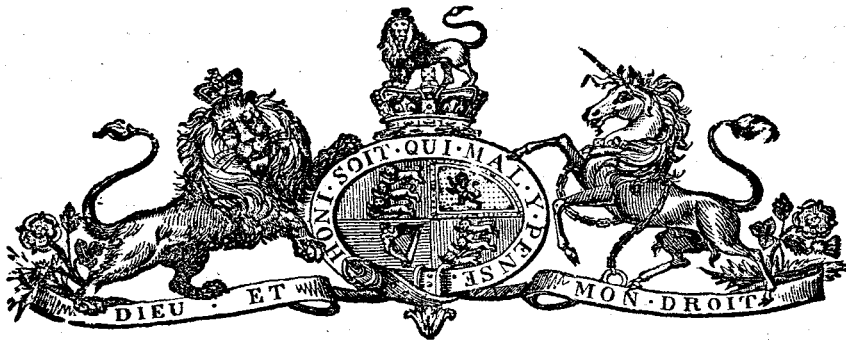


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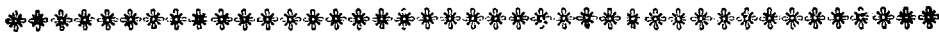


1869.

ANNO TRICESIMO-TERTIO

VICTORIÆ REGINÆ,

No. 8.



AN ACT to consolidate and amend the Laws relating to Cross and Bye Roads.

[22 October, 1869.]

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 :—

*Interpretation.*

1 In the construction and for the purposes of this Act, and of all proceedings under this Act, the following terms shall have the respective meanings hereafter assigned to them, except where there is something in the context repugnant to such construction ; that is to say, Interpretation.

“ Trustees ” shall mean the Trustees for the time being of the Road District for which they have been elected : “ Trustees.”

“ Road ” shall mean a Cross Road, and shall extend to and include all Bridges and Culverts along the Line of Road, and the Footpaths at the side of the Road : “ Road.”

“ Toll-gate ” shall extend to and include Toll-bars, Toll-houses, and all other erections, buildings, and things built, set up, or made for any purpose connected with the collection of Tolls : “ Toll-gate.”

“ Landholder ” shall extend to and include the Owner of any property situate within the Road District of the Annual Value of not less than Five Pounds, or the Occupier of any Property situate within the Road District of the Annual Value of not less than Ten Pounds : “ Landholder.”

“ Property ” shall mean Lands and Buildings : “ Property.”

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*Cross and Bye Roads Act, 1870.*

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“Valuation Roll.”

“Valuation Roll” shall mean and include every Valuation Roll in force for the time being, made under the authority of *The Property Valuation Act*, and every Assessment Roll in force for the time being, made under the authority of *The Rural Municipalities Act, 1865*, in which any property situate within the Road District is comprised.

*Application of Act.*

Application of Act.

**2** The provisions of this Act shall be construed to be applicable in respect of each Road District.

*Road Districts.*

Governor empowered to divide Colony into Road Districts.

**3** The Governor is hereby empowered, by and with the advice of the Executive Council, from time to time, by Proclamation—

- (1.) To declare any such portion of the Colony as to him seems meet as and to be a Road District for the purposes of this Act :
- (2.) To define the boundaries of any Road District :
- (3.) To assign a specific name to any Road District :
- (4.) To alter and re-define the boundaries of any Road District :
- (5.) To assign to any Road District a new name in the place of the name theretofore assigned to such Road District :
- (6.) To abolish any Road District.

Proclamation of new Road District to direct when first Meeting for election of Trustees to be held.

**4** When any portion of the Colony is proclaimed by the Governor in Council as and to be a Road District for the purposes of this Act, the Governor shall, in such Proclamation, direct that, at a time and place therein named, there shall be held within the said District a Meeting of the Landholders of such District for the purpose of electing from amongst the Landholders of such District either Five or Seven persons, as fixed by such Proclamation, as and to be Trustees of such Road District for the purposes of this Act ; and such Election shall be held accordingly.

District as re-defined to be substituted for former District.

**5** When the boundaries of any Road District are altered, the Road District as altered shall be deemed to be substituted for the Road District so altered, and the Trustees of the Road District before it was altered shall be the Trustees of the Road District as altered.

Assigning new name not to affect District.

**6** The assigning of a new name to any Road District shall not affect the powers of the Trustees, or any other matter relating to the Road District.

*Municipal Road Districts.*

Municipalities to continue Road Districts.

**7** Whenever before the passing of this Act the Public Roads within any Municipality have been placed under the care and management of such Municipality, such Municipality shall be deemed to be a Road District, and the Municipal Council of such Municipality shall be deemed to be the Trustees thereof, and the Councillors of such Municipality shall hold office as Trustees during the tenure of their office as Councillors, anything to the contrary in this Act contained notwithstanding : Provided, however, that the Governor in Council may by Proclamation in the *Gazette*, upon the Petition of such Municipal Council, or upon the Petition of a majority in number and value of the Landholders of such Municipality, or of any part thereof, divest the Municipality of such care and management as aforesaid, and thereupon the Municipality as such shall cease to be a Road District, and the Councillors thereof shall cease to be the Trustees thereof.

May be discontinued.

*Cross and Bye Roads Act, 1870.**Cross Roads.*

**8** The following Roads within each Road District shall be Cross Roads, and shall be the Roads to be constructed, maintained, and regulated by the Trustees under the authority of this Act ;

- (1.) Any Road leading from one Town to another :
- (2.) Any Road leading from a Town or public Bridge to the Main Road :
- (3.) Any Road leading from a Town to a navigable River or the Sea-shore :
- (4.) Any Road or intended Line of Road proclaimed by the Governor as a Cross Road or intended Cross Road before the commencement of this Act by virtue of any Act hereby repealed :
- (5.) Any Road or intended Line of Road proclaimed by the Governor as a Cross Road in manner hereinafter provided :
- (6.) All Streets within a Town except in any Town in any Rural Municipality.

**9** If at any Meeting of Landholders it is decided that it is expedient so to do, the Governor is hereby empowered by Proclamation to declare that any Road or intended Line of Road previously surveyed and marked out shall be a Cross Road.

Governor empowered to proclaim any Road a Cross Road.

*Meetings of Landholders.*

**10** Every Meeting of the Landholders of any Road District for the purposes of this Act shall be convened in manner following, and not otherwise, excepting as hereinafter expressly provided : Any number not less than Seven Landholders shall have power to convene a Meeting of Landholders for any of the purposes of this Act, by Notice signed by the Landholders convening the Meeting, specifying the purpose for which, and the day, hour, and place at which the Meeting is to be held, published once in the *Gazette*, and at least twice consecutively in a public Newspaper published in the City or Town nearest to the place in which the Meeting is to be held, Ten clear days at least before the day of holding the Meeting.

Meetings of Landholders how to be convened.

**11** Every such Meeting of Landholders shall be held within the Road District.

Meetings to be held within District.

**12** At every such Meeting of Landholders the Landholders present shall appoint from amongst themselves a Chairman to preside thereat, who shall have a casting vote in addition to his vote or votes as a Landholder ; and shall furnish within Three days after such Meeting a copy of the Minutes thereof to the Chairman or Secretary of the Trustees.

Chairman at Meetings.

**13** Any vote tendered at any such Meeting may be objected to at the Meeting and not afterwards, by any Landholder present, on the ground that the person tendering the same is not a Landholder within the meaning of this Act, or not entitled to the number of votes tendered, and not otherwise ; and every such objection shall be decided by the Chairman presiding at the Meeting, whose decision shall be final.

Votes tendered to be objected to at Meetings.

*Cross and Bye Roads Act, 1870.*

Matters to be decided by majority of votes of Landholders present at Meetings.

**14** All matters by virtue of this Act to be done and decided by the Landholders of any Road District at a Meeting of such Landholders shall be done and decided by the majority of the votes of such Landholders present at the Meeting; and every such Landholder shall have a number of votes proportioned to the annual value, as ascertained by the Valuation Roll, of the property within the Road District owned or occupied by him according to the following scale:—

Scale of votes.	<i>Annual Value of Property.</i>	<i>Number of Votes.</i>
	£5 and under £40 (in the case of a Proprietor).	1
	£10 and under £40 (in the case of an Occupier)	1
	£40 and under £80.....	2
	£80 and under £120.....	3
	£120 and under £160.....	4
	£160 and under £200.....	5
	£200 and under £240.....	6
	£240 and under £280.....	7
	£280 and under £320.....	8
	£320 and under £360.....	9
	£360 and upwards.....	10

Mode of calculating votes of Landholders.

**15** Any Landholder, being the Owner or Occupier of several properties within the Road District, shall be entitled to a number of votes, according to the scale aforesaid, in proportion to the aggregate annual value of such properties as ascertained as aforesaid.

Provides for joint ownership or occupation.

**16** Where any property is jointly owned or occupied by more persons than One, each of such joint Owners or Occupiers, if the annual value of such property is of an amount which, when divided by the number of such joint Owners or Occupiers, gives for each Owner or Occupier a sum not less than the sum which would entitle such person to vote at any such Meeting if he owned or occupied separately, shall be entitled to vote at any such Meeting in respect of the property so jointly owned or occupied; and if the value of such property is not of such an amount as to be so divisible as aforesaid, then only such One of such joint Owners or Occupiers shall be entitled to vote at any such Meeting in respect of the property so jointly owned or occupied as is for that purpose deputed in writing by the other or others of such joint Owners or Occupiers; and where any building is occupied in apartments or portions by more persons than One, each of such Occupiers, if the annual value of the apartment or portion of such building occupied by him is of an amount which would entitle such Occupier to vote at any such Meeting if such apartment or portion were a separate building, shall be entitled to vote at any such Meeting in respect of such apartment or portion of such building so occupied by him.

Landholders may determine at Meetings questions arising in carrying out Act.

**17** The decision of the Landholders at any Meeting duly convened for the purpose upon any question which may arise in the carrying out of any of the objects of this Act shall be binding upon the Trustees: Provided, that nothing contained in this Section shall affect the powers vested in the Trustees of making and levying Rates under this Act as hereinafter provided.

*Election and Retirement of Trustees.*

Place of meeting for election of Trustees.

**18** The Trustees of every Road District shall fix a day in the month of *April* in 1870, and in every succeeding year, and shall also fix an

*Cross and Bye Roads Act, 1870.*

hour of the day between 10 A.M. and 2 P.M., and the place for holding the Annual Meeting of Landholders for the election of Trustees, by notice published once in the *Gazette*, and at least twice consecutively in a public Newspaper published in the City or Town nearest to the place in which such Meeting is to be held, Ten clear days at least before the day of holding the Meeting.

**19** In every Road District on the day fixed in the month of *April* in 1870, and in every succeeding year, for the Annual Meeting of Landholders in such District, Two of the Trustees of such Road District shall retire when the whole number is Five, and Three of the Trustees when the whole number is Seven, who have been longest in office without re-election; and in case more than Two when the whole number is Five, and more than Three when the whole number is Seven, have been an equal period in office without re-election, it shall be determined by lot amongst themselves which of such Trustees, being Two when the whole number is Five, and Three when the whole number is Seven, shall retire, and on such day an election of Trustees to supply the places of such retiring Trustees shall be held in manner hereinafter provided: Provided, that in case no election of Trustees is held in any year in manner herein directed, the Trustees then in office shall continue in office until the day which may be fixed in the month of *April* in the succeeding year for the Annual Meeting of Landholders, or until the election of new Trustees, and so from time to time.

Election and retirement of Trustees.

**20** In case the Trustees of any Road District neglect or omit to fix the day, place, and hour of Meeting of Landholders for the election of Trustees, or in case any such Meeting is not held in any District upon any day in the month of *April* in any year appointed for that purpose in pursuance of this Act, the Governor may extend the time for the election of Trustees in such Road District to any day to be fixed in manner hereinbefore provided before the First day of *June* in any year.

Time prescribed for election may be extended.

**21** It shall be lawful for the Landholders present at the First Meeting and at every Annual Meeting of Landholders for the election of Trustees of any Road District to elect from amongst the Landholders of such Road District any number of persons not being more than the number of Trustees then required to be elected, as and to be Trustees of such Road District for the purposes of this Act.

Landholders to elect Trustees.

**22** The Chairman of the Meeting shall fix a reasonable time for receiving nominations, which shall be made orally, of candidates for election; and such Chairman shall also fix a time for commencing and closing the Poll, if any, for such election; and every such Poll shall remain open for Two hours at least; and every Landholder present at any such Meeting is hereby empowered to give, and shall if he votes give, the number of votes to which he is entitled to any number of persons not exceeding the number of Trustees then to be elected; and every such election of Trustees shall be finished in One day without any adjournment whatsoever.

Mode of election.

**23** If no greater number of persons are nominated for election than the number of Trustees then to be elected, the Chairman shall, without any Poll being had, declare the persons so nominated to be elected as Trustees; and the persons so declared to be elected shall thenceforth be Trustees of the Road District.

Mode of proceeding if no more persons nominated than Trustees to be elected.

*Cross and Bye Roads Act, 1870.*

Provides for death, &c. of Trustees during period of office.

**24** If at any time during his continuance in office any Trustee dies, departs from the Colony and remains absent therefrom for the space of Three months, or resigns, or refuses, or from any cause whatsoever becomes incapable or unfit to act as a Trustee, or if his office is declared vacant, it shall be lawful for the surviving or continuing Trustees, and they are hereby required, to appoint some fit and proper person, being a Landholder of the Road District, to act in conjunction with such surviving or continuing Trustees in the place and stead of such first-mentioned Trustee.

Election of Trustees to be published.

**25** Forthwith after every election or appointment of Trustees, the Chairman presiding at the Meeting at which such election or appointment took place shall cause to be published in the *Gazette* the names and places of residence of every Trustee elected or appointed; and shall also cause notice in writing of his election or appointment to be served personally on, or left at the usual place of abode of, or transmitted by post to, every person so elected or appointed.

Retiring Trustees eligible.

**26** Every Trustee going out of office shall be eligible for re-election.

Trustees to accept office or pay a fine. Schedule (1.)

**27** Every person duly qualified, and duly elected or appointed to the office of Trustee, shall accept such office by making and subscribing before a Justice of the Peace a Declaration in the form in the Schedule (1.) within One month after notice of his election or appointment has been served on him personally, or left at his usual place of abode, or been transmitted to him by post, or shall in lieu thereof pay to the Trustees a penalty of Twenty Pounds: Provided that with the consent of the Trustees the penalty may be reduced to any sum not less than Five Pounds: and every declaration shall be delivered by the Trustee who has made the same, at the first meeting of the Trustees thereafter at which he is present, to the Chairman of the Meeting.

Certain persons exempted from fine for refusal to accept office.

**28** Provided that no Member of the Parliament of *Tasmania*, and no person disabled by deafness, blindness, or other permanent infirmity of body, or who is above the age of Sixty years, or who has already served the office of Trustee for the period of One year, or paid the penalty for not accepting such office or for resigning such office within Three years next before the day on which he is re-elected or appointed, nor any person whose usual place of abode is not situate within the Road District for which he is elected or appointed, or who is absent from the Colony at the time of the election or appointment, shall be liable to any penalty for refusing or neglecting to accept the office of Trustee.

Refusal or failure to accept office.

**29** If any person elected or appointed a Trustee under this Act refuses or fails to accept such office, the same shall thereupon be deemed vacant, and shall be filled up by a fresh election or appointment.

Trustee resigning during year of office to pay a fine.

**30** Every person elected or appointed a Trustee under this Act who, after acceptance of such office, resigns or refuses to act during his year of office, shall be liable to the same penalty as he would be liable to pay for non-acceptance of such office, unless he becomes entitled to claim exemption from payment of such penalty.

Trustee absent from Three consecutive Meetings to vacate office.

**31** If any person holding the office of Trustee, having had notice of the intention to hold such Meetings, is absent from Three consecutive Meetings of the Trustees, extending over a period of not less than Three months, without leave of absence granted by the Trustees, unless in

*Cross and Bye Roads Act, 1870.*

case of illness, such person shall cease to hold such office, and shall be liable to the same penalty as if he had refused to accept such office; and the Trustees shall in any such case declare such office to be vacant, and the same shall be vacant accordingly.

*Meetings of Trustees.*

**32** All acts and proceedings relating to this Act which are directed to be had or done by the Trustees, and all the powers and authorities vested in them generally, shall and may be had, done, and exercised by the major part of the Trustees present at any Meeting of the Trustees, the whole number present not being less than Three; and any such Three Trustees shall form a quorum. Quorum of Trustees.

**33** The Trustees shall, at their first Meeting held after the first Election held under this Act, and at their first meeting held after each Annual Election, by the majority of votes of the Trustees present, elect one of their body to be Chairman for the ensuing year: Provided that, if at any such Meeting there is an equality of votes in the election of Chairman, it shall be decided by Lot which of the Trustees having an equal number of votes shall be the Chairman; and such Chairman shall preside at all Meetings of the Trustees at which he is present; and in case the Chairman die, or by writing under his hand delivered by him to the Trustees at any Meeting of Trustees, or to the Clerk of the Trustees or the Collector of Road Rate, resign his office, or cease to be a Trustee, the Trustees present at the Meeting next after the occurrence of such vacancy, or at any Meeting before there shall as yet have been a Chairman, shall choose some one of their body to be Chairman, and the Chairman so elected shall continue in office until the next Annual Meeting for the election of Trustees; and if at any Meeting of Trustees the Chairman is not present, one of the Trustees present shall be elected Chairman of such Meeting by the majority of votes of the Trustees present thereat. Election of Chairman of Trustees.

**34** At all Meetings of Trustees all the Trustees present shall vote save where it is herein otherwise provided, and the questions there considered shall be decided by open voting and by the majority present; and if there is an equal division of votes upon any question, it shall be considered lost. Equal division of votes.

**35** No Trustee shall vote upon any matter in which such Trustee directly, by himself or his partners, has any pecuniary interest; and any Trustee who knowingly offends against this Section shall, on conviction, forfeit and pay for every such offence a sum not exceeding Fifty Pounds. Trustee not to vote where he is pecuniarily interested.

**36** All orders and proceedings of the Trustees, together with the names of the Trustees present at every Meeting, shall be entered in a Book to be kept by the Trustees for that purpose, and be signed by the Chairman of the Meetings at which such orders or proceedings are, from time to time, made or had; and such orders and proceedings so entered and signed by the Chairman of such Meetings shall be deemed to be original orders and proceedings; and such Book may be read in evidence in all Courts whatsoever in all suits and proceedings whatsoever. Orders and proceedings of Trustees to be recorded.

*Purchase and taking of Land.*

**37** The Trustees are hereby empowered to purchase and take, in the mode prescribed by *The Lands Clauses Act*, such Land within the Purchase and taking of Land.

*Cross and Bye Roads Act, 1870.*

Road District as they deem necessary for the purpose of erecting Toll-gates, or widening, diverting, altering, or improving any Road, or making any new Line of Road, or of obtaining any Materials for any such purpose, or as they may deem necessary for any other of the purposes of this Act; and, subject to the provisions of this Act, *The Lands Clauses Act* shall be incorporated with this Act, and for the purposes of such incorporation the Trustees shall be deemed to be the promoters of the undertaking.

If compensation excessive Trustees may give up land.

**38** Where the Trustees give notice of their intention to take land for any of the purposes hereinbefore set forth, and the compensation in respect thereof is determined as in cases of disputed compensation, if the Trustees deem it inexpedient to pay the amount of compensation so determined, they may, within Twenty-one days after notice of the amount of compensation so determined on, withdraw the first-mentioned notice, on payment of all the costs of reference and award.

In estimating compensation to be paid for land taken for Cross Road, benefit to owner to be considered.

**39** Notwithstanding anything in *The Lands Clauses Act* contained, in estimating the amount of compensation to be paid to any person for land taken for improving, widening, diverting, altering, or making any Cross Road, the Arbitrators or umpire shall take into consideration the benefit that is likely to accrue to the person whose land is about to be so taken for such Cross Road, and the arbitrators or umpire, in awarding compensation to be paid for taking such land, shall make such deduction for such benefit as shall be deemed just; and in case it appears to the arbitrators or umpire that the benefit likely to accrue to the person through whose land such Road is about to be taken is equal to or greater than the loss he will sustain by reason of the taking of his land for such Road, the arbitrators or umpire may award that no compensation is to be paid, and thereupon the same rights shall accrue as if compensation had been awarded and duly paid.

Entry upon Land.

**40** Whenever it is intended to take any Land for any of the purposes of this Act, it shall be lawful for the Trustees, after Seven days notice served upon the Occupier, to enter upon any Land and to stake out the same in such manner as the Trustees think necessary or expedient; and if any person wilfully pulls up, removes, or destroys the stakes or other marks used for the purpose aforesaid, every person so offending shall, for every such offence, incur a penalty not exceeding Fifty Pounds.

Renting Land.

**41** It shall also be lawful for the Trustees to contract and agree with the persons interested in any Land for the demise of such Land for the purpose of obtaining materials from such land for the repair or construction of any Road or new Line of Road, or for any other of the purposes of this Act.

Uncultivated Land may be used for temporary Road.

**42** The Trustees are hereby empowered to make use of any uncultivated Land within the Road District for the purpose of constructing a temporary Road whilst any Road is being made, diverted, altered, or repaired without making compensation for the same: Provided, that the temporary Road 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: Provided also, that on the completion of such repairs any damage done to the Lands through which such temporary Road may pass shall in all respects, as far as practicable, be made good by the Trustees.



*Cross and Bye Roads Act, 1870.*

**43** It shall be lawful for the Trustees to take and use any Crown Land for any of the purposes of this Act which the Governor may authorise to be taken and used for such purpose.

Crown Land may be taken for purposes of the Act by consent of the Governor.

*Taking Materials.*

**44** It shall be lawful for the Trustees, after Seven days notice to the Owner and Occupier, to enter upon any uncultivated Land, and to cut down and carry away all such indigenous Timber as may be required for making, repairing, or fencing any Road or new Line of Road, or any other of the purposes of this Act, making full Compensation for such Timber to the Owner of the Land: Provided, that it shall not be lawful for the Trustees to cut down any such indigenous Timber where it is made to appear to their satisfaction that the same has been, and is intended to be, reserved and used by the Owner or Occupier of the Land for the purpose of ornament or shelter.

Timber may be taken from uncultivated Land upon making Compensation.

**45** Where it is deemed necessary to obtain Materials for the repair or construction of any Road or new Line of Road, or any other of the purposes of this Act, from any Land, it shall be lawful for the Trustees, after Seven days notice to the Owner and Occupier, to enter upon such Land, and to dig, quarry, and carry away all such Materials as may be required for any such purpose, making full Compensation to all parties interested for the damage thereby sustained.

Materials may be taken from Land upon making Compensation.

**46** The Compensation for taking indigenous Timber from uncultivated Land, or Materials from any Land, for the purposes of this Act, shall be settled by Arbitration in the mode prescribed by *The Lands Clauses Act* in cases of disputed Compensation.

Compensation for Timber and Materials how to be ascertained.

*Gardens, &c., not to be taken or injured.*

**47** Nothing in this Act contained shall, without the consent of the Owner, authorise the purchase or taking by the Trustees of any Land which is a garden, yard, lawn, orchard, or planted walk or avenue to a house, or enclosed ground planted as an ornament or shelter to a house, or planted as a nursery for trees, or the taking of any Materials from, or the cutting down of any Timber growing on, any such Land, or the taking of any such Land for the purpose of a Bye Road, or the opening of any drain or watercourse on, to, or through such Land.

Gardens, &c., not to be taken without consent of Owner.

*Sale of superfluous Land.*

**48** It shall be lawful for the Trustees to sell and dispose of, in the manner prescribed by the *Lands' Clauses Act*, any Land purchased or taken by them for the purposes of this Act, which is not required for any such purpose, and the purchase money arising from any such sale shall be applied by the Trustees to the purposes of this Act; and in the application of the provisions of *The Lands' Clauses Act* to the purposes of this Act the enactment contained in this Section shall be substituted for Section 78 of that Act.

Lands not required may be sold.

*Construction of Roads.*

**49** The Trustees shall have the control and management of all Cross Roads within the Road District, and are hereby empowered to define, repair, maintain, improve, widen, divert, alter, make, construct, and fence in such Roads, in such manner as the Trustees from time to time determine, in accordance with their view of the wants and necessities

Roads to be made and maintained as directed by the Trustees.

*Cross and Bye Roads Act, 1870.*

of the Road District: Provided, that no Road shall be made under the authority of this Act of a greater width than Sixty-six feet unless with the consent of the Owners of the Land on each side thereof.

Trustees may contribute to roads out of District.

**50** It shall be lawful for the Trustees of any Road District, if they deem a road or bridge in any other District to be of benefit to their District, to contribute out of the moneys received by them by virtue of this Act such sum towards the repair and maintenance of such road or bridge as they deem just.

Trustees may repair Streets in Municipalities.

**51** The Trustees shall, with the consent of the Council of any Rural Municipality, expend not less than One-third of the rates collected within any Town in such Municipality in the repair of the streets and footpaths in such Town.

Entry upon adjoining Lands for executing Works.

**52** It shall be lawful for the Trustees to enter upon any Land adjoining any Road or new Line of Road for the purpose of constructing or repairing such Road.

Power to make Drains on adjoining Lands.

**53** The Trustees shall have power to make, cleanse, and keep open all Drains or Watercourses which they may deem necessary in and through any Land adjoining or near to any Road or new Line of Road.

When new Road is constructed old Road may be stopped up.

**54** When any new Line of Road is constructed and completed, or any existing Road or any part thereof diverted or altered, the Trustees are hereby empowered to stop up any old Line of Road, or any part thereof which appears to them to be thereby rendered useless, unless such old Line of Road or such part thereof leads to any lands, house, or place which cannot be conveniently approached by such new Line of Road or any other then existing Road, in which case such old Line of Road, or so much thereof as may be necessary for the access or approach to such lands, house, or place, shall remain as, and be, a Bye Road to the same: Provided always, that in case any dispute or difference arises as to the propriety of stopping up any such Line of Road, or any part thereof as aforesaid, the same shall be heard and determined in a summary manner, upon the application of any parties interested therein to the Justices assembled at the next Court of General Sessions which is holden for the District within which such Line of Road or such part thereof is situate, and such Justices are hereby authorised to hear and determine the same, and such determination shall be final and conclusive upon all parties interested in such Line of Road or such part thereof, and all claiming under them.

Timber growing near Roads may be cut down.

**55** The Trustees are hereby empowered to cut down and remove all indigenous Timber growing or standing within Seventy-five Feet of the centre of any Road, making good all damage or injury to the fences, hedges, ditches, walls, or any other thing upon the Land of the person on which such Timber may be growing or standing.

Quarries to be fenced in or otherwise secured.

**56** The Trustees shall cause to be filled up, or in other respects rendered secure, all pits or quarries that may have been opened or used by them for any of the purposes of this Act, and shall, so soon as any work is completed, cause all fences taken down in the prosecution of the same to be well and sufficiently restored.

Gates on Cross Roads.

**57** In every case in which any Gate is erected across any Cross Road at the time of the passing of this Act, such Gate may be lawfully

*Cross and Bye Roads Act, 1870.*

maintained and continued so long only as the Trustees by writing authorise the same to be maintained and continued ; and in every case in which a Cross Road is hereafter created, the Trustees may decide whether any, and if so what, Gates may be continued, and how long they may be so continued, across such Road, and the same may be lawfully continued accordingly.

*Preservation of Roads.*

**58** Every person who is guilty of any of the following offences shall, *Injuring Roads.* for every such offence, incur a penalty not exceeding Five Pounds ;

- (1.) Riding upon any Footpath made or set apart for the use or accommodation of foot passengers by the side of any Road :
- (2.) Wilfully leading or driving any Animal or Vehicle, or any single wheel of any Vehicle, or wheeling or drawing any wheelbarrow, truck, or sledge upon any such Footpath :
- (3.) Hauling or drawing, or causing to be hauled or drawn, upon any part of any Road any timber, stone, or other thing otherwise than upon a wheeled Vehicle :
- (4.) Suffering any timber, stone, or other thing which is carried principally or in part upon a wheeled Vehicle to drag or trail upon any Road to the injury thereof :
- (5.) Suffering pigs to root up or damage any Road, or the hedges or banks on the sides thereof :
- (6.) Using any instrument for the purpose of retarding the descent of any Vehicle down hill in such manner as to destroy, injure, or disturb the surface of any Road :
- (7.) Making a fire upon any Road :
- (8.) Not placing any Vehicle during the time of loading or unloading the same, or of taking refreshment or of halting, as near to one side of the Road as conveniently may be, either with or without any Animal harnessed or yoked thereto :
- (9.) Laying or causing to be laid any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other like matter or thing upon any Road :
- (10.) After having blocked or stopped any Vehicle in going up or down hill, causing or suffering to be or remain on the Road the stone or other thing with which such Vehicle has been blocked or stopped :
- (11.) Removing soil from any Road or from the sides thereof, or removing, barking, felling, or cutting trees on any Road or on the sides thereof, the property of the Trustees.

**59** Every person who is guilty of any of the following offences shall, for every such offence, incur a penalty not exceeding Twenty Pounds over and above the damages occasioned thereby ; *Further penalty for certain injuries.*

- (1.) Pulling down, damaging, or destroying any Lamp or Lamp-post put up, erected, or placed in or near the side of any Road, or on or near to any Toll-gate, or extinguishing the light of any such Lamp :
- (2.) Pulling down, defacing, damaging, or destroying any Table of Tolls, direction board, mile-stone, wall, fence, post, or rail made, erected, or set up by the Trustees :
- (3.) Injuring or damaging any Road, Toll-gate, or Bridge.

*Cross and Bye Roads Act, 1870.*

Maliciously injuring Bridges or Toll-gates.

**60** If any person unlawfully and maliciously throws down, damages, or destroys any Bridge or Toll-gate, such person shall be guilty of a misdemeanor, and for such offence shall be punished by fine or imprisonment, with or without hard labour, or both, at the discretion of the Court before which he is convicted.

Encroachments on Roads.

**61** Every person who is guilty of any of the following offences shall, for every such offence, incur a penalty not exceeding Twenty Pounds ;

- (1.) Making or causing to be made any building, or any hedge or other fence, on or at the side of any Road, in such manner as to reduce the breadth or confine the limits thereof :
- (2.) Any person being the owner or occupier of land adjoining any Road permitting or suffering any hedge or the growth thereof separating such land from such Road after the Trustees shall have grubbed up and cleared the encroachments at present existing, if any, of such hedge or the growth thereof on such road, to encroach on such Road so as to reduce the breadth or confine the limits thereof :
- (3.) Filling up or obstructing any ditch at the side of any Road, or any ditch made by the Trustees through the adjoining land for the purpose of draining such Road :
- (4.) Making any drain, gutter, sink, or watercourse upon or across any Road :
- (5.) In any manner whatsoever wilfully obstructing the free passage, use, or enjoyment of any Road :

And it shall be lawful for the Trustees, after Ten days' notice in writing to such owner or occupier as aforesaid, and after the Trustees shall have grubbed up and cleared the encroachments at present existing, (if any) of such hedge or the growth thereof on such road, to cause any such building, hedge, or the growth thereof, ditch or fence, drain, watercourse, gutter, or other encroachment or obstruction to be taken down, cut, cleared, or filled up, or where any ditch is filled up or obstructed to be opened and cleansed ; and it shall be lawful for any Two Justices, upon proof thereof upon oath to them made, to levy the expenses of taking down, filling up, cutting, clearing, or cleansing, as the case may be, such building, hedge, ditch, drain, or other encroachment or obstruction as aforesaid, by distress and sale of the offender's goods and chattels, rendering the overplus, if any, to such offender on demand : Provided, that nothing herein contained shall prevent the making or constructing across or under any Road of any covered drain or culvert for the making and constructing of which the sanction of the Trustees has been first obtained.

Under existing leases landlord to bear half cost of cutting hedges.

**62** When any hedge or the growth thereof is cut by the occupier of any land, in pursuance of notice from the Road Trustees requiring him so to do, and such occupier is tenant of such land by virtue of any lease made before the passing of this Act, then such tenant may recover one-half the amount reasonably expended by him in so cutting such hedge or the growth thereof as money paid for the use of the landlord, or the same may be deducted from or set off against the rent then due or thereafter to become due ; and such landlord in like manner, if tenant to another of the same property, may in like manner recover or deduct from his landlord a sum equal to that recovered or demanded from him as aforesaid, and so on between successive landlords and tenants.

*Cross and Bye Roads Act, 1870.**Impounding.*

**63** It shall be lawful for any person to seize and impound, in the Pound nearest to where it is found, any horse, ass, sheep, pig, or other beast or cattle of any kind found wandering, straying, or lying on any Road, or by the side thereof, except on such part of any Road as passes through unenclosed ground; and every such animal so impounded shall be there detained till the costs and charges of impounding and keeping the same are paid by the owner; and in case such costs and charges are not paid within the time allowed by Law in other cases of impounding cattle, the Poundkeeper may sell the animal so impounded, after giving such notice as by such Law is in that behalf required; and after deducting the costs and charges of impounding, keeping, and selling such animal out of the proceeds of sale, shall pay the overplus, if any, to the owner on demand; and if not demanded within Sixty days after sale, such overplus shall be paid to the Trustees of the Road District within which the animal impounded was seized, and be applicable by them to the purposes of this Act.

Cattle straying on enclosed parts of Roads may be impounded.

*Tolls.*

**64** The Trustees may continue all or any of the Toll-gates erected by virtue of any Act hereby repealed, and may erect such other Toll-gates and Side-bars in, upon, or across, or at the sides of such parts of any Road as the Trustees, from time to time, think proper and expedient; and, from time to time, may repair, renew, and rebuild such Toll-gates and Side-bars as occasion requires.

Erection of Toll-gates.

**65** It shall be lawful for the Trustees, when and so often as they think proper, to cause any of the Toll-gates already erected or to be hereafter erected to be removed or discontinued.

Removal and discontinuance of Toll-gates.

**66** No Toll-gate shall be erected, after the commencement of this Act, within the distance of One Mile along the Road on which it is erected from any part of the boundary of any City or Town.

No Toll-gate within One Mile from Towns.

**67** The Trustees may cause such Tolls to be demanded and taken at any Toll-gate as to them seems necessary and proper; and, from time to time, may increase or reduce the rates of Toll to be demanded and taken at any Toll-gate, so that the said Tolls be always increased or reduced according to one uniform scale and proportion as to the several descriptions of Animals and Vehicles chargeable therewith: Provided, that where the whole money borrowed on the credit of the Tolls has not been paid off, or during the continuance of any demise of the Tolls, no such Tolls shall be reduced without the consent of the person or persons entitled to Five-sixths of the money remaining due upon such Tolls, or of the Lessee of such Tolls, as the case may be: Provided also, that the Tolls to be demanded and taken at any Toll-gate shall not at any time exceed the rates mentioned in the Schedule (2).

Trustees may fix Tolls to be taken.

Schedule (2).

**68** No Toll shall be demanded or taken at any Toll-gate until the situation of such Toll-gate, and the rates of Toll for the time being payable thereat, have been notified in the *Gazette* at least One week before the same are demanded.

Rates of Toll and situation of Toll-gates to be published.

**69** The Trustees are hereby required to put up, and to continue on some conspicuous part of the front of every Toll-gate so that the same appears to public view, a Table, painted in distinct and legible

Tables of Tolls.

*Cr ss and Bye Roads Act, 1870.*

black letters on a board with a white ground, or in white letters on a board with a black ground, containing a List of all the Tolls payable at such Toll-gate, and also a List of all the Toll-gates, if any, which are cleared by the payment of Toll at such Toll-gate; and any person who collects or receives any Tolls at any Toll-gate at which such Table of Tolls is not affixed as aforesaid shall incur a penalty of Forty Shillings for every day during which he continues to collect Tolls without such Table being affixed.

**Recovery of Tolls.** **70** After such notification in the *Gazette* as aforesaid, the Tolls, according to the rates specified in and by any such Table of Tolls, shall be payable and paid to the respective Collectors thereof at the respective rates for the respective Animals or Vehicles as the same are specified in and by any such Table of Tolls; and if any person liable to the payment of any Toll fails to pay such Toll when demanded by any Collector of Tolls, it shall be lawful for such Collector by himself, or taking such assistance as he thinks necessary, to seize and distrain any Animal or Vehicle in respect of which such Toll is payable, and its harness, or any of the goods or chattels of the person failing to pay; and if the Toll, or any part thereof so unpaid, and the reasonable charges of such seizure and distress, are not paid within the space of Four days next after such seizure and distress made, the Collector so seizing and distraining may sell the Animal, Vehicle, or things so seized and distrained, or a sufficient part thereof, returning the overplus of the money to arise by such sale, if any, and what remains unsold, upon demand, to the owner thereof, after such Toll, and the reasonable charges occasioned by such seizure, distress, and sale, have been deducted.

Tolls paid at certain Toll-gates to clear others.

**71** When any Toll has been once taken in respect of any Animal or Vehicle at any Toll-gate, no Toll shall be taken in respect of the same Animal or Vehicle on the same day (to be computed from Twelve o'clock at night to Twelve o'clock in the next succeeding night) for once repassing through the same Toll-gate, or for once passing or repassing through any other Toll-gate in the same Road District and on the same Road, within the distance of Fifteen Miles from the Toll-gate at which such Toll has been taken, such distance measured along Roads only, nor for once passing or repassing through any Toll-gate in any adjoining Road District within the distance of Two Miles from the Toll-gate at which such Toll has been taken, to be measured as afore-said: Provided, that nothing in this Section contained shall exempt any Animal drawing a Vehicle from Toll unless the Vehicle is the same as that which was being drawn by such Animal when the Toll was taken in respect of which the exemption would otherwise arise; and the enactment contained in this proviso shall extend to Tolls payable at the time of the commencement of this Act.

Toll Tickets.

**72** Wherever any Toll-gate is so situated that payment of Toll at such Toll-gate will free any other Toll-gate, the Trustees shall provide Tickets denoting the payment of Toll, and on such several Tickets shall be specified the name of the Toll-gate and date at which the same respectively are delivered, and also the names of the several Toll-gates freed by such payment, one of which Tickets shall be delivered *gratis* to the person paying the Toll; and, on the production of such Toll Ticket at any Toll-gate therein mentioned as being cleared as aforesaid by the payment of the Toll at the Toll-gate where such Ticket was delivered, the person producing the same shall pass through the Toll-gate therein mentioned without paying any further or additional Toll.

*Cross and Bye Roads Act, 1870.*

**73** If any Collector of Tolls demands or takes a greater or less Toll from any person than he is authorised to do by virtue of this Act, or refuses to permit or suffer any person to read, or in any wise hinders any person from reading, the inscriptions on any such Table of Tolls as aforesaid, or refuses to tell his Christian and Surname to any person who inquires the same on payment of the Toll demanded by such Collector, or in answer to such demand gives a false name, or refuses to give to the person paying the Toll a Toll Ticket where the same is required by this Act to be delivered, or upon the legal Toll being paid or tendered, or where no Toll is legally due unnecessarily detains or wilfully obstructs, hinders, or prevents any person, or his Animal or Vehicle, from passing through any Toll-gate, or makes use of any scurrilous or abusive language to any passenger, any such Collector of Tolls shall, for every such offence, incur a penalty not exceeding Five Pounds.

Collectors of Toll taking greater or less Toll, &c.

**74** No Toll shall be demanded or taken at any Toll-gate—

Exemptions from Tolls.

- (1.) Of or from any Minister of Religion going to, or returning from, visiting any sick person or prisoner in gaol, or on any other charitable or religious mission :
- (2.) Of or from any person going to, or returning from, his usual place of religious worship on *Sundays* :
- (3.) Of or from any Constable or other Police Officer going on or returning from duty :
- (4.) Of or from any person going to, or returning from, any funeral :
- (5.) For any Animal or Vehicle passing from one part of any farm to any other part of the same farm, provided such Animal or Vehicle is then actually engaged or employed in farming work upon such farm :
- (6.) For any Animal going only to water, or returning after watering :
- (7.) For any Animal or Vehicle employed for the purpose of the construction or repair of any Road within the Road District in which the Toll-gate is situated :
- (8.) Of or from any person exempted by any Law, other than the Acts hereby repealed, from the payment of the Tolls imposed by any Act hereby repealed.

**75** No person claiming exemption from Toll under this Act shall be exempt therefrom unless and until he states to the Collector demanding such Toll, if required to do so by him, the grounds on which such person claims exemption ; and if any person claims or takes the benefit of any exemption from Toll payable under this Act, not being entitled to the same, every such person shall, for every such offence, incur a penalty not exceeding Five Pounds ; and in all cases the proof of exemption shall be upon the person claiming the same.

Illegally claiming exemption from Toll.

**76** Every person who is guilty of any of the following offences shall, for every such offence, incur a penalty not exceeding Five Pounds ;

Evading Tolls.

- (1.) Any person with any Animal or Vehicle who goes off or passes from any Road, or passes through or over any Land near or adjoining to any Road not being a public highway, and such person not being the Owner or Occupier or servant or one of the family of the Owner or Occupier of such Land, with intent to evade the payment of any Toll authorised to be demanded and taken under this Act :

*Cross and Bye Roads Act, 1870.*

- (2.) Any person, being the Owner or Occupier of any such Land, who knowingly or wilfully permits or suffers any person, except as aforesaid, with any Animal or Vehicle to go or pass through or over such land with intent to evade the payment of any such Toll :
- (3.) Any person who gives to, or receives from, any person other than a Collector of Tolls, or forges, counterfeits, or alters, any Toll Ticket with intent to evade the payment of any such Toll :
- (4.) Any person who fraudulently or forcibly passes through or by any Toll-gate with any Animal or Vehicle by reason whereof the payment of any such Toll is evaded :
- (5.) Any person who does any other act whatsoever in order or with intent to evade the payment of any such Toll, and whereby the same is evaded.

Compounding for Tolls.

**77** It shall be lawful for the Trustees, from time to time, to compound and agree for any term, not exceeding One year at any one time, with any person for the Tolls payable for his Animals and Vehicles passing through all or any of the Toll-gates within the Road District ; and all such composition money shall, for the period agreed upon, be paid in advance, and shall be applied in like manner as the Tolls received by virtue of this Act are directed to be applied.

Letting Tolls.

**78** It shall be lawful for the Trustees, from time to time, to let for any term not exceeding Twelve Months all or any of the Tolls authorised to be collected under the provisions of this Act, together with any Toll-gate, such letting to be either by tender to be advertised for in Two consecutive numbers of the *Gazette* Seven days at least before the day appointed for the opening of such tenders, or otherwise by public auction duly advertised in like manner ; and such security shall be taken by the Trustees as they may deem necessary for the due payment of the rent or sum stipulated to be paid for such Tolls ; and during the continuance of any such demise the Lessee of the Tolls, or any Collector or person by him appointed, is hereby empowered to demand and take the Tolls so let, and to use the same means for the recovery thereof in case of non-payment or evasion as any Collector of Tolls appointed by the Trustees is empowered to use.

*Road Rate.*

Trustees may make and levy a Road Rate.

**79** It shall be lawful for the Trustees at yearly, half-yearly, or such other periods as to them may seem necessary, to make and levy a Rate, to be called the Road Rate, upon the annual value of the property within the Road District for the purpose of raising the necessary funds for carrying out in the Road District the several objects of this Act ; and every such Road Rate, when received, shall form part of the moneys at the disposal of the Trustees for the purposes of this Act : Provided, that such Road Rate so to be made and levied shall not in any case exceed, in any One Year, the sum of One Shilling in the Pound upon the annual value of the property within the Road District

Upon making a Road Rate notice of same to be given.

**80** Upon the making of any Road Rate, a Notice signed by not less than Three Trustees, specifying the amount in the Pound of the Rate, the period for which the same is made, and at what times the same is payable, shall be published in the *Gazette* ; and upon any such Notice



*Cross and Bye Roads Act, 1870.*

being so published, the Rate therein mentioned shall be payable and paid at the times specified in such Notice by the persons liable to pay the same, according to the annual value of the property within the Road District as shown by the Valuation Roll; and it shall not be necessary in any such Notice to set forth the names of the persons liable to the payment of the Rate, or the sums which according to such Rate such persons are liable to pay, or any other particulars than hereinbefore in that behalf mentioned.

**81** Every such Road Rate shall be payable in the first instance by the Occupier of the property at the time when the same is made payable by such Notice as aforesaid; but every Occupier, if Tenant, unless otherwise provided by agreement, shall be entitled to recover from his Landlord One-half of the amount of any such Rate paid by or recovered from him as money paid to the use of the Landlord, or the same may be deducted from, or set-off against, the rent then due or thereafter to become due; and such Landlord, if Tenant to another of the same property, may in like manner recover or deduct from his Landlord a sum equal to that recovered or demanded from him as aforesaid, and so on between successive Landlords and Tenants.

Occupiers liable for Road Rate in first instance.

**82** In case at the time when any Road Rate is made payable by such Notice as aforesaid there is no Occupier of any property, or the Occupier cannot be found or is not known, the Road Rate in respect of such property shall be payable by and recoverable from the Owner in the first instance, who shall be entitled to recover One-half thereof from the Tenant, if any, if not paid on demand, by distress as for rent in arrear, or as money paid to his use.

If no Occupier, Owner liable in first instance.

**83** In case any change of occupation of any property takes place after the time when any Road Rate is made payable by such Notice as aforesaid, and before the Rate due in respect of such property is paid or recovered, it shall be lawful for the Trustees to recover such Rate in arrear from the person who is the Occupier of such property at the time of demand or levy, as the case may be, or if there is no such Occupier then from the Owner of such property; and any such Occupier, if Tenant, shall be entitled to recover from his Landlord One-half of the amount of Rate so paid by or recovered from him as money paid to the use of the Landlord, or to deduct or set-off the same from or against the rent then due or thereafter to become due, and to recover the other half from the person who was Occupier when the Rate became payable as money paid to his use; and any Owner who has paid or from whom has been recovered any amount of Road Rate in any such case where there is no Occupier at the time of demand or levy, may recover One-half of such amount of Rate from the Tenant, if any, at the time when such amount of Rate was made payable: Provided that no such occupier or owner shall in any case be liable for the payment of the said Rate after the expiration of Three months from the time when such Rate is made payable.

Provides for change of occupation.

**84** In case any change of ownership of any property takes place after the time when any Road Rate is made payable by such Notice as aforesaid, and before the Rate due in respect of such property is paid or recovered, any amount of Road Rate in arrear paid by or recovered from the Owner for the time being of such property shall be recoverable by him from the person who was Owner of such property when such amount of Rate became payable as money paid to his use.

Provides for change of ownership.

*Cross and Bye Roads Act, 1870.*

Recovery of Rate  
in case of sub-  
division of pro-  
perty.

**85** If any property valued at one entire sum in the Valuation Roll in any year is, after the making of such Roll, subdivided and occupied by more than one occupier, then it shall be lawful for the Trustees to fix for the current year the amount of the proportionate annual value of each subdivision, provided that the total of the amounts so fixed shall not exceed the total value of such property as set forth in the Valuation Roll; and Road Rates shall be paid on the annual value of each of such subdivisions when so ascertained, in the same manner as if the annual value of each such subdivision had been inserted in the Valuation Roll.

Owner on demand  
to furnish names  
of tenants to  
Trustees.

**86** Every owner or lessor of property in any Road District shall, upon request in writing to be left at or posted to his usual residence from the Chairman of the Road Trustees of such District, deliver or cause to be delivered to such Chairman forthwith a statement in writing setting forth the names of the tenants or occupiers of his property or any part thereof; also the rent payable by each such tenant or occupier, and the area of their respective holdings; and if any owner or occupier neglects so to deliver or cause to be delivered such statement, he shall be liable to pay to the Trustees the Road Rate payable in respect of such property.

Occupiers of  
Crown Land to  
pay half Road  
Rate.

**87** The Occupiers of Crown Land under Lease or Licence shall be liable to pay only One-half of any Road Rate made under the authority of this Act in respect of the Crown Land occupied by them; and no such Rate, or any proportion thereof, shall be payable by the Crown, whether as Owner or otherwise.

Recovery of Road  
Rate.

**88** Every such Road Rate shall be paid by the persons liable to pay the same to the Trustees, or a Collector of Road Rate appointed by the Trustees; and in case any such person fails to pay the amount of any such Rate for which he is liable for the space of Fourteen days after the same has been demanded by any Collector of Road Rate, it shall be lawful for any Justice of the Peace, and he is hereby authorised and required, to grant a Warrant under his hand, authorising and directing any Collector of Road Rate, or some other fit person, to distrain the goods and chattels of such person whether the same are on the property in respect of which the Rate is payable or elsewhere, and to cause such goods and chattels when distrained to be sold, and out of the moneys to arise by such sale to pay all costs, charges, and expenses attendant upon such distress and sale, and in the next place to pay the amount of the Rate for which such distress and sale are made, and to pay over the surplus, if any, to the person whose goods and chattels have been so distrained and sold as aforesaid on demand.

Demand of Road  
Rate.

**89** Any Road Rate may be demanded by any Collector of Road Rate, by written or printed or partly written and partly printed notice specifying the amount of Rate demanded, the date of making the Rate, and the property in respect to which the Rate is demanded, left at or posted to the usual or last known place of abode of the person from whom the Rate is sought to be recovered, if such place can after diligent inquiry be discovered, but if not, then affixed to some conspicuous part of the property in respect of which the Rate is demanded.

All goods found  
on property liable  
to Road Rate.

**90** All goods and chattels whatsoever found upon the property in respect of which any such Road Rate is payable, to whomsoever the same may belong, shall be liable to be taken under the Warrant of Distress issued for the recovery of such Rate: Provided that, in case of

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change of occupation as hereinbefore mentioned, the same shall not be liable after the expiration of Three months from the time when such Rate is made payable.

**91** The Warrant of Distress for the recovery of any such Road Rate may be in the form contained in the Schedule (3). Form of Distress Warrant. Schedule (3.)

**92** In the event of any distress so made as aforesaid not realising sufficient to pay such Road Rate, costs, charges, and expenses as aforesaid, it shall be lawful, from time to time, to make further and other distress, in manner aforesaid, until the whole amount of such Rate, costs, charges, and expenses, has been fully paid. Further distress in case first is insufficient.

**93** The goods and chattels distrained under any such Warrant of Distress shall be sold and disposed of within any time, not being less than Four days, after the making of the distress. Time of sale of goods distrained.

**94** Any person deeming himself aggrieved by the amount of the costs, charges, and expenses with which he is charged as attendant upon any such distress and sale may forthwith apply to the Justice issuing the Warrant of Distress; and such Justice is hereby authorised and empowered to make such order in the matter as to him seems just; and any person who disobeys or fails to comply with such order shall incur a penalty not exceeding Five Pounds. Appeal to Justice against costs of distress.

**95** No Distress made under the authority of this Act shall be deemed unlawful, or the person making the same be deemed a trespasser, on account of any defect or want of form in the Warrant of Distress, or in any other proceeding relating to such distress; nor shall the person distraining be deemed a trespasser *ab initio* on account of any irregularity which he may afterwards commit, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case. Distress not unlawful for want of form.

**96** No Summons or Warrant shall be issued at the instance of the Trustees, or any Collector of Road Rate, for the recovery of any Road Rate after the expiration of One Year from the time when such Rate is made payable by such Notice as aforesaid. Road Rate not to be recoverable after One Year.

**97** The provisions of *An Act to facilitate the Collection and Recovery of Rates* shall be applicable to the collection and recovery of Rates under this Act. Applies provisions of 22 Vict. No. 27.

**98** The Trustees shall not levy or raise any such Road Rate on any property belonging to and occupied by or on behalf of Her Majesty, nor on any property hired or used by the Government or by any Municipal Council for any public purpose, nor on any Hospital, benevolent Asylum, or other building used solely for charitable purposes, nor on any Church or Chapel or other building used solely for public worship, nor on any Public School established by "The Board of Education." Certain property exempted from Road Rate.

*Loans.*

**99** If at any time it appears expedient to the Trustees to raise any sum by way of Loan, upon the security of any of the Tolls payable under this Act, or of a Special Rate, or both, for any of the purposes of this Act, the Trustees shall publish a Notice stating their intention to raise a Loan, with the amount of such proposed Loan, and the rate of interest to be paid in respect thereof, and the purposes to which Trustees to give notice of their intention to raise Loans on security of the Tolls or a Special Rate.

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it is intended to be applied, and also the amount of the Special Rate, if any, which it will be necessary to impose in order to provide for the reimbursement of such Loan within the period hereinafter prescribed, and convening a Meeting of the Landholders for the purpose of taking into consideration the expediency of raising such Loan, at a day, hour, and place to be named in such Notice, such day to be not less than Four Weeks nor more than Six Weeks from the date of the first publication of such Notice in the *Gazette*; and such Notice shall be published by being inserted for Four consecutive Weeks in the *Gazette*, and at least once in each of such Four consecutive Weeks in a public newspaper published in the City or Town nearest to the place at which such Meeting is to be held; and at such Meeting of Landholders the Trustees shall propose the raising of such Loan, and also, if necessary, a Special Rate to be made for the reimbursement thereof with interest.

Landholders may sanction raising Loans.

**100** It shall be lawful for the Landholders at any such Meeting, so convened as aforesaid, to authorise the Trustees to raise by way of Loan, upon the security of any of the Tolls payable under this Act, or of a Special Rate, or both, any sum of money not exceeding the amount mentioned in the Notice convening the Meeting as aforesaid, and also to make any Special Rate upon all property within the Road District not exceeding in amount the Special Rate stated in such Notice; and any Special Rate so authorised shall, when made, continue in force from year to year without being again made or published, until, but not after, the repayment of the amount so authorised to be raised, with interest thereon; and shall be payable at such times as may be appointed in the Notice of the making the Rate published by the Trustees, and at the like times in each succeeding year, in respect of all such property for each year that it remains in force, and shall be a charge upon such property; and every such Special Rate shall be applied solely to the payment of such Loan and interest, and shall be of such an amount as to ensure the payment of such Loan and interest within Twenty-five years at the farthest from the time of raising such Loan: Provided, that the amount of Special Rate made or levied upon property within the Road District by virtue of this Section shall not exceed the sum of One Shilling in the Pound in any one year.

Special Rate to be recoverable as Road Rate.

**101** Every such Special Rate shall be made and recoverable in the same manner, and shall be payable by the like persons, as any Road Rate under this Act.

Loans to be effected by mortgage of the Tolls or Rate.

**102** Every Loan so authorised to be raised shall be by mortgage of the Tolls or Special Rate, or both, as the case may be, upon the security of which the Loan is authorised to be borrowed.

Form of mortgage of Tolls or Rate. Schedule (4.)

**103** Every such mortgage in security of Tolls or Rates shall be by Deed under the hands and seals of the Trustees, or any Three of them, and may be according to the form in the Schedule (4), or to the like effect; and the respective mortgagees in security shall be entitled one with another to their respective proportions of the Tolls or Rates comprised in such mortgages, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced with interest, without any preference one above another by reason of the priority of advancing such moneys, or of the dates of any such mortgages.

Mortgages to be registered.

**104** A register of such mortgages in security shall be kept by the Treasurer of the Trustees; and in the event of separate sums being

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borrowed on security of separate Tolls or Rates a separate register shall be kept for each class of mortgages in security ; and any such register may at all reasonable times be perused and inspected upon payment of a fee of One Shilling.

**105** Any person entitled to any such mortgage may transfer his right and interest therein to any other person ; and every such transfer shall be by Deed wherein the consideration is truly stated, and may be according to the form in the Schedule (5.) or to the like effect.

Transfer of mortgages.

Schedule (5.)

**106** Every such transfer shall, within One Month from the date thereof, be produced to the Treasurer of the Trustees, and thereupon such Treasurer shall cause an entry thereof to be made in the same manner as in the case of an original mortgage in security ; and for every such entry the Treasurer may demand the sum of One Shilling ; and any such entry may at all reasonable times be perused and inspected upon payment of a fee of One Shilling ; and upon such entry being made, such transfer shall entitle the transferee, his executors, administrators, and assigns, to the full benefit of the original mortgage in security, and the principal and interest thereby secured ; and such transferee may in like manner transfer the same again, and so from time to time ; and it shall not be in the power of any person except the person to whom the same has been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage so transferred, or any money thereby secured.

Transfers to be registered.

**107** If the Trustees can at any time borrow any sum of money, in order to pay off and discharge any such mortgage in security then in force, at a lower rate of interest than such existing mortgage bears, it shall be lawful for the Trustees to borrow such sum for such purpose, and to charge the Tolls or Rates authorised to be mortgaged in security, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other moneys borrowed on mortgage in security of Tolls or Rates.

Power to borrow money at a lower rate of interest to pay off securities at a higher rate.

**108** If no time is fixed in the mortgage-deed in security for the repayment of the money so borrowed, the party entitled to receive such money may at the expiration or at any time after the expiration of One year from the date of such deed demand payment of the principal money thereby secured, with all arrears of interest, upon giving Six months previous notice for that purpose ; and in the like case the Trustees may at any time pay off the money borrowed on giving the like notice ; and every such notice shall be in writing or print, or both, and if given by a mortgagee or transferee shall be delivered to the Treasurer of the Trustees or left at his Office, and if given by the Trustees shall be given either personally to such mortgagee or transferee or left at his residence, or if such mortgagee or transferee is unknown to the Trustees, or cannot be found after diligent enquiry, such notice shall be given by advertisement in the *Gazette*.

Repayment of money borrowed when no time has been agreed upon.

**109** If the Trustees give notice of their intention to pay off any such mortgage in security at a time when the same may lawfully be paid off, then at the expiration of such notice all further interest shall cease to be payable thereon, unless on demand of payment made pursuant to such notice, or at any time thereafter, the Trustees fail to pay the principal and interest due at the expiration of such notice on such mortgage in security.

Interest to cease on expiration of notice to pay off a mortgage debt

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*Cross and Bye Roads Act, 1870.*


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Mode of paying  
off mortgages.

**110** Whenever the Trustees are enabled to pay off one or more of the mortgages in security which are then payable, and are not able to pay off the whole of the same class, the Trustees shall decide the order in which they are to be paid off by lot among the class to which such one or more of the mortgages in security may belong, and shall cause a notice to be given to the person entitled to the money to be paid off pursuant to such lot ; and such notice shall express the principal sum so proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified at the expiration of Six months from the date of giving such notice.

Mortgagee may  
enter and receive  
Tolls or Rate on  
default.

**111** It shall not be lawful for any mortgagee or transferee in security as aforesaid to enter into the receipt or possession of such Tolls or Rates so mortgaged as aforesaid until default is made in payment of the interest due upon such security for the space of Twenty-eight days, and unless after demand thereof the same is not paid within such time ; and in case after demand made as aforesaid any such interest is not paid within such time as aforesaid, or in case within Six months after the principal money owing upon any such mortgage in security becomes payable, and after demand thereof the same is not paid, together with all interest due in respect thereof, or if in any case in which no time is fixed in the mortgage-deed in security for the repayment of the money borrowed repayment thereof is demanded as hereinbefore provided, and the same, together with all interest due in respect thereof, is not paid pursuant to such demand, it shall be lawful for the mortgagee or transferee in security, his executors, administrators, or assigns, as the case may be, to enter into possession of the Tolls or Rates so mortgaged, if no other mortgagee or transferee in security is then in possession, and to continue in such possession, and in receipt of such Tolls or Rates as aforesaid, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of collecting and receiving the Tolls or Rates aforesaid, are fully paid ; and every mortgagee or transferee in security so in possession of such Tolls or Rates shall have and exercise all powers for collecting and recovering the said Tolls or Rates hereinbefore contained for those purposes ; and if there is any other mortgagee or transferee in security as aforesaid in such possession as aforesaid, then such mortgage shall be deemed and taken to be a continuing security for the payment of the principal and interest mentioned in such mortgage until the same are fully paid and satisfied, notwithstanding the period for which such mortgage has been granted has expired.

Tolls or Rate to be  
applied by mort-  
gagee in possession  
*pari passu.*

**112** Any mortgagee or transferee in security as aforesaid, who so enters into the possession and receipt of such Tolls or Rates as aforesaid, shall not apply such Tolls or Rates which may consequently be received by him to his own exclusive use and benefit, but to and for the use and benefit of all other mortgagees and transferees in security, if any, of such Tolls or Rates in equal degree, and in proportion to the several sums which are due to them as such mortgagees or transferees in security

If there are no  
Trustees notices  
and demands re-  
lating to mort-  
gages may be  
published in the  
*Gazette.*

**113** Any notice of intention to demand or demand of payment of the principal or interest secured by any such mortgage, required or authorised to be given or made by the mortgagee or transferee, may, in case there are no Trustees of the Road District upon whom such notice or demand can be served or made, be published in the *Gazette*, addressed to the Landholders of the Road District ; and, for the purposes of the foregoing provisions, such notice or demand shall be deemed to have been given or made at the time of its publication in the *Gazette*.

*Cross and Bye Roads Act, 1870.**Subscriptions towards making Roads.*

**114** Any persons who may subscribe for or agree to advance any money for or towards the making or maintaining of any Road, and who may subscribe their names to any writing for that purpose, shall pay the sums of money so subscribed or agreed to be advanced within such time and in such proportions as may be expressed in the writing subscribed by them ; and in case no time or proportions should be expressed in the writing, then at such time and in such proportions as the Trustees order and direct ; and the same shall be demanded by and paid to the Treasurer of the Trustees ; and if any person fails to pay any such sum, it shall be lawful for the Trustees to recover the same as a debt due to the Trustees.

Recovery of sub-  
scriptions towards  
making Roads.

*Bye Roads.*

**115** Upon the application in writing to the Trustees of any Landholder for the definition of a Bye Road for the benefit of such Landholder the Trustees shall, upon the applicant depositing the probable cost of the survey and arbitration, and after such notice, if any, as they deem proper, to the owners and occupiers whose interests may be affected by such Bye Road, authorise and direct a Surveyor to define and lay out such Bye Road, and to draw the necessary plans and specifications for the same.

Trustees may lay  
out Bye Roads.

**116** Such Surveyor is hereby empowered with all necessary assistance to enter upon any Land for the purpose of defining and laying out such Bye Road, and making such plans and specifications.

Surveyor may  
enter for such  
purpose.

**117** Upon such Bye Road being so defined and laid out, and the necessary plans and specifications for the same completed, and after Compensation made as hereinafter mentioned, it shall be lawful for the Trustees to enter upon the Land so defined and laid out as such Bye Road by such Surveyor as aforesaid, and to take and appropriate the same for the purpose of such Bye Road, and the same shall thenceforth become and be, and be used and enjoyed as, such Bye Road ; and thereupon any person interested in such Bye Road is hereby empowered, with all necessary assistance, means, and appliances, to enter upon the same, and to do and execute all such works, matters, and things as may, from time to time, be requisite for the construction, making, repair, and maintenance of such Bye Road.

Land may be  
taken for purpose  
of a Bye Road.

**118** Before the Trustees enter upon and take possession of any such Land for the purpose of any such Bye Road, Compensation shall be made to the persons whose Land may be so taken, such Compensation, in case of dispute, to be ascertained by Arbitration in the mode prescribed by *The Lands Clauses Act* in cases of disputed Compensation ; and such Compensation shall be paid by the person making such requisition as aforesaid, and any other person who is proved upon such Arbitration to be interested in the construction of such Bye Road, in such proportions as the Arbitrators or Umpire in their or his award determine : Provided, that such Arbitrators or Umpire shall not include in their or his award the name of any person as being interested in the construction of any Bye Road unless such person has had notice to appear, and the opportunity afforded him of being heard before such Arbitrators or Umpire before their or his award has been made : Provided that the Trustees may, within Twenty-one days after notice of the amount of Compensation determined on, withdraw the notice of

Compensation to  
be made for Land  
taken for purpose  
of a Bye Road.

Notice to be given  
to persons before  
being awarded to  
pay for Bye Road.

*Cross and Bye Roads Act, 1870.*

their intention to take such Land if the applicant or applicants fail to deposit the sum awarded in the hands of the Trustees within Fourteen days after the amount of Compensation has been determined upon.

In estimating compensation to be paid for land taken for Bye Road, benefit to owner to be considered.

**119** In estimating the amount of compensation to be paid to any person for land taken for a Bye Road, the Arbitrators or Umpire shall take into consideration the benefit that is likely to accrue to the person whose land is about to be so taken for such Bye Road, and the Arbitrators or Umpire, in awarding compensation to be paid for taking such land, shall make such deduction for such benefit as shall be deemed just ; and in case it appears to the Arbitrators or Umpire that the benefit likely to accrue to the person through whose land such Road is about to be taken is equal to or greater than the loss he will sustain by reason of the taking of his land for such Road, the Arbitrators or Umpire may award that no compensation is to be paid, and thereupon the same rights shall accrue as if compensation had been awarded and duly paid.

Bye Roads to be fenced.

**120** Before any such Road so defined and laid out as aforesaid is used as a Bye Road, the same shall, if required by the Owners or Occupiers of the land through which it passes, unless otherwise directed by the Arbitrators or Umpire as hereinafter provided, be sufficiently fenced in on both sides to the satisfaction of the Trustees, so as to prevent injury to the Owners or Occupiers of such Lands by trespass or otherwise, by and at the expense of the applicant and other persons so proved as aforesaid to be interested in the construction of such Bye Road.

By whom fencing to be erected.

**121** The Trustees are hereby empowered and required to ascertain and determine the respective portions of such fencing to be erected by the several persons required to fence such Bye Road, and to fix the time within which such portions of fencing shall respectively be completed ; and in case any such person fail to erect the portion of fencing to be erected by him within the time fixed for that purpose, it shall be lawful for any other of such persons to erect the same ; and such other person as last aforesaid shall be entitled to recover the cost and expense of erecting such portion of fencing as last aforesaid, as money paid to the use and at the request of the person so failing to erect such portion of fencing.

Arbitrators may decide whether Road is to be fenced.

**122** The Arbitrators or Umpire appointed to decide the amount of compensation to be allowed for land taken for a Bye Road, or if there is no dispute as to compensation, then Arbitrators and an Umpire shall be appointed by the person whose land is so taken and by the Trustees in the mode prescribed by *The Lands' Clauses Act* in cases of disputed compensation, who shall take into consideration the probable traffic along such Road, and the desirability or otherwise of the same being fenced in on both sides ; and the Arbitrators or Umpire may by any document declare that the Road shall only be fenced in on one side, or that it shall remain unfenced, and the Road on being fenced in on one side or remaining unfenced, as the case may be, in accordance with such declaration as aforesaid, may be used without being first fenced in on both sides, anything hereinbefore to the contrary notwithstanding : Provided, that in case any Bye Road is directed to be fenced in on one side only, or to remain unfenced, then before the said road is used, wherever the same passes through any fence, a substantial gate properly hung and latched shall be erected by the party on whose application the Bye Road is granted, of not less than Ten feet in width, to be approved of by the Trustees.



*Cross and Bye Roads Act, 1870.*

**123** Every such gate shall have distinctly painted thereon the words "Bye Road Gate," and also the words "Shut the Gate under Penalty of Five Pounds;" and every person passing through any such gate shall shut and fasten the same, and any person who fails or neglects to shut any such gate on passing through the same, or to fasten the same, shall forfeit and pay a penalty not exceeding Five Pounds: Provided, that no person shall be liable to any penalty under this Section unless such gate is, at the time of such failure or neglect, in good and sufficient repair.

Penalty for not shutting gates.

**124** If, in the opinion of the Trustees, a Bye Road, Bridge, Ford, or Ferry is of public advantage, they may apply such portion of the Road Rates as they see fit towards the purchase, repair, or maintenance of such Bye Road, Bridge, Ford, or Ferry.

Road Rates may be applied to Bye Roads, &c.

**125** All powers and authorities herein contained in relation to Bye Roads may, where no Road District exists, or where there are no Trustees in any Road District, be exercised by such person or Boards as the Governor in Council may appoint for that purpose, as fully and effectually to all intents and purposes as if a Road District existed, and as fully and effectually as if there were Trustees of such Road District.

As to Bye Roads where no Road District exists, or where there are no Trustees.

*Officers and their Accountability.*

**126** The Trustees shall, from time to time, appoint a Treasurer, who may be one of the Trustees, and may, from time to time, appoint and employ a Solicitor, Clerk, and such Surveyors, Collectors of Road Rate, Collectors of Tolls, and other Officers as the Trustees think necessary and proper; and, from time to time, may remove any of such Officers, and appoint others in the room of such as are so removed, or as may die, resign, or discontinue their offices; and may, out of the moneys at the disposal of the Trustees under this Act, pay such salaries and allowances to the said Officers respectively as the Trustees think reasonable: Provided, that nothing herein contained shall prevent the same person from being appointed to hold more than one of such offices at the same time if the Trustees so think fit.

Power to appoint Officers.

**127** Any of the Trustees who may be willing to act in such capacity may be appointed Collector of Road Rate, or Clerk or Surveyor to the Trustees.

Trustees may be appointed Officers.

**128** Any Trustee who is appointed Treasurer, Clerk, or Surveyor, or a Collector of Road Rate under this Act shall be liable to all the provisions of this Act relating to such Officer, in the same manner as if he were not a Trustee.

Liability of Trustee appointed an Officer.

**129** Before any person, whether Treasurer, Clerk, Collector, or other Officer, who is entrusted by the Trustees with the custody or control of moneys by virtue of his office, enters upon such office, the Chairman of Trustees shall take sufficient security for the faithful execution thereof.

Security from Officers.

**130** Every Officer or person employed by the Trustees shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters for which such sums have been received or paid, and of all acts done by him by direction of the Trustees; and such books shall at all times be open to the inspection of any Trustee.

Officers to keep account books.

*Cross and Bye Roads Act, 1870.*

Payment over of  
moneys by  
Officers.

**131** Every Collector or other Officer appointed or employed by the Trustees to collect money shall, within Seven days after he has received any moneys on behalf of the Trustees, pay over the same to their Treasurer, and the receipt of such Treasurer for the moneys so paid shall be a sufficient discharge to such Collector or other Officer; and every such Collector or Officer shall, in such time and in such manner as the Trustees direct, deliver to the Trustees true and perfect accounts in writing under his hand of all moneys received by him and of all moneys paid by him to the said Treasurer, and also a list of the names of all persons who have neglected or refused to pay any moneys owing by them, with a statement of the moneys due from them respectively.

Officers to ac-  
count.

**132** Every Collector and other Officer appointed or employed by the Trustees shall, from time to time when required by the Trustees, make out and deliver to the Trustees, or to any person appointed by the Trustees for that purpose, a true and perfect account in writing under his hand of all moneys received by him on behalf of the Trustees; 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 Trustees, or to any person appointed by the Trustees to receive the same, all moneys which appear to be owing from him upon the balance of such accounts.

Summary pro-  
ceeding against  
Officers failing to  
account.

**133** If any such Collector or other Officer fails to render such accounts as aforesaid, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for Five days after being thereunto required he fails to deliver up to the Trustees, or to any person appointed by the Trustees to receive the same, all books, papers, and writings, property, effects, matters, and things in his possession or power relating to the execution of his office or belonging to the Trustees, then, on complaint thereof being made to a Justice, such Justice shall summon such Officer to appear before Two or more Justices, at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such Officer, or upon proof that such summons was personally served upon him or left at his last known place of abode, such Justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such Officer; and if it appears, either upon confession of such Officer, or upon evidence, or upon inspection of the account, that any moneys of the Trustees are in the hands of such Officer, or owing by him to the Trustees, such Justices may order such Officer to pay the same; and if he fails to pay the amount it shall be lawful for such Justices to grant a Warrant to levy the same by distress, and in default of sufficient distress to commit the offender to gaol, there to remain without bail for a period not exceeding Three Months, unless the same is sooner paid.

Officers refusing  
to make out ac-  
counts, &c., may  
be committed.

**134** If any such Officer summoned as aforesaid refuses to make out such account in writing, or to produce and deliver to the Justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things in his possession or power belonging to the Trustees, such Justices may commit such offender to gaol, there to remain until he has delivered up all the vouchers and receipts in his possession or power relating to such accounts, and all the books, papers, writings, property, effects, matters, and things in his possession or power belonging to the Trustees.

*Cross and Bye Roads Act, 1870.*

**135** If any Trustee or other person acting on behalf of the Trustees makes oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such Officer as aforesaid to abscond, the Justice before whom the complaint is made may, instead of issuing his summons, issue his Warrant for bringing such Officer before such Two Justices as aforesaid; but no person executing such Warrant shall keep such Officer in custody longer than Twenty-four hours without bringing him before some Justice; and the Justice before whom such Officer is brought may either discharge such Officer, if he thinks there is no sufficient ground for his detention, or order such Officer to be detained in custody so as to be brought before Two Justices at a time and place to be named in such order, unless such Officer gives bail to the satisfaction of such Justice for his appearance before such Justices to answer the complaint of the Trustees.

If Officer about to abscond, Warrant may be issued.

**136** No such proceeding against or dealing with any such Officer as aforesaid shall deprive the Trustees of any remedy which they would otherwise have had against such Officer or any surety of such Officer.

Proceedings against Officers not to discharge sureties.

*Accounts and Audit.*

**137** The Trustees shall cause books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and paid under the authority of this Act, and of the several purposes for which such sums of money have been received and paid, which books shall at all reasonable times be open to the inspection of any Trustee, or any Mortgagee or Transferee in security of Tolls or Rates, or other Creditor of the Trustees, without fee or reward; and the persons aforesaid, or any of them, may take copies of or extracts from the said books without paying anything for the same; and any person having the custody of the said books who does not, on the reasonable demand of any person as aforesaid, permit him to inspect the said books, or to take such copies or extracts as aforesaid, shall, for every such offence, incur a penalty not exceeding Five Pounds.

Trustees to keep accounts of receipts and disbursements.

**138** All moneys received by the Treasurer of the Trustees shall be paid by him monthly into some One of the Public Banks of this Colony to the account of the Trustees of the Road District; and no part of such moneys shall be drawn out of such Bank except by cheque signed by the Treasurer and countersigned by One of the Trustees.

Moneys received to be paid into Bank.

**139** At the First and every Annual Meeting of Landholders for the election of Trustees in every Road District, there shall be elected by the Landholders of such District Two fit persons qualified to be, but not being, Road Trustees or Candidates at such election for the office of Road Trustee for such District, to be Auditors of such Road District, and the election of Auditors shall be conducted in the same manner, as nearly as may be, as the election of Road Trustees, and such Auditors shall continue in office until their successors are appointed.

Election of Auditors.

**140** Every person elected Auditor shall accept such office, and shall perform the duties attached thereto under a penalty, at the discretion of the Trustees, of not less than Five Pounds nor more than Twenty Pounds.

Auditor to accept office.

**141** In case any extraordinary vacancy takes place in the office of Auditor in any Road District, the Chairman of such Road District

Extraordinary vacancy in office of Auditor.

*Cross and Bye Roads Act, 1870.*

shall forthwith call a meeting of the Landholders to fill such vacancy : Provided, that Ten clear days previous notice of the time and place of holding such meeting shall be published in the *Gazette*, and in a public newspaper published in the City or Town nearest to the place in which such meeting is to be held.

Statement of accounts to be annually prepared.

**142** The Trustees of every Road District shall, before the end of the second week in the month of *March* in each year, cause the accounts of the Trustees up to and including the last day of *February* next preceding to be balanced, and also cause a full and true statement and account to be drawn out of the amount of all Rates made and levied, and of all contracts entered into, and of all moneys received and expended during the preceding year, and also of all debts then owing by and to the Trustees, and such statement and account, signed by the Chairman and not less than Two Trustees, shall be submitted by such Chairman to the Auditors.

Auditors to inspect accounts.

**143** The Auditors of every Road District shall, during the month of *March*, and as soon as conveniently may be after each annual balancing of the accounts of the Trustees, proceed to audit the accounts of the Trustees for the preceding year ; and the Trustees at a convenient time and place to be fixed by the Chairman, who shall give the Auditors Seven days' notice thereof, shall, by the Treasurer, then and there produce and lay before such Auditors the accounts so balanced as aforesaid, together with the statement and account hereinbefore mentioned, accompanied with proper vouchers in support of the same, and all books, papers, and writings in the custody or power of the Trustees relating thereto ; and the Auditors shall make and deliver to the Treasurer a special report upon such accounts, or if the said accounts are found correct such Auditors shall simply confirm and sign the same in token of their allowance thereof: Provided that if one Auditor only attends, he shall do all that is by this Section required to be done by the Auditors.

Publication of accounts.

**144** The Treasurer of every Road District shall make out and cause to be printed a full abstract of the accounts for the year as audited ; and a copy of the said abstract shall be published in the *Gazette* before the meeting for the election of Trustees in such District.

*Title to the Road Property.*

Road property vested in Trustees.

**145** The property in the Roads, and in all Land purchased by the Trustees for the purposes of this Act, and in all moneys at the disposal of the Trustees for the purposes of this Act, and in all Toll-gates, lamps, Tables of Tolls, direction-boards, mile-stones, walls, fences, posts, rails, and other erections, buildings, and things erected or provided by the Trustees, with the several appliances and appurtenances thereto respectively belonging, and the materials of which the same consist, and all materials, tools, implements, and things furnished and provided by the Trustees for the purposes of this Act, together with the scrapings of the Roads, shall, for the purposes of this Act, be vested in the Trustees of the Road District.

Ejection of trespassers.

**146** If any person who, by virtue of his office, lease, or appointment, is in occupation of any Toll-gate or land under the Trustees, at the termination by any means whatsoever of such office, lease, or appointment refuses or fails to deliver up possession of such Toll-gate or Land,

*Cross and Bye Roads Act, 1870.*

or if any person in wrongful possession of any Toll-gate or Land, the property in which is vested in the Trustees, refuses or fails to deliver up possession of such Toll-gate or land, within Two days after notice demanding possession thereof has been left at or on such Toll-gate or Land, it shall be lawful for any Justice, by Warrant under his hand, to order any Constable, with all necessary assistance, to enter into or on such Toll-gate or Land, in the day-time, and to remove any person who is found therein or thereon, together with his goods and chattels, out of or from such Toll-gate or Land, and to give possession thereof to the Trustees or such person as they may appoint.

*Appropriation.*

**147** All moneys whatsoever levied, received, or recovered under the authority of this Act shall be at the sole and absolute disposal of the Trustees, to be by them applied in the payment of the interest of any money borrowed on the security of any Rate or Tolls under this Act, as well as any sum of money set apart in each year for the redemption of the principal money borrowed on any such security ; the payment of the necessary salaries and wages of the several Officers, servants, and others appointed and employed by the Trustees, and of the necessary expenses attending the collection or recovery of such moneys ; in repairing, maintaining, improving, widening, diverting, altering, making, constructing, fencing, and completing any Road or new Line of Road in the Road District ; the erection of Toll-gates ; and generally in carrying out and effectuating the several purposes of this Act in the Road District, and to no other purpose. Appropriation.

*Suits by and against Trustees.*

**148** The Trustees may sue or be sued by the name of " The Trustees of the Road District of \_\_\_\_\_," naming the Road District of which they are Trustees, without otherwise naming such Trustees ; and no action, suit, or other proceeding commenced or had by or against the Trustees shall abate or be in any way affected by reason of the death, resignation, absence, or new election or appointment of any Trustee, but the same may be carried on and proceeded with as if no such change had taken place. Trustees how to sue and be sued.

**149** In any proceeding, Civil or Criminal, relating to any property or money vested in the Trustees for the purposes of this Act, it shall be sufficient to describe such property or money as the property or money of " The Trustees of the Road District of \_\_\_\_\_," naming the Road District of which they are Trustees, without otherwise naming such Trustees. Property may be laid in the Trustees.

**150** Any Trustee may sue and be sued by the Trustees, and be proceeded against criminally, in the same manner as if he were not a Trustee ; and in any such suit or proceeding the Trustees may be described, and the property laid, as in a suit or proceeding by or against a stranger. Any Trustee may be sued notwithstanding his being a Trustee.

**151** If any person entrusted with the receipt or disposal of money under the authority of this Act, whether a Trustee or not, fraudulently disposes of or retains in his own possession, or applies to his own use, any money with the receipt or disposal of which he has been entrusted by virtue of this Act, he shall be guilty of Larceny. Frauds by persons entrusted with moneys.

*Cross and Bye Roads Act, 1870.**Notices by the Trustees.*

Notices to be given by Trustees how to be signed.

**152** Any Notice required to be given by the Trustees by virtue of the provisions of *The Lands Clauses Act*, or of this Act, shall be sufficient if signed by any Two of the Trustees, or by their Chairman, Solicitor, or Clerk.

*Breach of Duty.*

Breach of Duty by Trustee.

**153** If any Trustee or Chairman of any Meeting of Landholders wilfully neglects or refuses to perform any duty, matter, or thing, which he is appointed or enjoined to perform under this Act, or in any manner infringes or disobeys any provision of this Act, such Trustee or Chairman shall, for every such offence, incur a penalty not exceeding Twenty Pounds.

Penalty on Trustee for being interested in a contract with the Trustees.

**154** Every person who, being a Trustee, continues to be or becomes, directly or indirectly, by means of partnership with any other person or otherwise howsoever, wilfully or knowingly engaged or interested in any contract or agreement, or employment with, by, or on behalf of the Trustees, except as proprietor or shareholder of any Joint Stock Company contracting with the Trustees, or except as hereinbefore provided, shall incur a penalty not exceeding One hundred Pounds nor less than Ten Pounds: Provided, that nothing in this Section contained shall affect any Trustee in respect of any contract entered into before the commencement of this Act.

*Obstructing Trustees and their Officers.*

Obstructing Trustees.

**155** If any person wilfully obstructs, hinders, or interrupts, or causes or procures to be obstructed, hindered, or interrupted, the Trustees, or any Surveyor, Collector, Officer, Servant, or Workman of the Trustees, in doing or performing any work by this Act authorised to be done or performed by the Trustees, or in the exercise of any power or authority vested in the Trustees or any of the persons aforesaid by this Act, or threatens, or assaults, or uses improper or abusive language to any of the persons aforesaid whilst in the performance or execution of his duty under this Act, every such person shall for any such offence, if not otherwise specially provided for, incur a penalty not exceeding Twenty Pounds: Provided, that no proceeding for the recovery of any such penalty, nor the payment thereof, shall be a bar to any action at Law by any of the persons aforesaid for or in respect of any such assault as aforesaid, but every such action may be commenced and proceeded with as if this Act had not been passed, any Law or usage to the contrary notwithstanding.

Powers conferred on Trustees to extend to Officers duly authorised.

**156** Wherever by this Act authority is conferred on the Trustees to enter upon any Land for the purposes of this Act, or to do any act in or relating to the construction or maintenance of any Road or other work, the same authority shall equally extend to all persons acting by the direction of the Trustees, and to all necessary agents, assistants, servants, workmen, means and appliances whatsoever.

*Recovery and Appropriation of Penalties.*

Offences to be dealt with summarily.

**157** All offences against this Act, and all penalties and sums of money imposed or made payable by this Act, shall, where no other mode of proceeding is by Law provided, be heard, determined, and

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recovered in a summary way by and before One or more Justice or Justices of the Peace, in the mode prescribed by *The Magistrates Summary Procedure Act.* 19 Vict. No. 8.

**158** No person shall, unless otherwise expressly provided, be imprisoned for nonpayment of any penalty under this Act, or for want of sufficient distress, for a longer period than Three Months, to be computed from the day, if such offender has been arrested, on which he was actually arrested. Imprisonment for penalties limited to Three months.

**159** All penalties received by virtue of this Act shall, if not otherwise in any case specifically directed, be paid to the Treasurer of the Trustees of the Road District within which the offence in respect of which the penalty is imposed was committed, and shall form part of the moneys at the disposal of the Trustees for the purposes of this Act. Appropriation of penalties.

*Appeal from Penalties.*

**160** Any person who thinks himself aggrieved by any penalty imposed under the authority of this Act which is recoverable in a summary manner, may, unless otherwise expressly provided, appeal against the same in the mode prescribed by *The Appeals Regulation Act.* 19 Vict. No. 10. Appeal from penalties.

*Protection of Persons executing Act.*

**161** No action shall lie against any person for any thing done in pursuance of this Act unless notice in writing of such action, and of the cause thereof, is given to the Defendant One Month at least before the commencement of the action, and such action is commenced within Three Months after the cause of action has accrued; and in any such action the Defendant may plead the general issue, and give this Act and the special matter in evidence; and no Plaintiff shall recover in any such action if tender of sufficient amends has been made before such action brought, or if a sufficient sum of money has been paid into Court by or on behalf of the Defendant after such action brought, together with the costs incurred up to that time; and if a verdict passes for the Defendant, or if the Plaintiff becomes nonsuit or discontinues such action, or if upon demurrer or otherwise judgment is given against the Plaintiff, the Defendant shall recover his full costs as between attorney and client, and have the like remedy for recovering the same as any Defendant has by Law in other cases; and though a verdict is given for the Plaintiff in any such action, such Plaintiff shall not have costs against the Defendant unless the Judge before whom the case is tried certifies his approbation of the action, and the verdict obtained thereupon. Persons acting under Act entitled to notice of action, &c.

*Repeal.*

**162** On and after the day on which this Act commences and takes effect, the Acts of the Parliament of *Tasmania* set forth in the Schedule (6.), to the extent to which such Acts and parts of Acts are therein expressed to be repealed, shall be hereby repealed: Repeal of existing Acts. Schedule (6.)

Provided that such repeal shall not affect—

- (1.) Anything duly done before this Act commences and takes effect:
- (2.) Any liability accruing before this Act commences and takes effect:

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- (3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act commences and takes effect :
- (4.) The institution of any legal proceeding, or any other remedy for enforcing or recovering any such liability, penalty, forfeiture, or punishment as aforesaid.

*Existing Road Districts, &c. continued.*

Existing Road Districts continued.

**163** All Road Districts existing at the time of the commencement of this Act, by virtue of any Act hereby repealed, shall continue to be Road Districts, and shall be deemed to be Road Districts within the meaning and for the purposes of this Act, and shall be subject to its provisions.

Existing Trustees and Officers continued.

**164** All Trustees elected or appointed, and all Collectors and other Officers and persons appointed under any Act hereby repealed, and in office at the time of the commencement of this Act, shall continue in office notwithstanding such repeal, and shall be deemed to have been elected or appointed under this Act, and shall be subject to its provisions, and the rotation in which any such Trustee shall retire shall be the same as if this Act had not passed.

Existing Roads, &c., to be embraced by provisions of this Act.

**165** All Roads and other works made, constructed, or repaired, and all other matters and things whatsoever made or done under any Act hereby repealed, shall, for the purposes of this Act, be deemed to have been made, constructed, repaired, or done under this Act.

Existing contracts, &c., continued.

**166** All contracts, bonds, covenants, securities, and proceedings whatsoever made, entered into, or commenced under any Act hereby repealed, and subsisting at the time of the commencement of this Act, shall remain in full force and effect, and continue available and be continued as if the same had been made, entered into, or commenced under this Act.

Recovery of Rates not paid.

**167** All Special Rates and mortgages of Special Rates made before the commencement of this Act shall be deemed to have been made under this Act, and all Special and other Rates made under any Act hereby repealed, and not paid or recovered at the time of the commencement of this Act, shall be payable and recoverable as if this Act had not been passed.

Existing Tolls to continue during mortgages or demises.

**168** Where any Tolls payable at any Toll-gate at the time of the commencement of this Act are then under mortgage or demise, such Tolls shall continue to be payable at every such Toll-gate until the money secured by such mortgage has been paid off, or during the continuance of such demise, as the case may be, anything in this Act to the contrary notwithstanding.

Existing Tolls continued.

**169** All Tolls payable at any Toll-gate at the time when this Act commences and takes effect shall be deemed to be payable under this Act.

Where in Acts 24 Vict. No. 7 is mentioned this Act to be meant

**170** Where in any Act *The Cross and Bye Roads Act, 1860*, is referred to, the same shall, for the purposes of the said first-mentioned Act, be deemed to mean this Act.



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*Cross and Bye Roads Act, 1870.*

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**171** Nothing hereinbefore contained shall affect or be deemed to affect the provisions of "An Act to vest the Maintenance of the Jetty at Swansea in the Trustees of the Road District in which the same is situate," "An Act to make special Provision in certain Particulars for the Great Lake Road District," or *The South Esk Bridge Act, 1861.* This Act not to affect 23 Vict. No. 16, 24 Vict. No. 8, or 25 Vict No. 14.

*Main Road.*

**172** This Act shall not apply to the Main Road from the City of Hobart Town to the Town of Launceston. Act not to apply to Main Road.

*Commencement of Act.*

**173** This Act shall commence and take effect on the First day of January, 1870. Commencement of Act.

*Title of Act.*

**174** This Act may be cited as "The Cross and Bye Roads Act, 1870." Short Title.

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SCHEDULE.

(1.)

I, A.B., having been elected a Trustee of the Road District of \_\_\_\_\_, do hereby solemnly declare that I take the said Office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability. Sect. 27.

A.B.

(2.)

THE MAXIMUM RATE OF TOLLS TO BE TAKEN AT ANY TOLL-GATE UNDER THIS ACT. Sect. 67.

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	s.	d.
For each Horse, Colt, Foal, Mule, or Ass, drawing any Vehicle. ....	0	8
For each Ox, Bull, Bullock, or Steer, drawing any Vehicle .....	0	4
For each Horse, Colt, Foal, Mule, Ass, Ox, Bull, Bullock, Cow, Steer, Heifer, or Calf .....	0	4
For each of any number of Pigs, Sheep, or Lambs under a Score .....	0	0½
For each Score of Pigs, Sheep, or Lambs, not exceeding Fifteen Score ....	1	0
For each additional Score or any number less than a Score of Pigs, Sheep, or Lambs above Fifteen Score....	0	4

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(3.)

## DISTRESS WARRANT FOR ROAD RATE.

Sect. 91.

TASMANIA } To X.Y. [a Collector of Road Rate for the Road District of  
TO WIT. } *or some other fit person.*]

WHEREAS complaint has been made before [me], a Justice of the Peace, that A.B. of \_\_\_\_\_ has not paid the sum of \_\_\_\_\_ payable by him in respect of certain property situate [describe property fully] by virtue of the Road Rate for the Road District of \_\_\_\_\_ made on or about the \_\_\_\_\_ day of \_\_\_\_\_ 1870, although the same has been duly demanded of him: And whereas it appears to me upon the oath of [the said X.Y.] a Collector of Road Rate for the said Road District, that the said sum of \_\_\_\_\_ has been duly demanded by him from the said A.B. and that the said A.B. has failed to pay the same for the space of \_\_\_\_\_ days after such demand made and has not paid the same: And whereas the said A.B., having appeared before me in pursuance of a Summons issued by [me] for that purpose, has not shown sufficient cause why the said sum of \_\_\_\_\_ should not be paid: [or And whereas it has been proved to me upon oath that the said A.B. has been summoned to appear before [me] or such other Justice of the Peace as might now be here to show cause why the said sum of \_\_\_\_\_ should not be paid, and the said A.B. has neglected to appear according to such Summons, and has not shown any sufficient cause why the said sum of \_\_\_\_\_ should not be paid:] These are therefore to command you forthwith to make distress of the Goods and Chattels of the said A.B. wheresoever the same may be found, and also of all Goods and Chattels found by you upon the said property to whomsoever the same may belong; and unless at any time within the space of [Five] days after such distress by you made the said sum of \_\_\_\_\_ together with all costs, charges, and expenses attendant upon such Distress, be paid to you, that you cause the said Goods and Chattels so by you distrained to be sold, and out of the money arising by such sale that you detain the said sum of \_\_\_\_\_ and also all costs, charges, and expenses attendant upon such Distress and Sale, rendering to the said A.B. or other person whose Goods and Chattels are so distrained by you, as the case may be, the overplus, if any, on demand; [in case the Warrant is directed to some other person than the Collector, and the said sum of \_\_\_\_\_ you are hereby commanded to pay to (the said X.Y.) the said Collector of Road Rate;] and if no sufficient Distress can be made of the Goods and Chattels of the said A.B. or otherwise as aforesaid, that then you certify the same to me together with this Warrant.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 1870.

J.P.,  
Justice of the Peace.

(4.)

Sect. 103.

## FORM OF MORTGAGE OF TOLLS OR RATES.

## MORTGAGE No.

By virtue of "The Cross and Bye Roads Act, 1870," the Trustees of the Road District of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_ paid to the Treasurer of the said Trustees by A.B. of \_\_\_\_\_ hereby grant and assign unto the said A.B., his executors, administrators, and assigns, such proportion of the [Tolls arising or to arise on the Road within the said Road District called the \_\_\_\_\_ Road, together with the Toll-gates erected or to be erected thereon where the same are col-

*Cross and Bye Roads Act, 1870.*

lected, *describing the Tolls and Toll-gates proposed to be mortgaged, or Special Rate made describing the Rate proposed to be mortgaged*] as the said sum of bears to the whole sum which is or shall be borrowed upon the credit of the said [Tolls or Rate] to hold to the said *A.B.*, his executors, administrators, and assigns, from this day until the said sum of with interest at per centum per annum for the same is fully made and satisfied, [*in case any period is agreed upon for that purpose, the principal sum to be repaid at the end of* years from the date hereof].

Given under our hands and seals this day of 1870.

*Y. Z. (L.S.)  
W. X. (L.S.)  
U. V. (L.S.)*

*Trustees of the Road District of*

(5.)

FORM OF TRANSFER OF MORTGAGE OF TOLLS OR RATES. Sect. 105.

I, *A.B.*, in consideration of the sum of paid to me by *C.D.* of hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain Mortgage, Number , made by the Trustees of the Road District of to bearing date the day of 1870, for securing the sum of and interest, (*or if such transfer is by endorsement the within Security,*) and all my right, estate, and interest in and to the money thereby secured, and in and to the [Tolls or Rate] thereby assigned.

In witness whereof I have hereunto set my hand and seal this day of 1870.

*A. B. (L.S.)*

(6.)

ACTS AND PARTS OF ACTS TO BE REPEALED. Sect. 162.

<i>Date and Number of Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i>
24 Vict. No. 7.	<i>The Cross and Bye Roads Act, 1860.</i>	The whole Act.
29 Vict. No. 21.	<i>The Cross and Bye Roads Act, 1865.</i>	The whole Act.
31 Vict. No. 19.	<i>"The Cross and Bye Roads Act, 1867."</i>	The whole Act.

