

TASMANIA.

THE RAILWAY MANAGEMENT ACT 1935.

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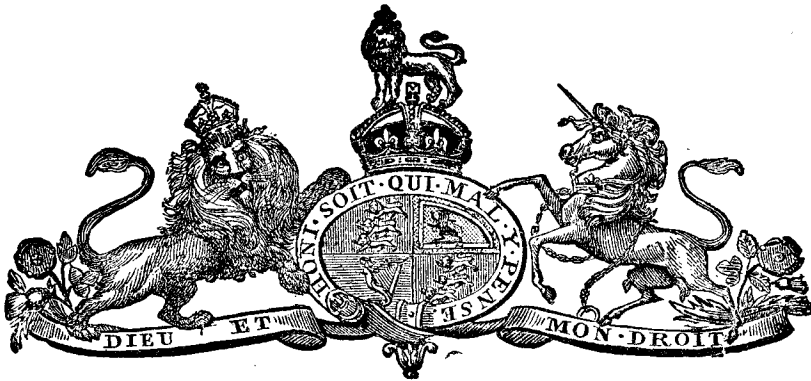
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T A S M A N I A .



1935.

ANNO VICESIMO SEXTO

GEORGII V. REGIS.

No. 33.

AN ACT to consolidate the Acts relating to
the Control and Management of the Govern-
ment Railways. [18 October, 1935.]

A.D.
1935.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I.

PRELIMINARY.

- 1 This Act may be cited as the *Railway Management Act 1935*. Short title.
- 2 The Acts set forth in the first schedule are hereby repealed. Repeal.

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—
Interpretation.**3—(1)** In this Act, unless the contrary intention appears—

“Goods” includes merchandise and chattels of any kind, and live and dead animals :

“Railway” includes—

- i. Every railway at any time constructed, purchased, or acquired (whether before or after the commencement of this Act) by the Government of this State :
- ii. The land on which every such railway is made or authorised to be made, or purchased or acquired in connection therewith :
- iii. All buildings and erections of every kind on such land :
- iv. All works, wharves, and jetties the property of His Majesty, whether of a permanent or temporary nature, used for the purposes of, or in connection with, a railway :
- v. All materials for the construction or erection of any railway or any such building, erection, work, wharf, or jetty :

“The Commissioner” means the Commissioner for Railways.

(2) Any land purchased or acquired for any railway shall be deemed to be part of that railway, notwithstanding that such land is situated at a distance from the railway.

PART II.
THE COMMISSIONER FOR RAILWAYS.

Commissioner for Railways.

1 Geo. V. No. 69,
s. 8.**4—(1)** There shall be a Commissioner for Railways, who shall be the authority to carry out this Act.

(2) The Commissioner shall be a corporation sole by the name of “The Commissioner for Railways,” and shall have perpetual succession and a common seal, and be capable of suing and being sued, and shall have power, subject to this Act, to take, purchase, and sell goods, chattels, and other property for the purposes of this Act.

Appointment of Commissioner.
Ib., s. 9 (15 Geo. V. No. 2, s. 2).**5—(1)** The Commissioner shall be appointed by the Governor, and shall, subject to this Act, hold office for such term, not exceeding five years, as the Governor shall determine on making the appointment.(2) The Commissioner shall not be subject to the provisions of the *Public Service Act 1923*.

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6—(1) The Commissioner shall receive a salary of one thousand six hundred and sixty-seven pounds a year.

(2) The salary of the Commissioner shall be charged on the Consolidated Revenue, which, to the necessary extent, is hereby permanently appropriated.

(3) The amount payable, as provided by this section, shall be subject to the provisions of section five of the *Official Salaries Reduction Act* 1931.

7—(1) The Commissioner may be suspended from his office by the Governor—

- i. For misbehaviour, negligence, or incompetence :
- ii. If he engages, during his term of office, in any employment outside the duties of his office :
- iii. If he becomes bankrupt, or applies to take or takes the benefit of any Act relating to bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit :
- iv. If he becomes incapable of performing his duties : or
- v. If he in anywise participates or claims to be entitled to participate in the profit of, or in any benefit or emolument arising from, any contract or agreement made by or on behalf of the Government of this State.

(2) The Minister shall cause to be laid before each House of Parliament a full statement of the grounds of suspension within the first seven sitting days after such suspension.

(3) The Commissioner, when suspended under this section, shall not be restored to office unless each House of Parliament, within forty days from the time when such statement has been laid before it, declares by resolution that he ought to be restored to office.

(4) If each House of Parliament within the said time so declares, the Commissioner shall be restored by the Governor accordingly, but otherwise may be removed from office.

(5) The Commissioner shall not be removed from office except as hereinbefore provided.

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Salary of Commissioner.

Ib., s. 12 (inserted by 12 Geo. V. No. 7, and amended).

[22 Geo. V. No. 2.]

Suspension and removal of Commissioner.

1 Geo. V. No. 69, s. 15.

PART III.

VESTING, CONTROL, AND MANAGEMENT OF RAILWAYS.

Division I.—Vesting and Control of Property.

8 Every railway, together with all the engines, rolling-stock, machinery and appurtenances thereof, shall be vested in the Minister, who shall hold the same to and for the use of His Majesty.

Railways vested in the Crown.

55 Vict. No. 40, s. 6.

9 Subject to this Act, the Commissioner shall have the management, maintenance, and control of every railway.

Commissioner to manage railways.

1 Geo. V. No. 69, s. 18.

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Railway property
not to be subject
to rates, &c.

Ib., s. 19.

Expenditure of
money appropri-
ated by Parlia-
ment.

1 Geo. V. No. 69,
s. 20.

[9 Geo. V. No. 3.]
Ib., s. 21.

Accounts.

(12 Geo. V. No.
64, s. 15.)

10 No rate, tax, or assessment shall be charged, levied, or made upon any railway, or upon any pier, wharf, jetty, station, yard, building, works, or other property under the control of the Commissioner, unless the contrary is expressly provided.

Division II.—Financial Provisions.

11—(1) All moneys appropriated by Parliament for the maintenance or management of railways, and for any purposes in connection therewith, shall be expended under the control and management of the Commissioner.

(2) All moneys payable to the Commissioner shall be collected and received by him on account of, and shall be paid into, the Consolidated Revenue; and the provisions of the *Audit Act* 1918 shall apply to the Commissioner and to all officers of the Railway Service.

12 The Commissioner shall, once in every financial year, cause to be prepared, and to be submitted to Parliament—

- i. A railway working account showing the total gross receipts accruing from the railways during the previous financial year, and the total expenditure upon the working, management, and maintenance thereof during the same period: and
- ii. An account showing the total cost as at the end of the previous financial year of the construction of all railways, and the value of the rolling-stock, fixed plant, and machinery, loose plant, stores, and office furniture, under their respective headings.

PART IV.

Division I.—Powers and Duties of Commissioner.

Carriage of pas-
sengers and goods.
55 Vict. No. 40,
s. 11.

13 The Commissioner may carry and convey passengers and goods over and along any railway, or upon any part thereof, and may do all such other things as he may think requisite in such manner as he thinks convenient.

Motive power
and charges.

Ib., s. 12.

14 The Commissioner may use and employ upon any railway, locomotive engines or other motive power, and carriages or wagons to be drawn or propelled thereby, and may make such reasonable charges for the carriage and conveyance of passengers and goods upon any railway as shall be determined as provided by this Act.

Liability of
Commissioner.

Cf. *ib.*, s. 13.

Vict., No. 3759,
s. 4.

15 The Commissioner shall be deemed to be a common carrier, and (except as by this Act otherwise provided) shall be subject to the obligations and entitled to the privileges of a common carrier.

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16 Subject to this Act, and to any conditions imposed by the Commissioner under the provisions of section twenty-two, all persons shall be entitled to use any railway upon payment of the fares, rates, or charges fixed for the use thereof.

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Right to use railways.

55 Vict. No. 40, s. 23 (inserted by 12 Geo. V. No 64, s. 6).

Fares, &c.

Ib., s. 14, I.

17—(1) The Commissioner may fix the fares, rates, and charges to be paid for the conveyance of passengers and the carriage of goods, and generally in respect of the use of the railways and any wharf, pier, jetty, shed, or yard, or any rolling-stock or machinery in connection with any railway.

(2) The Commissioner may fix special fares to be paid in lieu of ordinary fares on special occasions, or for such times and throughout such parts of any railway as he thinks fit.

(3) The Commissioner may fix special scales of fares, rates, and charges in relation to the railway known as the Marawah Tramway.

18—(1) The Commissioner may declare certain kinds of goods of such a nature as to be liable to injury or goods over a certain value to be special goods, and may determine the additional rates and charges which shall be payable in respect thereof, and the rates of compensation to be paid in respect thereof.

Special goods.

Ib., s. 14, II. & III.

(2) Every person delivering any special goods at a railway station shall give to the person in charge of the station a statement in writing declaring the nature and value of the goods; and the person in charge of the station shall give a receipt for such goods, in which shall be specified particulars of the nature and value so declared.

(3) No person shall be entitled to recover, in respect of any loss of or damage to any special goods, any sum greater than such sums as may be determined by the Commissioner in respect thereof, unless he has complied with the provisions of subsection (2) of this section.

19—(1) The Commissioner may—

Special provisions in connection with certain articles.

See 12 Geo V. No. 64, s. 2, II.

- I. Fix higher rates for the carriage of certain goods at the Commissioner's risk than for the carriage of such goods at owner's risk; and may determine that certain goods shall be carried at owner's risk only:
- II. Impose conditions upon which passenger's luggage shall be carried, and regulate the checking of such luggage, and provide for the exemption of the Commissioner from all liability in respect of unchecked passenger's luggage or for limiting such liability:
- III. Regulate the conditions under which, and the times at which, dangerous goods and explosives may be carried, and the loading and unloading of explosives at or near stations and sidings.

(2) In respect of goods carried without charge, the Commissioner shall take no liability or responsibility for any loss, detention, injury, damage, non-delivery, mis-delivery, or delay, whatsoever and howsoever occasioned.

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Conditions.

55 Vict. No. 40,
s. 14, v.

Time-tables.

See 12 Geo. V.
No. 64, s. 2, I.

By-laws.

55 Vict. No. 40,
s. 14, VI., s. 15.

20 The Commissioner may impose such conditions with respect to the matters referred to in sections sixteen, seventeen, and eighteen as he deems advisable.

21 The Commissioner may make and issue time-tables showing the times of arrival and departure of trains at stations.

22—(1) The Commissioner may make by-laws for regulating the management of railways open for traffic, and, in particular, may make by-laws with respect to the following matters:—

- i. The mode in which, and speed at which, engines and all other rolling-stock on a railway are to be propelled or moved :
- ii. The loading and unloading of carriages and wagons, and the weights they may carry :
- iii. The receipt and delivery of goods, and the storing of the same :
- iv. Declaring certain goods to be dangerous goods :
- v. Preventing or controlling the smoking of tobacco or any other substance, and prohibiting the committing of nuisances on railways :
- vi. The accounts to be kept of receipts and expenditure on railways and the traffic and ticket audit :
- vii. The traffic on roads and bridges used both for ordinary and railway traffic :
- viii. Regulating the traffic generally on railways, and the conduct of all persons employed on or about the same or travelling thereon :
- ix. The issue of permits for the use of tricycles, trolleys, and similar vehicles on railways :
- x. The manner, times, and places in and at which tickets of any kind shall be purchased by, issued to, used by, and delivered up by passengers on railways :
- xi. Regulating the traffic of carriages, cabs, omnibuses, and other vehicles in or about any railway station, or yard, or siding :
- xii. The admission of the public to any railway station, building, or premises, and fixing charges therefor, and dispensing with the same on certain days or for certain times :
- xiii. Prohibiting the carriage of diseased animals, and preventing them from coming on any station or premises :
- xiv. Prohibiting the carriage of persons suffering from infectious or contagious diseases :
- xv. Regulating and determining the conditions upon and subject to which free passes shall be issued and used :
- xvi. Regulating the seating of passengers :
- xvii. Prohibiting persons from loitering on any railway to the inconvenience of the railway officers, passengers, or intending passengers, or from obstructing the good govern-

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ment and maintenance of order thereon, and providing for the removal from a railway by any railway officer, or any police officer, of any person so loitering or otherwise offending against the by-law. A.D. 1935.

(2) A copy of all by-laws painted or printed in black letters on a white ground shall be exhibited in a conspicuous place at every station at which tickets are sold.

(3) Any by-law may apply to railways generally, or to any particular railway or part of a railway.

Division II.—Conveyance, Custody, Carriage, and Delivery of Passengers and Goods.

23 The Commissioner may enter into any special contract with any person for the custody, carriage or delivery of goods upon such conditions in all respects as he may think fit. Special contracts.
55 Vict. No. 40,
s. 16, vi. (in-
serted by 12 Geo.
V. No. 64, s. 3).

24—(1) Subject to the by-laws, and to any conditions imposed by the Commissioner, all goods received upon any railway shall be deemed to be in the custody of the Commissioner until delivered to the consignee of the goods. General provi-
sions as to custody,
carriage, and
delivery of goods.
55 Vict. No. 40,
s. 16.

(2) The Commissioner may make agreements with any person for insuring:—

- i. Any goods delivered on a railway against all loss or damage from any cause: and
- ii. The Commissioner against all liability in respect of any such loss or damage—

and may increase or diminish the charges payable on such goods accordingly.

25 All claims for loss or damage in respect of the custody, carriage, and delivery of goods upon or from any railway shall be made in writing to the Commissioner within twenty-one days of such loss or damage. Claims.
55 Vict. No. 40,
s. 16, v.

26—(1) The Commissioner may cause any goods carried on a railway to be delivered at places outside the limits of a railway, and for that purpose may enter into all such contracts and execute and perform all such acts and things as may be necessary. Delivery outside
limits of a
railway.
Ib., s. 19.

(2) No such contract as is referred to in subsection (1) of this section shall be entered into for a longer term than three years.

(3) The Commissioner may, by public notice, fix and define the limits within which the delivery of goods as provided by this section will be made, and may fix the rates and charges to be paid therefor.

(4) Such rates and charges shall be recoverable in the same manner as other rates and charges fixed by the Commissioner under this Act are recoverable.

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Power to sell goods in default of payment of rates, &c.

Ib., s. 20 (substituted by 12 Geo. V. No. 64, s. 5).

27—(1) If, for fourteen days after demand has been made therefor, any person, liable to pay the rates or charges due in respect of any goods, fails to pay the same, the Commissioner, without prejudice to any other remedy he may have under this Act, may—

I. Detain and sell any of such goods: or

II. If the same have been removed from the railway premises, detain and sell any other goods within such premises belonging to the person liable to pay such rates or charges—

and in either case, out of the moneys arising from the sale, may retain the rates or charges so payable, and all charges and expenses of such detention and sale, rendering the surplus, if any, of the moneys arising from such sale, and such of the goods as remain unsold, to the person entitled thereto.

(2) A notice in writing that any rates or charges are due in respect of any goods, signed by any person duly authorised to collect such rates and charges, and served upon the person liable to pay the same or left at or posted to his last known address, shall be deemed to be a demand within the meaning of this section.

Power to sell goods left without owner.

55 Vict. No. 40, s. 21.

28 If any goods are left on the premises of a railway, and the owner thereof, or the person liable for the charges thereon, is not known, the Commissioner may cause it to be publicly notified that such goods will be sold upon a day named in the notice, not being less than one month from the publication thereof; and if such goods are not removed, and the charges thereon paid before the day so named, such goods may be sold, and the balance of the proceeds of such sale, after paying the charges upon such goods, shall be paid into the Consolidated Revenue.

Conveyance of passengers.

55 Vict. No. 40, s. 41.

29 The Commissioner may enter into an arrangement with any person for the conveyance of passengers and luggage who or which have been or are to be conveyed by railway, and for the fares to be paid and the services to be performed in connection therewith.

Commissioner to take no responsibility outside of limits of a railway.

Ib., s. 41A (inserted by 12 Geo. V. No. 64, s. 13).

30 The Commissioner shall take no responsibility or liability of any kind for, or in respect of, personal injury to, or the detention or delay in the conveyance of, any person, or the loss, detention, non-delivery, mis-delivery, or delay in the carriage or delivery of, or injury or damage to, any goods, occurring outside the limits of a railway under his management and control, notwithstanding that he may have contracted for the conveyance or accommodation of such person or the carriage or delivery of such goods to or at a place outside such limits.

Division III.—Powers of Commissioner as to Land, &c.

Power to lease unused land, &c.

55 Vict. No. 40, s. 33.

31—(1) The Commissioner, in the name and on behalf of His Majesty, may grant leases of land acquired or occupied in connection with any railway which is not required for railway purposes.

(2) In any case where the value of the land so let exceeds the annual rental of twenty pounds, such letting shall be by public tender or public auction.

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(3) No lease under this section shall be for a longer period than fifteen years, but the Governor, on the recommendation of the Commissioner, may authorise the inclusion in any such lease of a right of renewal for any term not exceeding fifteen years. A.D. 1935.

32—(1) The Commissioner, in the name and on behalf of His Majesty, may let, on such terms and conditions as he thinks fit, any workshops or other buildings used in connection with any railway which are not required for railway purposes. Power to lease buildings.
Ib., s. 34.

(2) Any such letting shall be by public tender or public auction and no lease shall be for a longer period than five years.

(3) The Commissioner with the approval of the Minister may issue permits authorising the erection of hoardings on any part of a railway on such terms and conditions and for such period, not exceeding twelve months, as he may think fit.

33 The Commissioner may let by public tender, upon such conditions and for such term as he thinks fit, not exceeding three years, any part of the land or buildings attached to a railway for the sale of refreshments, books, or other articles, or the use of the walls of any such buildings or of any part of the rolling-stock for the display of advertisements thereon. Power to let refreshment rooms, &c.
Ib., s. 35.

34 The Commissioner may lease by tender, upon such conditions and for such term as he thinks fit, not exceeding one year, the right to any person or persons to ply for hire with cabs, omnibuses, or other vehicles in or about any railway station or yard, or may issue permits upon such conditions as he thinks fit to the proprietors of licensed cabs, omnibuses, or other vehicles to ply for hire in or about any railway station or yard. Power to let rights to ply for hire, &c.
Ib., s. 36.

35—(1) The Commissioner, on behalf of the Minister, may sell to such person or persons, at such price and on such terms and conditions in all respects as the Commissioner shall think fit— Power to Commissioner to sell surplus land and other assets.

i. Any land (including any buildings or improvements thereon) belonging to or forming part of, or occupied in connection with, any railway (whether the use of such railway has been discontinued or not), which is vested in the Minister or His Majesty, and is no longer required for railway purposes: 18 Geo. V. No. 50, s. 4.

ii. Any other capital assets or property belonging to or held in connection with any railway (whether the use of such railway has been discontinued or not), which are no longer required for railway purposes.

(2) Before any sale of any such land as aforesaid is made by the Commissioner the Minister's approval of such sale shall be first obtained by the Commissioner.

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(3) Any sale by the Commissioner, as provided by this section, may include the grant of any right-of-way or other easement over any land used or acquired for railway purposes.

(4) Upon the sale of any land under this section, the Governor, in the name and on behalf of His Majesty, upon payment into the Treasury of the purchase-money therefor, together with a grant fee of fifteen shillings, may convey and alienate such land to the purchaser thereof in fee simple and may grant to such purchaser any such easement as is referred to in subsection (3) hereof.

(5) All moneys produced by the sale of any such land, assets, or property as is mentioned in subsection (1) of this section shall be placed to the credit of the loan account in the Treasury from which the moneys originally expended for the acquisition, construction, or provision of such land, assets, or property, as the case may be, were provided, and, in the event of any question arising as to the appropriate loan account to be credited with any such moneys, the Treasurer may, in his absolute discretion, determine to which account such moneys shall be credited: Provided that, in any case in which any land so sold consisted of Crown land which had been set apart for railway purposes, the moneys produced by the sale thereof shall be paid into the Consolidated Revenue.

Division IV.—Powers in Connection with Railway Works.

Use of
materials on
Crown land.
Ib., s. 49.

36 For the purposes of this Act, the Commissioner may—

- i. Fell and carry away timber :
- ii. Dig and use clay, stone, and other material :
- iii. Place and deposit timber, clay, stone, rubbish, waste, spoil, and ballasting—

upon any Crown land occupied by any person under any lease or licence.

Materials from
private land.
Ib., s. 50.

37—(1) For the purposes of this Act, the Commissioner, after fourteen days' notice to the owner or occupier of any land, may—

- i. Enter upon any uncultivated land and fell, carry away, and use indigenous timber, except where the same is used for ornament or shelter :
- ii. Dig, quarry, carry away, and use clay, stone, or other material on such land :
- iii. Place and deposit thereon any materials, waste, or spoil.

1 Geo. V. No. 11.

(2) Compensation shall be made to all parties for the damage sustained by them in respect of the exercise of the powers conferred by this section, and claims for such compensation shall be made and determined as provided by the *Lands Resumption Act* 1910 in the case of compensation payable by the Minister for Lands and Works.

Right of way at
railway crossings.
Ib., s. 53.

38—(1) Where any part of a road, except where it crosses a railway on a level, is acquired for a railway, such part of the road shall thereafter cease to be a highway.

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(2) Where a road crosses a railway on a level, the public right of way at such crossing shall cease whenever any engine, carriage, or other railway vehicle on the railway is approaching and within a distance of one quarter of a mile from such crossing; and shall at all other times extend only to the right of crossing the line of railway with all convenient speed, but not to stopping or continuing thereon.

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(3) Where a bridge is used for railway and ordinary traffic jointly, the public right of way on such bridge shall extend only so far as shall be defined in any by-law made under this Act.

Right of way on joint railway and traffic bridges.

Ib., s. 54.

39—(1) Where a road or street crosses a railway on the level, the Commissioner shall maintain the road and crossing on the railway, and for a distance on each side of thirty-three feet outside the centre-line of any line of rails so crossed; and the authority having charge of the road or street shall maintain the approaches to such crossing, subject to the approval of the Commissioner.

Maintenance of public roads at railway crossings.

Ib., s. 55.

(2) Where a road or street crosses over any railway by means of a bridge, or is crossed by a railway by that means, the structure of such bridge shall be maintained by the Commissioner; but the road or street on or under such structure shall be maintained by the authority having charge of the road or street.

40 Where any Crown lands or any lands reserved for public purposes are acquired for a railway, such land shall cease to be Crown lands or lands reserved for public purposes, but shall be deemed to be land reserved for the use of the railway, and no compensation shall be payable in respect of any such land, except for improvements made thereon.

Where railway made on public reserves, no compensation payable.

Ib., s. 56.

41—(1) Where it is found necessary for the construction of a railway to alter any road, street, tramway, watercourse, or drain, or any other public work, or any water-pipe or gas-pipe for the supply of water or gas belonging to any person, such alterations shall be made in such manner as to interfere as little as possible with the work so altered, and so as to afford to the public and to every person entitled to use the same an equal use and convenience as before such alteration.

Alterations in roads, drains, &c., to be made without detriment to the public or to owners.

Ib., s. 57.

(2) Before commencing any such alteration, the Commissioner shall cause a plan thereof to be prepared, and to be submitted to the authority under whose control the work proposed to be altered is, or to the owner of such sewer, water-pipe or gas-pipe, or other work as the case may be.

(3) If such authority or owner object to the proposed alteration, the Commissioner shall appoint a competent engineer to confer with such authority or owner, and to agree with them or him as to the manner in which such alteration shall be made; and, if no agreement can be come to between the parties, the matter shall be referred to two justices, who may make such order therein as they think fit, and the alteration shall be made in accordance with such order.

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Power to occupy
land temporarily.
Ib., s. 58.

42—(1) Subject to this Act, the Commissioner may temporarily occupy and use any land for the purpose of constructing or repairing a railway, and may—

- i. Take therefrom stone, gravel, earth, and other materials :
- ii. Deposit thereon any such material :
- iii. Form and use temporary roads thereon :
- iv. Manufacture bricks or other materials thereon :
- v. Erect workshops, sheds, and other buildings of a temporary nature thereon.

(2) The Commissioner, before occupying or using any land as provided by this section, and except in the case of accident to a railway requiring immediate repair, shall give to the owner or occupier thereof not less than seven days' notice in writing, and shall state in such notice the use proposed to be made of such land.

(3) The owner or occupier of the land may, within ten days after receiving such notice, and after giving notice to the Commissioner of his intention so to do, apply to any justice, who may thereupon summon the Commissioner to appear before two justices at a time and place to be named in such summons.

(4) If it appears to the justices that the use proposed to be made of such land is unreasonable and unnecessary, or that other neighbouring lands are more suitable to be used for the purpose proposed, the justices may, by writing under their hands, order that such land shall not be occupied or used in the manner proposed ; or the justices may in such order direct that such land may be occupied and used, or material taken therefrom, in such manner, and to such extent only, and subject to such limitations and restrictions, as they think fit ; and all persons concerned shall be bound by any such order.

(5) The owner of any land temporarily occupied for the purposes of a railway may, at any time during such occupation, give notice in writing to the Commissioner that he requires such land to be acquired for the purpose of the railway ; and such land shall thereupon be acquired for the railway as provided by the *Lands Resumption Act* 1911.

Dangerous trees,
&c., to be
removed.

Ib., s. 59 (in-
serted by 8 Geo.
V. No. 7, s. 2).

43—(1) If the Commissioner is of opinion that any trees (whether timber or other trees), being within two hundred feet from either side of the railway, might, by their liability to fall or otherwise obstruct the traffic on or injure any railway, the Commissioner may cause notice to be given to the owner or occupier of the land whereon such trees are situate to remove such trees ; and in default of such removal he may cause the trees to be removed.

(2) Any trees (whether timber or other trees), or scrub, or underwood, which, in the opinion of the Commissioner or an officer duly authorised by him, obstruct or impede, or are likely to obstruct or impede a view of any signal post or crossing from any portion of the railway line which is within one mile in a straight line from any such signal post, or crossing, if the same are growing upon Crown lands, or upon any road, street, or highway, may, after notice to the local or other authority

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having the care or management thereof, be cut down or lopped as may be deemed necessary by the Commissioner or such officer after consultation with such authority ; and, if the same are growing upon private lands, then the proprietor or occupier of such private lands shall cut down or lop the same as and when required so to do by the Commissioner or such officer, and upon default the Commissioner or such officer may enter upon such private lands, and cause such trees, scrub, and underwood to be cut or lopped as may be deemed necessary. A.D. 1935.

(3) This section shall be sufficient to indemnify the Commissioner, and his officers, servants, agents, and workmen, and all persons whomsoever, for what he or any of them shall reasonably do by virtue of the powers granted by this section.

(4) In the exercise of the powers conferred by this section the Commissioner, or any officer so authorised as provided by this section, shall do as little damage as possible, and the Commissioner shall make adequate compensation to all local authorities and persons interested for any damage sustained by them by reason of the exercise of such powers.

(5) The compensation, if the amount cannot be otherwise agreed upon, shall be settled by arbitration under the *Arbitration Act* 1892, in the mode prescribed by that Act, except that a police magistrate nominated by the Minister shall be sole arbitrator, and his decision shall be final.

Division V.—Ferry Steamers, &c.

44—(1) When by any Act any ferry steamer or other vessel is vested in the Minister for the purposes of this Act, the Commissioner shall have and may exercise in relation thereto, so far as the same are applicable, all the powers and authority conferred on him by this Act in relation to railways. Powers of Commissioner as to ferry-steamers &c. 20 Geo. V. No 46, s. 4.

(2) The Commissioner may maintain and carry on such services and undertakings with and by means of any such ferry steamer or other vessel as he may think fit, in such manner and under such conditions as he may determine.

(3) In the exercise of the powers conferred by this section the Commissioner shall be subject to the same duties, obligations, and liabilities, so far as the same are applicable, as are imposed by this Act in relation to railways.

(4) The power of the Commissioner to make by-laws shall extend to the making of by-laws for the purpose of this section.

PART V.

POWERS OF MINISTER.

45 The Minister, with the approval of the Governor, may—

1. Hire or let to any person, upon such terms and conditions as may be agreed on, any locomotives, carriages, wagons or other rolling-stock :

Powers of Minister with Governor's approval. 55 Vict. No. 40, ss. 37, 38.

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- ii. Enter into an arrangement with any person for the grant to the Minister of running powers over, along, and upon any railway under the control of such person, upon such terms and conditions, and for such periods, as may be agreed on.

Powers of Minister with approval of Parliament.

Ib., ss. 39, 40.

46 The Minister, with the approval of Parliament, expressed by a resolution of both Houses may—

- i. Grant to any person, upon such terms and conditions and for such period as Parliament shall think fit, running powers over, along, and upon any railway :
- ii. Enter into an agreement with any person, upon such terms and conditions as may be agreed on, to rent any railway under the control of such person, and to maintain and work, or maintain or work, such railway, and to provide all locomotives, carriages, waggons, and other rolling-stock necessary for that purpose, together with the requisite staff.

Power to lease railway.

Ib., s. 33A (inserted by 22 Geo. V. No. 22).

47 In any case when any line of railway has been closed under this Act, the Minister may grant to any person a licence to use such railway, or any part thereof, upon such terms, and subject to such conditions, as may be arranged between the parties, and as shall be approved by the Governor.

General powers of Minister.

Ib., s. 42.

48 The Minister shall have the following powers with respect to railways :—

- i. To make or extend any railway upon, over, or under any land necessary for the construction thereof, and for this purpose to construct works of every description and of every material necessary to the making thereof :
- ii. To direct that any part of a line of railway may be constructed on and along any part of any road ; and no person or body shall be entitled to any compensation for any road or land so used or occupied, or for or in respect of any inconvenience or damage arising out of the execution of such works to any lands fronting or adjoining any such road :
- iii. To make a railway upon, over, or under any road, street, railway, tramway, or public reserve, and to alter the level of any road, street, railway, tramway, or public reserve for that purpose :
- iv. To make a railway across any arm of the sea, river, stream, or navigable water, but so as not to impede the navigation upon any navigable water, except as provided by a special Act :
- v. To alter the course or the level of any river not navigable, or of any stream, watercourse, ditch, or drain :

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- vi. To make drains or conduits on or under any land adjacent to and for the purpose of carrying water from off the railway ; and to maintain the same in good repair : A.D. 1935.
- vii. To remove or alter any drain or sewer, or any pipes or other material for the supply of water or of gas belonging to any person within or beyond the limits of a railway :
- viii. To make or construct all such buildings, stations, engines, machinery, piers, wharves, roads, approaches, and other works in connection with a railway as may be thought necessary :
- ix. To do all acts necessary for making, maintaining, altering, repairing, and using any railway.

49—(1) The Minister, with the approval of the Governor and out of the moneys to be provided by Parliament for the purpose, may purchase, acquire, and take such land as may be necessary for the purposes of this Act, and may take leases of any land required for the purposes of this Act. Power to purchase land. *Ib.*, s. 43 (21 Geo. V. No. 35).

(2) The Minister may exchange any land acquired in connection with or forming part of any railway for any other land required for that railway in any case where the value of the land so exchanged does not exceed one hundred pounds. Power to exchange land. *Ib.*, s. 44.

PART VI.

THE RAILWAY SERVICE.

Division I.—Appointment and Regulation.

50—(1) All appointments to the Railway Service shall be made by, and tenable during the pleasure of, the Commissioner. Appointment of officers of Railway Service.

(2) The Commissioner may appoint such and so many officers and employees as he thinks fit and may increase or diminish the number of officers. 1 Geo. V. No. 69, s. 27.

(3) The Commissioner shall pay such salaries, wages, and allowances to the officers and employees as he may by regulation prescribe and as Parliament may appropriate for the purpose.

(4) All appointments to permanent offices in the Railway Service shall be made as provided by this Part.

(5) All persons employed by the Commissioner for or in connection with the carrying on of any ferry service under the control of the Commissioner shall be deemed to be employed in the Railway Service.

(6) The provisions of sections forty, forty-one, forty-five, and forty-seven of the *Public Service Act* 1923 shall apply in respect of appointments to the Railway Service, but in the application of such provisions to the Railway Service the duties thereby imposed on the Public Service Commissioner shall be performed by the Secretary for Railways, and the register mentioned in the said section forty-one shall be a register to be kept by the said Secretary of the names of all returned soldiers who make application under the said section forty-five of the said provisions.

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Commissioner to
take security from
officers entrusted
with money.

Ib., s. 29.Officers to
account.*Ib.*, s. 30.

51 Before any person entrusted with the custody and control of moneys enters upon his office, the Commissioner shall take sufficient security from him for the faithful execution of his office in such form as the Commissioner may by regulations direct.

52 Every officer appointed or employed by the Commissioner under this Act shall, when required by the Commissioner, make out and deliver to him, or to any person appointed by him for that purpose, a true and faithful account in writing under his hand of all the moneys received by him on behalf of the Commissioner, and such account shall state how, and to whom, and for what purpose such moneys have been disposed of, and together with such account such officer shall deliver the vouchers and receipts for such payments, and every such officer shall pay to the Commissioner, or to any person appointed by him to receive the same, all moneys which appear to be owing from the officer upon the balance of such account.

Commissioner to
appoint
examiners.

Ib., s. 31.

53 The Commissioner may appoint from the officers of the Department fit and proper persons to be examiners of candidates for employment in each branch of the Railway Service.

Appointment of
additional
persons.

Ib., s. 32.

54—(1) The Commissioner, whenever he requires to employ additional persons in the permanent offices of the Railway Service, shall cause the examiners to hold competitive examinations of the candidates for employment in such subjects as the Commissioner may prescribe.

(2) The Commissioner shall give notice as prescribed of the time and place of such examinations, and the branches for which candidates are required and the subjects for examination.

(3) The names of all competitors who shall at such examinations have satisfied the examiners as to their proficiency shall be registered by the Commissioner in a book to be kept for that purpose, in the order of merit as determined by such examinations; and all appointments of additional persons, then or within one year after the date of such registration required for permanent offices in the branch for which such examinations shall have been held, shall be made from the persons whose names are so registered, and in the order of such registration, if in all other respects the person so to be appointed complies with the prescribed conditions and possesses the prescribed qualifications.

Additional
persons to be
appointed on
probation.

Ib., s. 33.

55—(1) Every appointment of a person to a permanent office shall be made to the lowest class in the branch to which it is made, and on probation only for a period of six months.

(2) After the period of probation, and upon production of a certificate of fitness from the officer at the head of the branch in which the probationer may then be serving, and upon proof to the satisfaction of the Commissioner that all the provisions of this Act, so far as they apply to such probationer, have been complied with, such appointment may be confirmed by the Commissioner.

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56—(1) No probationer shall have his appointment confirmed until he has effected in some life insurance company carrying on business in the State, and approved by the Commissioner, an insurance on his life providing for the payment of a sum of money at his death, should it occur before the age of retirement from the Railway Service, or, if he survive until that age, of a sum of money or annuity on the date of such retirement.

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Appointee to effect an insurance on his life

(2) Such insurance shall be continued, and the amount thereof fixed and increased from time to time, in accordance with regulations to be made by the Commissioner in that behalf.

(3) No policy of insurance so effected shall, during the time such person remains in the Railway Service, be assignable either at law or in equity.

57 The Commissioner, if he thinks fit, may transfer officers and employees from one branch of the Railway Service to any class in another branch, and also may appoint to any class in any branch, without examination, additional persons of known ability.

Transfers of officers and employees.
Ib., s. 35.

58 The officer at the head of any branch of the Railway Service may, if he thinks fit, certify that in his opinion any officer or employee in his branch is entitled to a payment for overtime work; but no payment for overtime work shall be paid without the authority of the Commissioner.

Overtime payments.
Ib., s. 36.

59—(1) The Commissioner shall keep a book, to be called the "Record-book," and shall record therein the names of all persons in the Railway Service, and the class, position or grade, the length of service, salaries, and such other particulars with regard to such persons as he thinks fit, and shall cause entries to be made in such record-book of deaths, dismissals, resignations, promotions, and reductions, and shall, in the month of July in every year, publish in the Gazette a list, arranged according to classes and branches, of the persons then employed in the Railway Service.

Record-book to be kept.
Ib., s. 37.

(2) The list to be published as provided by subsection (1) of this section shall contain a list of the railway branches in the Railway Service, and the names of the officers respectively having the charge or control of each branch.

7 Geo. V. No. 48,
s. 7.

60 The Commissioner may make regulations for the purposes of this Part, and in particular for—

Regulations.
1 Geo. V. No. 69, ss. 38 & 39.

- i. Prescribing the qualifications required in all candidates for permanent employment in the Railway Service, and the subjects for examination of all candidates for employment in the various branches thereof:
- ii. Determining the number of branches of the Railway Service:

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- iii. Determining the number and relative rank of classes in the various branches, and the maximum and minimum salaries payable to the officers of each class, and the annual increase of such salaries :
- iv. Determining the wages to be paid to the officers and employees temporarily employed in the Railway Service :
- v. Regulating the duties to be performed by employees in the Railway Service, and the discipline to be observed in the performance of such duties, the granting of leave of absence from time to time, and sick pay, and arranging for the performance of duties during holidays :
- vi. Fixing the ages at which employees shall retire in the different branches of the Railway Service :
- vii. Regulating and determining the scale on which employees in the various classes of the railway service shall effect insurance policies on their lives for the payment to them of a sum of money at death or for an endowment or annuity at the date of their attaining the age of retirement from the Railway Service :
- viii. Regulating the purchase, care, custody, and issue of stores and materials, and the taking and keeping of the accounts relating thereto.

*Division II.—Discipline.*Powers of officers
as heads of
branches.7 Geo. V. No. 48,
s. 5.

Appeal.

61—(1) The officer at the head of each branch of the Railway Service shall have the power with respect to any employee in his branch who has been guilty of misconduct, or of breaking any rule, by-law, or regulation of the Railway Service—

- i. To caution, admonish, or censure him : or
- ii. To suspend him.

(2) Every such employee shall, subject to the provisions of this Part, have a right of appeal to the Commissioner in the first instance, and then to the Board as hereinafter provided.

(3) The Commissioner shall have power with respect to any employee or officer of the Railway Service who has been guilty of misconduct, or of breaking any rule, by-law, or regulation of the Railway Service—

- i. To caution, admonish, or censure him :
- ii. To suspend or dismiss him :
- iii. To fine him in a sum not exceeding five pounds, to be deducted from his pay : or
- iv. To reduce him in rank, position, grade, or pay—

and every such employee or officer shall have the right of appeal to the Board, except in any case where the punishment is inflicted under paragraph i. of this subsection, or the fine inflicted under paragraph iii. does not exceed five shillings.

(4) Any employee or officer of the Railway Service shall have a right of appeal to the Board against any order of the Commissioner made under section ninety-six for the payment or deduction of any sum exceeding five shillings.

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(5) All sums deducted by way of fine from the pay of any employee or officer shall be paid into the Railway Reward Fund, constituted under section ninety nine.

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62 The Commissioner shall hear appeals from employees from any decision of any officer at the head of a branch of the Railway Service under section sixty-one, and may confirm, modify, or quash any decision of such officer.

Commissioner to hear appeals from decision of head of branch.

Ib., s. 6.

63 In no case shall any person who has been dismissed for speculation or drunkenness be again appointed on the permanent staff of the Railway Service.

Dismissals for speculation or drunkenness.

Ib., s. 24.*Division III.—Railway Service Appeal Board.*

64—(1) For the purposes of this Part there shall be a Board, to be called the Railway Service Appeal Board (in this part referred to as “the Board”).

Appeal Board.

Ib., s. 8.

(2) The elected members of the Board constituted under the *Railway Service Appeal Board Act 1917* holding office at the commencement of this Act shall continue in office, subject to this Act, until the expiration of the respective periods for which they were elected.

65—(1) The Board shall consist of the following members:—

Constitution of Board.

I. A police magistrate, who shall be appointed by the Governor:

II. Seven employees (hereinafter called “the employees’ representatives”) who shall be elected as provided by this section:

Ib., s. 9 (as amended—see 13 Geo. V. No. 52 and 17 Geo. V. No. 7).

and
III. Three persons who shall be the holders of such offices in the Railway Service as may be prescribed under this Part:

(2) The Board when sitting for the purposes of any appeal shall be composed of the member who is a police magistrate; one of the prescribed officers of the Railway Service who shall not be the head of the branch in which the appellant is actually employed and who shall be selected by the Commissioner; and the employees’ representative who is employed in the branch in which the appellant is actually employed, or to which he is deemed to be attached; and for this purpose the several branches shall be the—

I. Way and Works Branch:

II. Rolling Stock (Running Staff) Branch:

III. Rolling Stock (Ironworkers) Branch:

IV. Rolling Stock (other than Running Staff and Ironworkers’ Branch):

V. Traffic (other than Salaried Officers) Branch:

VI. Salaried Officers Branch: and

VII. Stationmasters Branch—

and employees in a ferry service shall be attached to and be part of the Traffic Branch, except masters or captains and engineers who shall be included in the Salaried Officers Branch.

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(3) The employees' representatives shall be elected respectively by ballot in the prescribed manner by the respective employees employed in or attached to the respective Branches set forth in subsection (2) hereof.

(4) Each employee at such election shall have one vote.

(5) If two or more employees in any branch obtain an equal number of votes at any such election, the election for that branch shall be determined by lot.

(6) The employees' representatives shall hold office for three years, but any employees' representative who ceases to belong to the Railway Service shall cease to be a member of the Board.

(7) The member of the Board who is a police magistrate shall be the Chairman of the Board at any meeting at which he is present.

(8) In the absence of the member of the Board who is a police magistrate from any meeting of the Board, the Governor shall appoint some other police magistrate to act as Chairman for that meeting, and the police magistrate so appointed shall have all the powers and perform all the duties of a member of the Board during the meeting for which he is appointed.

(9) In any case where the employees in or attached to any branch fail to nominate for election, or to elect, a representative of the branch as prescribed, the Governor may appoint one of such employees as the representative for that branch, and the employee so appointed shall be deemed to have been elected under this section, and shall hold office accordingly.

Ib., s. 12.

(10) In the event of a member of the Board, who is the employees' representative for any branch of the service, being unable through illness, or temporary disability, to sit on the hearing of any appeal, the Governor shall appoint some other qualified person from the same branch to sit as the deputy of such member of the Board.

(11) Where possible the deputy to be so appointed shall be the employee who at the election for that branch received the greatest number of votes received by an unsuccessful candidate.

(12) In the event of none of the officers mentioned in paragraph III. of subsection (1) of section sixty-five being available to sit on the hearing of any appeal, the Commissioner shall appoint some other qualified officer of the service who is not in the branch in which the appellant is actually employed, to sit as a deputy-member of the Board.

(13) Every deputy-member of the Board shall, for the time during which he acts as deputy, have all the powers and perform all the duties of a member of the Board.

Extraordinary
vacancies.*Ib.*, s. 14.

66—(1) If any member of the Board shall die or be absent without reasonable excuse from three consecutive meetings of the Board, or become incapable of acting on the Board, or go to reside abroad, or resign, or desire to be discharged from the Board, or be guilty of misconduct, or leave, or be dismissed or discharged from the Railway Service, the Governor shall declare his office vacant, and shall appoint some other qualified person to fill the vacancy.

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(2) Where possible the successor to the employees' representative for any branch of the service shall be the employee who at the election for that branch received the greatest number of votes received by an unsuccessful candidate. A.D. 1935.

(3) A member appointed as provided by this section shall, subject to this Act, hold office for the unexpired portion of the term of office of the member in whose place he is so appointed.

67 Any question or dispute arising as to the regularity or validity of any election of any employees' representative, or the voting thereat, shall be determined by the Minister, and his decision shall be final. Minister to determine questions arising as to elections.

68 The Governor may appoint a secretary to the Board. *Ib.*, s. 15.
Secretary to Board.

69 The Board shall investigate every appeal to the Board under this Part made by an officer or employee, and may confirm, alter, modify, or quash any decision appealed against; or may suspend such officer or employee, or, if he has already been suspended, may remove such suspension, and may allow him, if the Board thinks fit, his salary or pay during the whole or such part of the period of suspension as the Board may determine, or may further suspend him for any period not exceeding six months without pay, or may inflict a fine to be deducted from his pay, or may dismiss him; or may reinstate any such officer or employee who may have been dismissed, or may make such other order as the Board thinks fit. (13 Geo. V. No. 52, s. 3.)
Powers of Board. (7 Geo. V. No. 48, s. 16.)

70—(1) Every appeal to the Board shall be in writing, and shall be lodged with the secretary to the Board or with some officer appointed for that purpose by the Board, within fourteen days after the date of the decision which is appealed against, and shall be heard within thirty days of the appeal being lodged. Mode of appeal. *Ib.*, s. 17.

(2) The appellant in such appeal shall set forth— *Ib.*, s. 18.

- i. A concise statement of his case;
- ii. The grounds of the appeal; and
- iii. The name and address of the appellant.

(3) Immediately upon the receipt of a notice of appeal the Secretary shall forward the same to the Chairman, who shall thereupon— *Ib.*, s. 19.

- i. Fix a time and place for hearing the appeal; and
- ii. Cause notice to be given to the other members of the Board, and the parties directly interested in the appeal, of the time and place of the hearing.

71—(1) The Board before whom any appeal is heard, on the hearing of any appeal, may take evidence in such manner as the Board may deem proper, either on oath or otherwise: Provided that, if the appellant requests that an oath be administered to any witness present at the hearing, such witness shall not be permitted to give evidence except on oath. Procedure. *Ib.*, s. 20.

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1 Geo. V. No. 20.

(2) The provisions of Division II. of Part II. of the *Evidence Act* 1910 shall apply in the case of the Board as if the Governor had issued a commission to the persons constituting the Board for the purposes of any appeal, to make an enquiry, and such provisions shall, so far as the same are applicable, be deemed to be incorporated with this Act.

(3) No legal practitioner, and no agent, other than an officer or other employee in the Railway Service (not being a legal practitioner), shall appear or be heard on any appeal; but the appellant may appear in person, or may be represented by another officer or employee in the Railway Service; and the Railway Department may be represented by the Commissioner or some officer of the Railway Service appointed by the Commissioner for that purpose.

(4) Subject to this Act the Board may regulate its own procedure.

Costs.

Ib., s. 21.

72—(1) In disposing of an appeal the Board may fix the costs thereof, and direct by whom and in what proportions they shall be payable, and they shall be payable accordingly.

(2) Any costs so ordered to be paid by an appellant—

- i. May be deducted by the head officer of the appellant's branch of the Railway Service from any wages or salary due or becoming due to the appellant: or
- ii. May be recovered from the appellant as a debt due to the Crown.

(3) Any costs so ordered to be paid to the appellant may be recovered from the Commissioner in any court of competent jurisdiction as a debt due to the appellant, or in a summary way.

Decision of Board.

Ib., s. 22.

73—(1) All the powers of the Board may be exercised by a majority of the members present at any meeting of the Board.

(2) Every decision of the Board shall be final, and shall be given effect to by the Commissioner or other responsible officer of the Railway Service.

Commissioner to produce books.

Ib., s. 23.

74 The Commissioner, when required in writing by the Chairman or Secretary of the Board, either by himself or some officer on his behalf, shall produce all books, papers, writings, and documents in his possession or control having reference to or connected with any matter in issue in any appeal.

Regulations.

Ib., s. 25.

75 The Governor may make regulations for the purposes of this Part, and in particular for—

- i. The conduct of the elections of the persons required to be elected under this Part:
- ii. The conduct of appeals made to the Commissioner, under this Part, and for giving effect to any decisions thereunder:

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- iii. Regulating the procedure of the Board concerning appeals to the Board, the conduct of such appeals, and the method of taking evidence thereat and at a distance and for giving effect to any decision of the Board thereunder : A.D. 1935.
- iv. Regulating generally the mode, manner, and time of election of the elective member of the Board, and generally for the management and conduct of any such election, and providing facilities to the officers and employees of the Railway Service for voting at elections required by this Part :
- v. The attendance of the elected persons at any sittings of the Board to which they may be elected :
- vi. Prescribing the allowances to witnesses for their expenses.

PART VII.

LIABILITIES FOR PERSONAL INJURY.

Division I.—Actions by Passengers.

76—(1) Where an action is brought against the Commissioner for injuries occasioned by any wrongful act, neglect, or default of the Commissioner as carrier of passengers, if the Commissioner, within ten days after the service of the writ of summons or summons under the *Local Courts Act 1896* (as the case may be) shall give to the plaintiff written notice that he admits the cause of action, but that he disputes the amount of his liability, the following provisions shall apply—

Actions against
Commissioner as
carrier of
passengers.
6 Ed. VII. No.
10.
Ct. Vic., No. 3759,
s. 204.

- i. On the defendant delivering such written notice to the plaintiff, the action shall be stayed until the plaintiff delivers to the Crown Solicitor a statement setting forth the particulars specified in the second schedule, unless a judge orders that any of such particulars may be omitted from such statement :
- ii. The plaintiff or, if the plaintiff is physically unable so to do, then some credible person on his behalf shall verify such statement by a statutory declaration unless a judge dispenses with such declaration :
- iii. Every medical practitioner attending the person injured for the injuries in respect of which the action is brought, within seven days after being required by the plaintiff in writing so to do, or within such further time as a judge may order, shall deliver to the plaintiff a full statement of his fees, setting out each attendance with the date thereof and the amount charged for each attendance and, if any operation has been performed, the nature thereof and the amount charged therefor :

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- iv. In the event of the action being heard before a judge or a judge and jury, the judge or the jury, as the case may be, shall, on the hearing of the action, assess the amount to be paid to such practitioner :
- v. Within ten days after the delivery of such statement of the plaintiff to him, the defendant shall be at liberty to make an offer in writing to the plaintiff, or to his solicitor, of an amount in full satisfaction of the cause of action ; and, if such offer is accepted by the plaintiff, judgment shall be entered forthwith for the amount thereof and costs :
- vi. If within ten days after the delivery of the defendant's offer, or within such further time as a judge may order, such offer is not accepted by the plaintiff, he may then proceed with the action as if no such offer had been made :
- vii. If the action is tried by a judge with a jury, no communication of the amount offered by the defendant as provided by this section shall be made to the jury :
- viii. Unless the plaintiff recovers more than the amount offered, he shall pay the costs of the action ; but, if the plaintiff recovers more than such amount, the defendant shall pay such costs.

60 Vict. No. 48.

(2) The expression " judge " in subsection (1) of this section shall include, in the case of actions brought under the *Local Courts Act* 1896, a Commissioner as defined by that Act.

Division II.—Limitation of Liability.

Limit of damages for personal injury.
Ib., s. 23B.

77—(1) In any action against the Commissioner to recover damages or compensation in respect of personal injury, the court or jury shall not find or assess, nor shall judgment be given or entered for the plaintiff for any amount exceeding—

- i. If the personal injury results in death or permanent disablement, two thousand pounds : or
- ii. If the personal injury results in temporary disablement, one thousand pounds.

Plaintiff in action for personal injury to submit to examination.
Ib., s. 23c.

78 When any person claims damages or compensation from the Commissioner in respect of any alleged personal injury not resulting in death, such person shall, if so required by the Commissioner, submit himself for examination by a medical practitioner, or medical practitioners, appointed by the Commissioner, at all such reasonable times as the Commissioner may require, and, if he refuses to submit himself for examination or in any way obstructs the same, his right to damages or compensation, and to take or prosecute any proceedings in relation thereto, shall be suspended until such examination has taken place.

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PART VIII.

OFFENCES.

79 No person shall knowingly or wilfully make any false statement as to the nature, quantity, or value of any goods delivered upon a railway, in any way-bill or other document which he is required to deliver with respect to such goods.

False statements.
55 Vict. No. 40,
s. 18.

Penalty : Fifty pounds.

80—(1) No person shall send or attempt to send by any railway, or deposit in any premises of a railway, any box or package containing dangerous goods, without distinctly marking the contents thereof on the outside of the box or package, or giving notice of the contents in writing to the officer in charge of the station at which the box or package is left.

Dangerous goods
Ib., s. 22.

Penalty : Fifty pounds.

(2) In this section, “dangerous goods” means goods declared by by-law to be dangerous goods.

81 No person shall, except with the lawful authority or written permission of the Commissioner—

Injuries to
railways.
Ib., s. 24.

- i. Encroach on a railway, by making any building, fence, ditch or other obstacle, or planting any tree or shrub thereon :
- ii. Dig up, remove, or alter in any way the soil or surface of a railway :
- iii. Fill up, divert, alter, or obstruct any ditch, drain, or watercourse directly carrying water off a railway, or made to protect the same ; or do any act whereby any such ditch drain, or watercourse is stopped, or the natural flow of water therein is obstructed :
- iv. Interfere with or divert any drain or watercourse so as to damage or injure any railway :
- v. Fell or remove any tree, shrub, or timber growing on any railway :
- vi. Interfere with, move, injure, or damage any pole, stake, mark, or instrument used for the purpose of surveying or marking out any railway, or otherwise in connection therewith.

Penalty : One hundred pounds and a daily penalty of ten pounds, together with a further sum equal to the cost incurred in removing any such encroachment or obstruction, or in repairing any injury done to the railway.

82 No person shall knowingly and wilfully or negligently—

- i. Throw stones, gravel, timber, or any rubbish on a railway, or at any engine, carriage, or waggon thereon :

Interfering with
railways.
Ib., s. 25.
(See 18 Geo. V.
No. 50, s. 2).

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- ii. Drive any animal, or cause or allow any animal to wander on any portion of any railway where such portion is fenced on both sides, or in any station-yard or premises :
- iii. Do any act which obstructs or might obstruct the working of a railway, or endangers or might endanger the lives of persons travelling thereon :
- iv. Drive or attempt to drive any vehicle or animal across a level crossing or elsewhere on a railway when an engine or any carriages or wagons on the railway are approaching and within a quarter of a mile from such crossing :
- v. Place any rolling-stock on a railway without authority to do so :
- vi. Move any part of the rolling-stock on any railway, or leave the same on any part of a railway, without lawful authority so to do.

Penalty : Fifty pounds.

Polluting railway
or reservoir.
12 Geo. V. No.
64, s. 9.

83—(1) No person shall permit to flow or empty, or place, or cause, or suffer to flow, or to be emptied or placed, any sewage, night-soil, drainage, or other offensive matter, on to or upon any railway.

Penalty : Fifty pounds.

(2) No person shall bathe in or pollute the water of any reservoir or tank belonging to or connected with any railway.

Penalty : Fifty pounds.

Unauthorised
sale, &c., of
tickets.
Ib., s. 10.

84—(1) Unless authorised by the Commissioner so to do, no person shall sell, or exchange, or transfer or offer to sell or exchange, or transfer the whole or any part of a ticket issued in connection with the State railways.

Penalty : Twenty pounds.

(2) No person shall use upon any railway any ticket sold, exchanged, or transferred, whether in this State or elsewhere, without the authority of the Commissioner.

Penalty : Twenty pounds.

(3) No person shall—

- i. Without lawful authority or excuse, make or bring into Tasmania, any ticket in connection with the State railways : or
- ii. Counterfeit any ticket in connection with the State railways.

Penalty : Fifty pounds, or twelve months' imprisonment.

Travelling
without ticket, &c.
Ib., s. 11.

85 No person, without reasonable excuse, shall—

- i. Travel or attempt to travel by railway without having previously paid his fare :
- ii. Having paid his fare for a certain distance, proceed by railway beyond such distance without previously paying the additional fare for the additional distance :

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III. Refuse or neglect to quit the railway on arriving at the point to which he has paid his fare. A.D. 1935.

Penalty: Ten pounds, in addition to the fare or difference in fare properly payable.

86 No person—

- i. Being employed to open and shut any gate placed across any public road crossed by any railway, shall fail or neglect to open such gate so soon as the trains have passed :
- ii After using any gate—
 - (a) Placed across any public road crossed by any railway : or
 - (b) Providing access to, or egress from, any railway— and not being in charge of any person employed as aforesaid shall fail or neglect to close such gate forthwith after such user.

Offences in connection with gates.
55 Vict. No. 40,
s. 31.

Penalty: Ten pounds.

87 No person shall knowingly and wilfully—

- i. Deface the writing on any board or any notice authorised to be maintained on any railway, or any railway carriage, or rolling-stock, or any railway station :
- ii. Damage any railway, or any engine, carriage, truck, wagon, or any material or rolling-stock used upon any railway :
- iii. Behave in a violent or offensive manner to the annoyance of others, or be drunk, on any railway or in any carriage thereon :
- iv. Alter any ticket with intent to avoid payment of the proper fare or any part thereof :
- v. Sell or offer for sale or transfer any free-pass ticket, or permit any person other than the person to whom such free-pass ticket is issued to make any use of such ticket :
- vi. Use any ticket, the time for the proper use of which has expired :
- vii. Travel in any railway carriage of a class superior to that for which he is provided with a ticket :
- viii. Write any indecent words, or draw any indecent or obscene picture or representation on any part of a railway, or on any railway carriage or rolling-stock, or on any fences or buildings upon or adjoining any railway, or near to and conspicuous from any railway :
- ix. Affix any placard or bill on any part of the buildings or fences upon or connected with any railway, or sell any articles on any railway without the authority of the Commissioner :
- x. Neglect to shut any gate or slip-panel in any fence forming the boundary of, or upon, or adjoining any railway :
- xi Trespass upon any part of a railway not being a station, platform, or railway crossing, or some other part to which the public are allowed access :

Minor offences.
Ib., ss. 26, 27.

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Ib., s. 60.

xii. Trespass upon any railway in the course of construction, or upon any land occupied for the purposes of railway construction : or

xiii. Ride or drive, without lawful authority, any animal or vehicle upon any railway in course of construction or upon any land occupied for the purposes of railway construction.

Penalty : Ten pounds.

Onus of proof.

15 Geo. V. No. 56, s. 2.

88 In any proceedings in respect of any contravention of any of the provisions of this Part, the allegations set forth in the complaint shall be deemed to be proved in the absence of proof by the defendant to the contrary.

PART IX.

MISCELLANEOUS.

Division I.—Procedure and Evidence.

Liability for loss after transit restricted.

12 Geo. V. No. 64, s. 23A.

89 When any goods delivered to be carried along or upon any railway have been carried safely to the place to which the Commissioner has undertaken to carry them, the Commissioner, after the expiration of eight working hours from their arrival at such place, shall be responsible only as bailee for custody in respect of any damage or loss that may arise or accrue with reference to such goods.

Commissioner may inspect contents of packages.

Ib., s. 23D.

90 The Commissioner, or any officer in charge of a station or siding, in the presence of a witness, may test, gauge, or open any cask, case, package, parcel, or consignment of goods delivered or offered to the Commissioner for transmission by railway, and may examine and inspect the contents thereof in order to ascertain and determine whether the description, value, quantity, number, nature, and character of such contents are correctly described in the consignment note, invoice, or bill of lading relating to such cask, case, package, parcel, or consignment, and such goods shall be properly repacked by the Commissioner or such officer.

Proof of fares, conditions, and regulations.

Ib., s. 23E.

91 Any publication purporting to contain a list of any fares, rates, or charges fixed by the Commissioner, or any time-tables, conditions, or regulations made or imposed by him under this Act, and which purports to be printed by authority of the Commissioner, shall be *prima facie* evidence that the fares, rates, charges, time-tables, conditions, and regulations contained therein were fixed, made, or imposed by the Commissioner, and that they are still in force.

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92 The printing or writing, by way of endorsement or otherwise, of the words "subject to the *Railway Management Act 1935*" on any ticket, receipt, consignment note, or other instrument or document issued by the Commissioner, or used or employed in connection with a railway, shall, for all purposes, be a sufficient notice of any such publication as is mentioned in section ninety-one, and of the contents of such publication, to any person to whom such ticket or receipt is issued or given, or who uses or is concerned or interested in such consignment note or other instrument or document; and for the purpose of the application of anything contained in such publication to such ticket, receipt, consignment note, or other instrument or document as aforesaid, it shall not be necessary to print, write, or otherwise delineate thereon any portion or portions of such publication, but such portion or portions of such publications as are applicable to any such ticket, receipt, consignment note, or other instrument or document, as aforesaid, shall be deemed to be written or printed thereon and incorporated therewith.

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Effect of endorsement of certain words on railway documents.

Ib., s. 23F.

93—(1) Whenever any contravention of this Act or the breach of any by-law made thereunder would be attended with danger or annoyance to the public, or hindrance to any of the officers or employees in the lawful use of any railway, such officers or employees, or any of them, may summarily interfere to obviate or remove such danger, annoyance, or hindrance, without prejudice to the recovery or enforcement of any penalty incurred by any such contravention or breach.

Detention in certain cases.

12 Geo. V. No. 64, s. 12.

(2) Any officer or employee in the Railway Service, and all persons called by him to his assistance, may seize and detain any person committing, or attempting to commit, or who has committed any such offence as is mentioned in section eighty-five, and whose name and address are unknown to such officer or employee, and may give him in charge to a police officer.

94 Any police officer, or any officer or employee in the Railway Service, may arrest without warrant any person who—

Power of arrest in certain cases.

55 Vict. No. 40, s. 30.

- i. Trespasses upon a railway, and refuses to leave after being warned by any officer or servant employed thereon :
- ii. Is drunk or behaves in a violent or offensive manner to the annoyance of others on the railway or at any station or platform thereof, or in any carriage or railway vehicle thereon :
- iii. Obstructs or impedes any officer or employee of the Railway Service in the performance of his duty : or
- iv. Does or attempts to do, or instigates, aids, or assists another person to do, anything which may endanger the lives of persons employed on or travelling on the railway.

95 Any police officer may arrest without warrant any officer or employee of the Railway Service who—

Power to arrest railway employees.

Ib., s. 32.

- i. Is found drunk while on duty :
- ii. Commits any offence against any by-law : or

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III. Wilfully, maliciously, or negligently does or omits to do any act whereby any person passing along or being upon any railway is or might be injured, or whereby the passage of any engine, carriage, or train is or might be obstructed or impeded.

Division II.—Officers' Responsibility.

Responsibility for damage.
Ib., s. 17.

96—(1) Every officer and employee of the Railway Service shall be responsible for any damage caused by the wrongful act or neglect of such officer or employee.

(2) The Commissioner may deduct from the salary or pay of any such officer or employee the loss occasioned by any such wrongful act or default, or may recover the same in a summary way.

Division III.—Recovery and Appropriation of Moneys.

Recovery of charges.
12 Geo. V. No. 64, s. 14.

97 In any case where default is made in the payment of any amount due in respect of the conveyance of any passenger, or the carriage or custody of any goods, under the authority of this Act, the same may be recovered by the Commissioner in any court of competent jurisdiction, or in a summary way.

Appropriation.
55 Vict. No. 40, s. 65.

98—(1) Subject to this Act, all moneys received by any person by virtue of this Act, and all penalties and sums of money imposed or made payable by this Act, shall be paid into the Consolidated Revenue.

(2) All moneys or penalties received or recovered from any person under any by-law shall be paid into and form part of the Railway Reward Fund constituted under section ninety-nine.

Division IV.—Railway Reward Fund.

Railway Reward Fund.
20 Geo. V. No. 46, s. 2.

99—(1) There shall be a fund, to be called "The Railway Reward Fund," into which shall be paid all moneys received as provided by subsection (2) of section ninety-eight.

(2) All moneys forming part of the Railway Reward Fund as existing at the commencement of this Act shall form part of the Fund hereby constituted.

(3) The fund and the accumulations thereof shall be vested in the Minister, the Commissioner, and the Auditor-General as Commissioners of the Fund, and shall be managed and invested by such Commissioners, and shall be disbursed by them in such manner as they think fit by way of rewards for special services rendered, and meritorious conduct, in connection with any railway.

(4) When the amount standing to the credit of the Fund exceeds two hundred pounds, the Commissioners of the Fund may apply so much of the excess as they think fit in assisting, in such manner as they think fit, any welfare scheme for officers and employees of the Railway Service instituted by any organisation of such officers and employees, and approved by the Minister.

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(5) The Commissioner may remit any fine inflicted on any officer or employee of the Railway Service under any by-law or regulation, and, when such fine has been paid, the amount thereof may be repaid from the Fund to such employee by the Commissioners of the Fund. A.D. 1935.

Division V.—Closing Railways.

100—(1) The Governor at any time, by proclamation, upon the recommendation of the Commissioner, may permanently close and discontinue the use of any line of railway specified in the proclamation. Closing railways.
20 Geo. V. No.
46, s. 6.

(2) The closing and discontinuance of the use of any line of railway under this section shall not take effect until after the expiration of a period of three months from the date of the publication of the proclamation in the Gazette.

(3) After the expiration of such period of three months, if the proclamation is then in force, the Minister may cause to be pulled up, dismantled, demolished and removed any such line of railway together with all such buildings, erections, structures, works, and appurtenances used or occupied in connection with such line of railway as the Minister thinks fit.

Division VI.—Miscellaneous.

101 No building or other erection upon a railway shall be subject to any Act, or any by-laws or regulations made thereunder, by which any local authority is empowered to regulate the erection, construction, or use of any buildings or erections within the jurisdiction of such local authority. Exception of
railway buildings
from local
building regu-
lations.
55 Vict. No. 40,
s. 61.

102 No part of any railway shall be open for traffic until the Director of Public Works has reported to the Commissioner that he has inspected the whole of such part of the railway, and that such railway is in good and efficient repair, and may be safely used for public traffic thereon. Requirements as
to opening rail-
way for traffic.
Ib., s. 10.

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THE FIRST SCHEDULE.

ACTS REPEALED.

Regnal Year and Number.	Title of Act.
55 Vict. No. 40	<i>The Railway Management Act 1891.</i>
57 Vict. No. 16	<i>The Railway Management Act 1893.</i>
1 Ed. VII. No. 30	<i>The Railway Management Amendment Act 1901.</i>
6 Ed. VII. No. 10	<i>The Railway Passengers' Actions Act 1906.</i>
1 Geo. V. No. 69	<i>The Railway Management Act 1910</i>
7 Geo. V. No. 48	<i>The Railway Service Appeal Board Act 1917.</i>
8 Geo. V. No. 7	<i>The Railway Management Act 1917.</i>
8 Geo. V. No. 9	<i>The Railway Management Act (No. 2) 1917.</i>
12 Geo. V. No. 7	<i>The Railway Management Act 1921</i>
12 Geo. V. No. 64	<i>The Railway Management Act (No. 2) 1921.</i>
13 Geo. V. No. 52	<i>The Railway Service Appeal Board Act 1923.</i>
14 Geo. V. No. 48	<i>The Railway Management Act 1924.</i>
15 Geo. V. No. 2	<i>The Railway Management Act (No. 2) 1924.</i>
15 Geo. V. No. 56	<i>The Railway Management Act (No. 3) 1924.</i>
16 Geo. V. No. 13	<i>The Railway Management Act 1925.</i>
16 Geo. V. No. 89	<i>The Railway Service Appeal Board Act 1926.</i>
17 Geo. V. No. 7	<i>The Railway Service Appeal Board Act (No. 2) 1926.</i>
18 Geo. V. No. 50	<i>The Railway Management Act 1927.</i>
20 Geo. V. No. 46	<i>The Railway Management Act 1929.</i>
21 Geo. V. No. 35	<i>The Railway Management Act 1930.</i>
22 Geo. V. No. 22	<i>The Railway Management Act 1931.</i>
22 Geo. V. No. 33	<i>The Railway Service Appeal Board Act 1931.</i>
24 Geo. V. No. 20	<i>The Railway Management Act 1933.</i>
24 Geo. V. No. 21	<i>The Railway Service Appeal Board Act 1933.</i>
25 Geo. V. No. 37	<i>The Railway Management Act 1934.</i>

THE SECOND SCHEDULE.

Section 96.

- I. Plaintiff's occupation for three years preceding the commencement of the action.
- II. Nature of the injury, and if plaintiff believes it to be permanent; reasons and grounds of such belief.
- III. Net annual earnings or income for three years preceding the commencement of action.
- IV. The amount claimed for injury irrespective of all other claims arising out of or in consequence of the injury.
- V. The name or names of the medical practitioner or practitioners who attended the plaintiff in consequence of the injury.
- VI. Particulars of the respective amounts claimed for medical necessaries, comforts, nursing, medicines, medical appliances, and other claims arising out of the injury; and
- VII. A copy of the full statement of fees as prescribed by paragraph III. of section 76.