No. 11.

An Act to repeal an Act No. 17 of 1861, "To amend an Act No. 17 of 1852, for the making and improving of Roads in South Australia," and to make other provisions in lieu thereof:

[Assented to, 12th November, 1863.]

WHEREAS it is expedient to repeal an Act No. 17 of 1861, "To amend an Act No. 17 of 1852, for the making and improving of Roads in South Australia," and to make other provisions in lieu thereof: And whereas by the said Act No. 17 of 1852, it is enacted that all the public roads in the Province of South Australia should be divided into main and district roads, and that all public roads should be under the care, control, and management of Commissioners, and that the Central Board of Main Roads, by the said Act appointed, should be the Commissioners for the care, control, and management of main roads, and that the District Council for any district should be the Commissioners for the care, control, and management of the district roads within such district; but by the said Act no Commissioners are appointed for the care, control, or management of district roads not within any district established under the District Councils Acts, or any of them, and it is therefore also expedient to appoint a Commissioner for the care, control, and management of district roads not within any district established as aforesaid—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. An
Repeal of Acts.

1. An Act No. 17 of 1861, intitled "An Act to amend an Act No. 17 of 1852, for the making and improving of Roads in South Australia," and clauses Nos. 47, 48, 49, 50, 52, 53, 54, 55, 56, and 57 of the said Act No. 17 of 1852 are hereby repealed; but no proceedings taken before this Act comes into operation shall be affected hereby; and all proceedings under any notice inserted in the South Australian Government Gazette, before this Act comes into operation, may be completed in manner prescribed by the said Act No. 17 of 1861; or in case the same were commenced before the said Act of 1861 came into operation, then under the provisions of the said Act of 1852.

Short title of Act.

2. This Act may be cited for all purposes as the "Roads Amendment Act, 1863."

No. 17 of 1852, to be read with this Act.

3. The said Act No. 17 of 1852, shall (save in so far as the same is repealed), be deemed to be incorporated with this Act, and shall be construed herewith as forming one Act.

Interpretation of terms.

4. In the construction of this Act, and of the said Act No. 17 of 1852, the word "Commissioners" shall, unless inconsistent with the context, in addition to the meaning attached to it by the said Act No. 17 of 1852, be taken to mean and include the Commissioner of District Roads hereinafter more particularly referred to; and also as to any matters within the limits of any Corporate City, Town, or place, the Council of such City, Town, or place.

The following acts may be done by Commissioners.

5. Any one or more of the following acts may be done by the Commissioners at any one time, by one proceeding, or from time to time, that is to say—

New roads may be opened:

Existing roads, or any part thereof, may be altered, added to, or closed:

Closed roads or any part thereof may be exchanged for lands required for new roads or alterations, or may be sold, or, where within the jurisdiction of a Corporation or District Council, may be retained as the property of the Corporation or Council, and at any time sold or exchanged for other land required for roads, or corporate or district purposes, or may be dedicated to corporate or district purposes.

Proceedings before Commissioners.

6. The proceedings before Commissioners to open new roads, and alter, add to, close, and sell or exchange existing roads, shall be as follows: A survey plan shall be deposited with the Surveyor-General, at his office in Adelaide, showing the exact position, boundaries, bearings, and admeasurements of proposed new roads, alterations, additions, and the roads or parts proposed to be closed; and the names of owners or occupiers of lands affected by the proposed alterations shall, so far as known, be shown upon the plan, in a tabular form, which plan shall be open to public inspection at all reasonable times, and, at the time of depositing the said plan as aforesaid, a fee of Five Pounds Five Shillings shall be paid to the Surveyor-General for the use of Her Majesty.

7. On
7. On receipt of such plan, the Surveyor-General shall cause to be prepared and inserted in the *South Australian Government Gazette*, a notice for four consecutive weeks, containing the following information, namely:—A general description of the proposed alterations, showing the boundaries, bearings, and admeasurements of the land proposed to be taken for new roads, alterations or additions; and of the old roads proposed to be closed, as the case may be, and referring to the survey plan; the names of owners or occupiers of any land affected (so far as known); the date and place of meeting of the Commissioners to decide as to making such alterations or otherwise; and printed copies of such notices shall, as soon as possible, be forwarded, by the Surveyor-General, to the persons whose names appear in such notice as owners or occupiers of any land affected by the proposed alterations, such notices being forwarded through the medium of the General Post Office, directed to such persons at their last or most usual known place of abode in the said Province, or if that be not known, then to the place where such proposed alterations are to be made; and any person may, within forty days after the first publication of the notice, by writing, addressed and served on the Commissioners, their Secretary, or Clerk, or delivered at the office of the Commissioners, give notice of any objection: Provided also, that a copy of such notice be forwarded to the Surveyor-General.

8. At the time and place fixed by such notice the Commissioners shall hold a meeting and shall then or at any adjournment of such meeting consider the proposed alterations, and any objections thereto, and any person objecting may personally, or by counsel, or agent, attend any meeting and support his objection.

9. Nothing in this Act shall authorize the Commissioners to take or make use of, or order or direct any road to be made in or through any garden, yard, park, planted walk, or avenue to a house, or any closed ground planted as an ornament or shelter to a house, or as a nursery for trees, or any part thereof respectively, without the consent in writing of the owner and occupier thereof.

10. No order for the exchange of any land required for new roads shall be made unless an agreement for that purpose shall first have been entered into with the owner and occupier (if any) of the land so required, which agreement shall be in the form in Schedule A to this Act, or as near thereto as circumstances will permit.

11. Should the proposed alteration, or any portion thereof, be allowed by the Commissioners at such meeting, or at any adjournment thereof, they shall make an order to that effect, which order shall be in duplicate, and shall be in one of the forms Nos. 1, 2, or 3, in the Schedule B to this Act, or as near thereto as circumstances will permit, and such order shall be forthwith forwarded to the Commissioner of Crown Lands for confirmation by the Governor; and unless such order shall be duly confirmed by the Governor, and a notice thereof given as hereinafter mentioned within
within a period of twelve calendar months of the date of the meeting at which such order was made, the same shall be utterly void to all intents and purposes whatever.

12. On the confirmation by the Governor of any such order as aforesaid, a notice of such confirmation shall be forthwith published in the South Australian Government Gazette, which notice shall be in the form in Schedule C to this Act, or as near thereto as circumstances will permit, and the publication of such notice shall be sufficient evidence of the due confirmation of any such order, and thereupon any land or area to be taken for a new road or part of a road, shall become dedicated to the public and be under the control and management of the Commissioners, who shall also then be authorized to pay or receive any money agreed on for equality of exchange, and any land by the order ordered to be vested shall be vested in the person and for the estate therein mentioned; but should such order not be confirmed within the time above limited, any agreement for exchange shall be absolutely void.

13. The Commissioner of Public Works for the time being shall be the Commissioner of district roads for all such parts of the said Province as are not within the limits of any corporate city, town, or place, or any district under the District Councils Act, 1858; and all district roads in such parts of the said Province shall be under his care, control, and management, and he shall, in all such parts of the said Province have the like powers and be subject to the like liabilities as are conferred or imposed upon Commissioners of Roads by the said Act No. 17 of 1852, and by this Act: Provided that whenever any city, town, or place shall be incorporated, or any district constituted under the said District Councils Act, 1858, the powers, authorities, and duties of the Commissioner of Public Works as Commissioner of Roads shall cease within the limits of such city, town, place, or district.

14. The Commissioner of Public Works for the time being shall be the Commissioner for all roads that have been taken off the Schedule of Main Roads: Provided that whenever such roads shall have been placed in repair, they shall be handed over to the different District Councils or Corporations within the limits of which they may pass: Provided also, that if any parts of the said main roads shall be the boundaries of any District Councils, such District Councils shall jointly take charge of the aforesaid roads, when placed in repair by the said Commissioner.

15. The proceedings of the Commissioner of Public Works to open roads, and alter, add to, or close existing roads and effect exchanges, shall be the same as are prescribed by this Act, except that instead of the meeting of Commissioners hereinbefore directed to be held, the Commissioner of Public Works together with the Surveyor-General shall hold a public sitting at the time and place fixed by the notice to be given as aforesaid, and shall then and there consider
consider the proposed order and any objection of which notice has been given, and any person objecting may, personally or by his counsel or agent, attend such sitting and support his objections.

16. The Commissioner of District Roads constituted by this Act shall be called "The Commissioner of Public Works acting as Commissioner of Roads," and by such corporate name may enter into any contract authorized by the said Act No. 17 of 1852, or by this Act, and become a party to any deed, conveyance, agreement, or instrument which may be required for the performance or construction of any work, or the delivery or removal of any materials, or which may otherwise be required to be entered into by him in his capacity as such Commissioner of Roads: and may take security by bond, obligation or otherwise, and by such name may sue or be sued, implead or be impleaded, before any Court or tribunal whatsoever, and in any notices, orders, certificates of title, or other writings whatsoever in which it shall be necessary to mention the Commissioner constituted by this Act, it shall be sufficient to designate him as "The Commissioner of Public Works acting as Commissioner of Roads."

17. Any proprietor or occupier of any land through which a road, or part of a road is ordered to be made, in the original grant of which land no power of making roads has been reserved, or any person who is not a party to the agreement for exchange who shall after confirmation of any order for exchange, or for opening a new road without any agreement for exchange, have any estate, right, title, or interest in the land taken, may serve a notice in writing on the Commissioners within eighteen calendar months from the date of the Gazette in which notice of confirmation of the order shall have been published, claiming compensation for damages, for land required for the said road, or part of a road, and so taken or exchanged, and, in default of service of notice, as aforesaid, the proprietor and owner, and all persons claiming by, through, from, or under them, or claiming estate, right, title, or interest, in the land so taken or exchanged, shall be for ever foreclosed from any benefit or claim whatsoever to any compensation for any portion of such land.

18. If any person shall be desirous of obtaining an order to close any road adjoining his land, or to close such road and to open any land as a new road in place thereof, or in addition thereto, he may apply to the Local Court of Full Jurisdiction, nearest to the place where such alteration is proposed to be made, and such Local Court is hereby authorized to make such order as is hereinafter mentioned.

19. The proceedings to obtain an order under the last preceding section shall be as follows—

The person desirous of obtaining such order shall deposit with the Surveyor-General a survey plan showing the exact position, boundaries, bearings, and admeasurements of the roads, or parts of roads, proposed to be closed, and of any piece of land...
land proposed to be used as a road and substituted therefor, and also the names of the owners or occupiers of sections affected by the proposed alteration, which plan shall be open to public inspection at all reasonable times; and at the time of depositing such plan, the person so applying shall pay to the Surveyor-General the sum of Five Pounds Five Shillings, and also deliver a notice, stating the Local Court to which, and the time at which, it is intended that such application shall be made.

Upon such plan being deposited, the Surveyor-General shall cause to be prepared and inserted in the South Australian Government Gazette a notice, for four consecutive weeks, containing the following information, viz:—The name and time of meeting of the Local Court to which the application is to be made; a description of the proposed alterations, giving the boundaries, bearings, and dimensions of the road proposed to be closed, and also of any piece of land proposed to be used as a road or substituted therefor; and the names of the owners or occupiers of any land affected (so far as known); and a printed copy of such notice shall, as soon as possible, be forwarded to the Commissioners of Roads for the District where such alterations are proposed to be made, and also to the persons whose names may appear in such notice as owners or occupiers of any land affected, such notices being forwarded through the medium of the General Post Office, and being directed to such persons at their last or most usual place of abode in the said Province, or if that be not known, then to the place whence the proposed alteration is to be made.

At the Local Court held at the time and place mentioned in such notice, being not less than six, nor more than eight, weeks after the first publication thereof in the South Australian Government Gazette, or at any adjournment thereof; or if from any reason other than the mistake of the applicant, the said Court should not sit on the day mentioned in such notice, then at its next sitting the said Court may hear and adjudicate upon such application, and may make such order as to closing any old road, or opening any piece of land as a new road in place thereof; or in addition thereto, as to them may appear expedient, which order shall, as soon as possible after the making thereof, be drawn up in duplicate and authenticated by the seal of the said Court, and shall be in the form of No. 4 in the Schedule B to this Act, or as near thereto as circumstances will permit.

Any person interested may by himself, his counsel, or agent, attend before any such Court, and object to any such order being made: Provided that he shall have given notice in writing to the Clerk of the said Court, at least seven days before the day on which the application is to be heard, stating his intention so to object, and the grounds of such objection.
Roads Amendment Act.—1863.

There shall be an appeal to the Adelaide Local Court of Full Jurisdiction from any order of any other Local Court, which shall be conducted in the manner prescribed for regulating appeals by the Act No. 6 of 1850.

Certificates of title shall be issued by the Commissioner of Crown Lands to the persons respectively entitled to the lands mentioned in such order.

From and after the making of the order, the road or part of a road therein described to be closed, shall cease to be a road; and any land by the order ordered to be taken for a substituted road, shall become dedicated to the public: Provided that if any substituted road shall be ordered to be made, the road ordered to be closed shall not be closed until the substituted road shall be certified to be in a fit state for public use, by the Surveyor of Roads for the District or the Surveyor-General, as the case may be.

20. Nothing herein contained shall empower any Local Court to make any order affecting a road within the limits of a corporate town, or to open a new road through land against the will of the owner.

21. The owner of the land adjoining any road or part of a road ordered to be closed, or through whose land any road or part of a road ordered to be closed shall pass, shall have the right to acquire the said road or part of a road, either in exchange or at such price as may be agreed upon with the Commissioners, and, if by agreement with the Commissioners, the same may be embodied in the order; but in the event of difference, the price shall be fixed by arbitration, as provided in the Lands Clauses Consolidation Act; and the Commissioner of Crown Lands may issue to the person acquiring the same a certificate of title, in the form in the Schedule D to this Act, which shall, upon being signed, be delivered to the Registrar General, and the purchase money, after deducting the necessary expenses (if any), shall be paid to the Commissioners for the District, or to the Treasurer, as the case may be: Provided that nothing herein contained shall prevent any District Council at any time, after reserving a road, from selling any reserved road to the person entitled to buy the same.

22. No order heretofore made or to be made for the opening, closing, altering, adding to, or exchanging of roads shall be deemed to be invalid by reason that such order affects more than one road, or affects more than one act or thing with regard to any road or roads, and no objection by reason thereof shall be taken to any order; and no order heretofore made, purporting to be under the provisions of the said Act No. 17 of 1861, shall be deemed to be invalid by reason that such order has not been duly confirmed and notice thereof given within three calendar months of the making thereof, as provided by the said Act: Provided that such order be duly confirmed and notice thereof given within a period of twelve calendar months from the making thereof.

23. All
23. All orders intended to operate to vest any estate or interest in lands under or by virtue of this Act shall be in duplicate, and one copy thereof, together with the plans used before the Local Court or Commissioners making the order, shall forthwith be transmitted by them to the Surveyor-General: Provided that no order made by Commissioners shall be transmitted until after confirmation by the Governor.

24. Upon the receipt of any order under the provisions of this Act, vesting land, or dedicating land to the public, or for corporate or district purposes, the Commissioner of Crown Lands shall, on being satisfied that the proceedings are regular, cause separate certificates of title on parchment, in the form prescribed in Schedule E to this Act, to be issued in duplicate to the Commissioners or to any person entitled thereto, and the Commissioner of Crown Lands, after signing such certificate, shall deliver the same to the Registrar-General.

25. Upon receipt of any certificate of title given under the provisions hereof, the Registrar-General shall, after the expiration of three calendar months from the date of the order, bind up one of the certificates of title as a separate folium of the register-book, and shall register the same under the provisions of the Real Property Act for the time being, and shall deliver the other of such certificates of title to the Commissioners or person or persons entitled thereto.

26. After registry of any such certificate of title as hereinbefore provided, the provisions of the Real Property Act for the time being shall be applicable to the land therein mentioned to all intents and purposes whatsoever as fully as if the said land had been brought under the provisions of such Act upon the application of a proprietor, and it shall be conclusively held in every Court of Law and Equity that the certificate of title shall vest such land and estate in the persons therein mentioned.

27. No order purporting to be made under the provisions of this Act shall, after the registration of any such certificate of title as aforesaid, be removed or removable into the Supreme Court, or any of Her Majesty's Courts of Record, but before making any order the Commissioners or Local Court may reserve any question of law for the consideration of the Supreme Court, and if any such question be reserved, no certificate of title shall be granted until after the decision of the Supreme Court thereupon.

In the name and on behalf of the Queen I hereby assent to this Act.

D. DALY, Governor.
SCHEDULES REFERRED TO.

A

Agreement made pursuant to the Roads Amendment Act, 1863, between the undersigned, the Commissioners of Main Roads of the one part [or for the District of], or the Commissioner of Public Works acting as Commissioner of Roads (as the case may be) and (owner of the land to be taken in exchange) of and (occupier, if any, other than the owner) of the other part.

Whereas the said is the owner [or the owner and occupier] [and the said is the occupier] of a piece of land situated at (here describe the land to be taken in exchange) and it is considered expedient that the road [or part of a road] situate at (here describe the road or part of a road) should be exchanged for the land first described, it is hereby agreed that such exchange shall be made, and that the said shall pay to the said the sum of for equality of exchange: Provided that if no order shall be made and confirmed in manner, and within the period, by the Roads Amendment Act, 1863, prescribed, this agreement shall be void. Dated the day of 18 .

Receipt to be endorsed.

We, the within named, do hereby acknowledge to have duly received from the within mentioned the sum of , within agreed to be paid for equality of exchange. Dated the day of 18 .

B

No. 1.—Order to open New Roads.

Whereas, at a meeting duly held under the provisions of the Roads Amendment Act, 1863, this day of 186 , it appears to us, the Commissioners of Main Roads [or the Commissioners of Roads for the District of] or to me, the Commissioner of Public Works, acting as Commissioner of Roads], that it is expedient and necessary that the lands hereinafter described should be opened as a new line of road, and it having been proved to us [or me] that the notice required by the said Act has been duly given, and that all other requirements thereof have been complied with, and no valid objection to the opening of such new line of road having been made: Now, therefore, we [or 1] do hereby, by virtue of the powers given to us [or me] by the said Act, order that all that (here describe the land as fully as in the notice, and also by reference to the plan deposited with the Surveyor-General) shall be forthwith made and opened as a new line of road.

Dated this day of , 186 .

No. 2.—Order to close Old Roads.

Whereas, at a meeting duly held under the provisions of the Roads Amendment Act, 1863, this day of 186 , it appears to us, the Commissioners of Main Roads [or the Commissioner of Roads for the District of] or to me, the Commissioner of Public Works acting as Commissioner of Roads] that the piece of land hereinafter mentioned, and heretofore used as a road, is no longer required for such purpose; and it having been proved before us [or me] that the notice required by the said Act has been duly given, and that all other requirements thereof have been complied with, and no valid objection to the closing of such road having been made: Now, therefore, we [or 1] do hereby, by virtue of the powers given to us [or me] by the said Act, order that all that (here describe the road to be discontinued as fully as in the notice, and also by reference to the plan deposited with the Surveyor-General), shall henceforth be discontinued, and cease to be used as

2H
Roads Amendment Act.—1863.

as a road. (If the old road has been agreed to be sold, add) and we do further order that the said piece of land shall be sold to

and that the same shall be vested in him, his heirs, and assigns for ever. (If the old road has not been agreed to be sold, instead of the above substitute) and we do further order that the said piece of land shall be sold and vested in the purchaser, his heirs, or assigns; or we do further order that the said piece of land shall be set apart and dedicated to the use of the said District of , or the Municipal Corporation of the Town of , as the case may be.

No. 3.—Order to open New and close and exchange Old Roads.

Whereas, at a meeting duly held under the provisions of the Roads Amendment Act, 1863, this day of 186 , it appears to us, the Commissioners of Main Roads [or the Commissioners of Roads for the District of or to me, the Commissioner of Public Works acting as Commissioner of Roads], that it is expedient and necessary that the lands hereinafter firstly described should be opened as a new line of road, and that the lands hereinafter secondly described are no longer required for the purposes of a road; and it having been proved before us [or me] that the notice required by the said Act has been duly given, and that all other requirements thereof have been complied with, and no valid objection to the opening of such new line of road or to the closing of such old road having been made: Now, therefore, we [or I] do hereby, by virtue of the powers given to us [or me] by the said Act, order that all that [here describe the piece of land to be opened as a road as fully as in the notice, and also by reference to the plan deposited with the Surveyor-General], shall be forthwith made and opened as a new line of road; and we [or I] do further order that all that [here describe the road to be discontinued as fully as in the notice, and by reference to the plan deposited with the Surveyor-General], shall henceforth be discontinued, and cease to be used as a road; and we [or I] do further order that the piece of land firstly described, and heretofore used as a road, shall be exchanged with for the piece of land firstly described, and that the same shall be vested in the said , his heirs, and assigns for ever.

(If any money is to be paid on either side, by way of equality of exchange, alter the form accordingly.)

Dated this day of 186 .

No. 4.—Order by Local Court.

In the Local Court of , Full Jurisdiction.

Whereas at the sitting of this Court held this day of 186 , an application was made by to close, [or open as a new line of road (or, as the case may be)] the piece of land hereinafter described, and it having been proved to the satisfaction of the Court that the notice required by the Roads Amendment Act, 1863, has been duly given, and that all other requirements of the said Act have been complied with, and no valid objection to the closing of such old road (or, as the case may be), having been made, this Court doth hereby, by virtue of the powers given to it by the said Act, order that (conclude as in the preceding forms, Nos. 1, 2, and 3, according to the circumstances.)

Dated this day of 186 .

A.B., Special Magistrate.

Note.—The above forms are given as a guide in drawing up orders, and are to be adhered to as far as practicable; but they may be departed from should the circumstances of any particular case render it necessary.

C

Notice of Confirmation.

Notice is hereby given, that by an order dated the day of 18 , the (here describe whether Commissioners for the Roads for the District, or Local Courts) having made order that (here give a general description of the nature and effect of the order) His Excellency the Governor has been pleased to confirm the said order, and to direct that the Commissioner of Crown Lands shall issue Certificate of Title to the persons entitled respectively to the lands mentioned in such order.

Dated the day of 18 .
Roads Amendment Act.—1863.

D

Certificate of Title by the Commissioner of Crown Lands.

South Australia.

Pursuant to the Roads Amendment Act, 1863, and of an order of the Local Court of Full Jurisdiction [or Commissioners of Main Roads or Commissioners of Roads for the District of, or Commissioner of Public Works, acting as Commissioner of Roads (as the case may be)] made on the day of 18, in consideration of Pounds paid by to the Commissioner of Main Roads [or Commissioners of Roads for the District of, or to the Commissioner of Public Works, acting as Commissioner of Roads (as the case may be)]: I, , Commissioner of Crown Lands of this Province, do hereby certify that is now seised of an estate in fee simple in that (here describe the road to be conveyed).

E

Certificate of Title by Commissioner of Crown Lands under Road Order.

South Australia, Register Book, vol. folio .

I, Commissioner of Crown Lands of the said Province, pursuant to the direction of his Excellency the Governor, published in the Government Gazette of the day of , in confirming a road order made by therein referred to, dated the day of do hereby certify that is [or are] now seised of an estate in fee simple in that