices in General or Quarter Sessions so assembled or the major part of them shall deem it necessary to direct (which they are hereby empowered to do) the Commissioners to make an entire new Rate for the District—PROVIDED ALSO that before such appeal be entertained the Justices aforesaid shall be satisfied that due notice of the appeal was given to the Chairman of the Commissioners.

Proceedings at the Sessions.

Proviso.

Proviso.

Proceedings on the Commissioners deciding in favour of a Bye Road being closed.

Proviso.

LIV. AND BE IT ENACTED that whenever the decision of the Commissioners shall be that any application for the shutting up of any Bye Road ought to be complied with it shall be lawful for the party by whom or on whose behalf the application shall have been made forthwith to shut up the same and the right if any of all other persons to the use of the same shall cease—PROVIDED ALWAYS that every such decision shall be advertised in the Government Gazette—AND PROVIDED ALSO that in all cases the production of such Gazette shall be deemed conclusive evidence of the decision of the Commissioners for the shutting up of such Bye Road.

LV. AND BE IT ENACTED that when any Bye Road through another person's land be at the request of some other party sanctioned by the Commissioners such Road shall be fenced off with a substantial fence to be approved of by the Commissioners one moiety of the expense of erecting which fence shall be borne by the applicant for such Road and the remaining moiety in equal proportions by the Commissioners and Owner of the land through which such Road shall pass—PROVIDED ALWAYS that the applicant for such Road or the Commissioners as aforesaid shall not be compelled under the provisions of this Act to fence in any such Road until the land through which such Road may pass shall have been enclosed—AND PROVIDED ALSO that whenever such fence as is herein provided for shall have been erected such fence shall under this Act be deemed and taken to be the property of such Owner of the land as aforesaid.

Bye Roads to be fenced in certain cases.

Proviso.

Proviso.

LVI. PROVIDED ALSO AND BE IT ENACTED that when any such Bye Road shall pass through any cultivated land whereby such cultivated land would be injured then in such case it shall be lawful for the Commissioners by notice in writing under their hands (which notice shall or may be in the form or to the effect of the form contained in the Schedule to this Act marked A) to inform the owner or tenant in possession of any such cultivated land through which he is desirous of carrying the line of the Bye Road of such intention on his part and to nominate some person as an Arbitrator to act jointly with the Arbitrator of the party to whom such notice is given in ascertaining the amount of Compensation to be paid to the party applying for such Bye Road to the owner or tenant in possession of any such cultivated land through which the Commissioners shall be so desirous of carrying the line of such Bye Road.

Where Bye Road passes through cultivated land Compensation to be made.

LVII. PROVIDED ALWAYS AND BE IT FURTHER ENACTED that it shall not be lawful for the Commissioners in the making or alteration of any Bye Road to make use of any garden yard or any park planted walk or avenue to a house or any inclosed ground planted as an ornament or shelter to a house or planted and set apart as a nursery for trees or any part thereof respectively without the consent of the owner or proprietor thereof in writing first had and obtained.

Commissioners not to make use of any garden yard &c. for any Cross Road without owner's consent.

LVIII. AND BE IT ENACTED that it shall not be lawful for any person or persons to erect or cause to be erected after the passing of this Act within fifty yards of any Public Road or Bye Road or of any street of any town within this Island any windmill or steam engine unless such windmill or steam engine shall be within some house or other building or behind some wall or fence sufficient to screen the same from the Public Road Bye Road or street of any town so that the same may not be dangerous to passengers horses or cattle nor shall it be lawful for any person to make or cause to be made any fire for burning or calcining lime stone bricks clay or the making of coke or charcoal within the distance of twenty-five yards of any Public Road

Penalty for erecting any steam engine burning lime &c. within fifty yards of any Public or Bye Road.

Bye Road or street of any town unless the same shall be within some building or behind some wall or fence sufficient to screen the same from such Public Road Bye Road or street of any town as aforesaid and in case any person shall offend in any of the cases aforesaid every such person so offending shall forfeit and pay a sum not exceeding Five Pounds for each and every day such windmill steam engine or fire shall be permitted to continue contrary to the provisions of this Act which said penalties shall be levied recovered and applied in such and the same manner as any penalty or forfeiture for any offence against this Act.

Penalty for obstructing any Road.

LIX. AND BE IT ENACTED that if any person shall after the passing of this Act wilfully stop up or otherwise injure with a view of preventing the free use of the Main or any Cross or Bye Road every person so offending shall for every such offence forfeit and pay a penalty of not more than Fifty Pounds to be recovered as is hereinafter provided.

Penalty for riding or driving on footways leaving stone &c. on Roads defacing mile-stones &c.

LX. AND BE IT ENACTED that if any person shall wilfully ride upon any footway or causeway by the side of the Main or any Cross Road set apart for the accommodation of foot-passengers or shall wilfully lead or drive any horses sheep or cattle or carriage of any description or any truck or wheelbarrow upon any such footpath or shall cause any injury to be done to the Main or any Cross Road or the fences hedges or posts thereof or shall wilfully obstruct the passage of any footway or wantonly injure the mile-stones or shall lay any timber stone or other matter or thing whatsoever upon the Main or any Cross Road to the injury thereof every person so offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding Forty Shillings over and above the damages occasioned thereby.

Persons authorised by Director-General of Roads or by a District Commissioner may impound cattle found straying on the Main Cross or Bye Roads.

LXI. AND BE IT ENACTED that if any horse ass sheep swine or other beast or cattle of any kind shall at any time be found wandering straying or lying or being depastured on the Main Road or on any Cross or Bye Road or on the sides thereof without a keeper (except on such parts of any road as lead or pass through or over any waste or uninclosed ground) any person authorised in that behalf by the Director-General if on the Main or by any District Commissioner of any Cross or Bye Road is hereby required to seize and impound every such horse ass sheep swine or other beast or cattle in the nearest pound to the place where the same shall be found and the said horse ass sheep swine or other beast or cattle there to detain until the owner thereof shall for every and each horse ass sheep swine or other beast or cattle so impounded pay any sum not exceeding One Shilling together with the reasonable charges and expences to be settled by any two Justices of the Peace of impounding and keeping the same to the Director-General of Roads if such horse ass sheep swine or other beast or cattle shall have been found on the Main Road and to the Commissioners of the District in which such horse ass sheep swine or other beast or cattle shall have been found if found on any Cross or Bye Road and in case

Justices may settle the expences of keeping such cattle and inflict a penalty in certain cases.

the said penalty charges and expences shall not be paid within five days after such impounding (notice thereof being first given to the owner if known at the time) it shall and may be lawful for any two Justices of the Peace to order every such horse ass sheep swine or other beast or cattle to be sold except where it shall be made to appear to such Justices that the horse ass sheep swine or other beast or cattle impounded escaped from any inclosure by any gate or fence being wilfully or negligently left open or destroyed by any person not being owner of such inclosure nor employed by such owner or that it arose from accident and was not wilful in which cases such Justices may remit the said penalty and the money arising from such sale after deducting the said penalty and charges and expences of impounding keeping and selling every such horse ass sheep swine or other beast or cattle shall be paid to the person whose property the same so sold shall appear to have been and in case the owner thereof shall not be known and no application shall be made for the money arising from such sale within one calendar month after such sale shall have taken place the said money shall be applied after deducting the said charges and expences in the same manner as the said penalty of One Shilling is herein directed to be applied—PROVIDED ALWAYS

Power to sell cattle to obtain payment thereof.

Proviso.

LXII. AND BE IT ENACTED that if the driver of any waggon dray cart or other carriage of any kind whatsoever shall ride upon any such carriage or upon any horse or ox drawing the same on the Main or any Cross Road not having some other person on foot or on horseback to guide the same (such carriages and carts as are driven with reins and are conducted by some person holding the reins of all the horses drawing the same excepted) or if the driver of any carriage whatsoever on any part of the Main or any Cross Road shall by negligence or wilful misbehaviour cause any hurt or damage to any person horse ox or goods conveyed in any carriage passing or being upon such Road or shall leave any cart or carriage on such Road so as to obstruct the passage thereof or shall not keep his waggon dray cart or carriage horses mules oxen or other beasts of burden on the left or near side of the Main or Cross Road every person so offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding Forty Shillings over and above the damages occasioned thereby.

Regulation as to carriages waggons carts &c.

LXIII. AND BE IT ENACTED that no conviction under this Act shall be quashed for want of form or be removed by writ of Certiorari or otherwise into the Supreme Court and no warrant shall be held void by reason of any defect therein provided it be alleged that the party has been convicted and that there be a good and valid conviction to sustain the same.

Proceedings not to be quashed for informality and no Certiorari allowed.

LXIV. AND BE IT ENACTED that all offences against this Act in respect of which a pecuniary penalty is imposed shall upon informa-

Offences how to be heard and determined.

Appeal.

tion in that behalf exhibited be heard and determined and every such penalty shall be awarded and imposed in a summary way by and before any two Justices and all persons aggrieved by any summary conviction under this Act shall be entitled to appeal therefrom in the manner provided respectively by the Act intituled *An Act to regulate Summary Proceedings before Justices of the Peace.*

Roads in the Towns to be beyond the authority of the Commissioners.

LXV. AND BE IT ENACTED that nothing in this Act contained shall be deemed or construed to authorise the Commissioners to interfere in any manner with the ways passages or streets of the several Towns of this Island or to possess within the limits of the said several Towns or the suburbs thereof any authority whatever beyond the powers conferred upon them under this Act of making such Assessments on the lands buildings or other tenements situate within such Towns respectively for the purposes of this Act.

Application of penalties.

LXVI. AND BE IT ENACTED that all penalties and fines levied and collected under and by virtue of this Act shall be applied to the repairs of the Roads in the Districts respectively in which such penalties and fines have been levied and collected.

Construction of terms.

LXVII. AND BE IT ENACTED that throughout this Act every word and term used in the singular number only shall be construed equally to imply and include the plural and *vice versa* unless there be something in the context repugnant to such construction.

JOHN FRANKLIN.

Passed the Legislative Council this twenty-first day of December one thousand eight hundred and forty,

RONALD C. GUNN, *Clerk of the Council.*

SCHEDULE A.

IN pursuance of the Act for making altering improving and defining the Main and other Roads of this Island I hereby give notice to you A. B. as the owner of the cultivated land situate at [*place*] in the District of [*mentioning the District*] that I am desirous of carrying through the cultivated land so situate the line of the Main Road and for the purpose of ascertaining the amount of damage that may be thereby occasioned to you the said A. B. I call upon you to nominate an Arbitrator on your behalf to ascertain pursuant to the said Act jointly with the said C. D. the Arbitrator named by me the sum of money to which you are entitled in respect to the injury which you may sustain by the line of the Main Road being carried through your cultivated land.

Dated [*place*] the day of 184

E. F., *Director-General.*

SCHEDULE B.

WE [*insert the names of the Arbitrators*] being duly nominated under the Act of Council passed for making altering improving and defining the Main and other Roads of this Island to act as Arbitrators between A. C. Director-General and A. B. of [*place*] respecting the injury likely to accrue to the cultivated land of the said A. B. by the line of the Main Road being carried through it do make our award in the premises as follows that is to say We award that the injury done to the cultivated land through which it is proposed by the said A. C. to carry the line of the Main Road amounts to £ and as he the said A. B. is the owner as well as occupier of the said cultivated land we award that there shall be paid to the said A. B. by the said A. C. the sum of £ within three months from this date.

Dated this day of 184

[*Signatures of Arbitrators and Umpire.*]

[*Attested by two Witnesses.*]

[*Where a portion of the money is awarded to a Tenant the above form will vary with the circumstances of the case and every Award must be signed in duplicate.*]