



ANNO VICESIMO QUARTO ET VICESIMO QUINTO

VICTORIÆ REGINÆ.

A.D. 1861.

No. 17.

An Act to amend an Act No. 17 of 1852, for the making and improving of Roads in South Australia.

[Assented to, 29th November, 1861.]

WHEREAS it is expedient to amend an Act, No. 17 of 1852 for the making and improving of roads in South Australia, so far as relates to the opening and making new roads, altering existing roads, and closing and disposing of unnecessary roads or parts of roads— 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. This Act may be referred to as The Roads Amendment Act, 1861, and shall take effect from the thirty-first day of December, 1861; and this Act and (save so far as repealed hereby), the said Act No. 17 of 1852 shall be read together as one Act.

This Act and No. 17 of 1852 to be read as one Act, except as to parts of 17, 1852, hereby repealed.

2. Clauses 47 to 57, both inclusive, of the said Act No. 17 of 1852, are hereby repealed; but no proceedings taken before this Act comes into operation shall be affected hereby; and all proceedings under any notice inserted in the *South Australian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.

Clauses 47 to 57 inclusive, of 17 of 1852 repealed.

3. 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—

The following acts may be done by Commissioners.

New roads may be opened.

close, exchange, and sell roads, or parts of roads.

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 District Council, may be retained as the property of the Council and sold or exchanged for other land required for roads or district purposes, or may be dedicated to district purposes.

Proceedings before Commissioners.

4. The proceedings before Commissioners to open new roads, and alter, add to, or close existing roads, and effect exchanges, shall be as follows:—

Survey map and boundaries, &c.

A survey map and plan, shall be deposited with the Surveyor-General at his office, in Adelaide, showing the exact position, boundaries, bearings, and admeasurements, of the proposed new roads, alterations, additions, and the roads, or parts proposed to be closed.

Book of reference.

Where any land is proposed to be taken under the proceedings a book of reference shall accompany the survey map and plan containing the particulars mentioned in the form in the Schedule A to this Act annexed.

Map and book of reference to be open to public.

The survey map and plan, and book of reference, shall be open to public inspection at all reasonable times.

Agreement for exchange.

To effect an exchange an agreement shall also be entered into between the Commissioners and the owner, (if any) of the land intended to be taken in exchange, in the form in the Schedule B to this Act annexed, or as near thereto as circumstances will permit.

Notice in *Gazette*.

A notice shall next be inserted in the *South Australian Government Gazette*, and in at least one newspaper published in the Colony, in the form appropriate to the transaction contained in the Schedule C to this Act annexed, or as near thereto as circumstances shall allow.

Opposition by persons interested.

Any person interested may, within forty days after the publication of the notice by writing addressed and served on the Commissioners, their secretary or clerk, or delivered at the office of the Commissioners, object to the proposed order, or any part thereof; at the time and place fixed by the notice, the Commissioners shall hold a meeting and consider the proposed order, and any objections of which notice has been given, and any person objecting may personally, or by his agent, attend the meeting and support his objections.

Order in duplicate and form thereof.

If it is decided to make the order, or any part thereof, the same shall be drawn up in duplicate in the form appropriate to the proceeding in the Schedule D to this Act annexed, or as near thereto as circumstances will permit.

Order with all objections to be submitted to the Governor.

The order, with all objections (if any) shall be submitted to the Governor

Governor who may within three calendar months of the order being made confirm the same, and a notice of the confirmation in the form in the Schedule E to this Act annexed shall be inserted in the *South Australian Government Gazette* within three calendar months from the meeting at which an order was decided on, and therefrom 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 no order be made and confirmed within the time above limited, any agreement for exchange shall be absolutely void.

Confirmation of order.

Effect of confirmation.

5. 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, have any estate, right, title, or interest in the land taken, may serve a notice in writing on the Commissioners within eighteen 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, so taken in exchange; 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 exchanged, shall be for ever foreclosed and shut out from any benefit or claim whatsoever to any compensation for any portion of land ordered to be taken or exchanged.

Claims for compensation.

6. For all purposes relative to compensation for lands required by virtue hereof, the Lands Clauses Consolidation Act shall be deemed to be incorporated with this Act, and shall be construed herewith as forming one Act.

Lands Clauses Consolidation Act incorporated herewith.

7. 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.

Commissioners not to take parks, &c.

8. The proceedings before Justices of the Peace by owners of land, applying to close or divert roads adjoining their land, with or without an application for substituting therefor other roads, shall be as follows:—

Proceedings before Justices.

A notice, as near as circumstances will permit to the form C, in the Schedule hereto annexed, shall be delivered to the Chairman, Clerk, or Surveyor of the District Council, or if lands or roads affected are not within the limits of a District, to the Surveyor-General

General of the said Province, at Adelaide, and shall also be published for four consecutive weeks in the *South Australian Government Gazette*, and one newspaper at least published in Adelaide.

Survey map.

A survey map or plan to be open to public inspection at all reasonable times, shall be deposited with the District Council or Surveyor-General, as the case may be, showing the exact position, boundaries, bearings, and measurements of the roads, or parts of roads, proposed to be closed or diverted, and of any road proposed to be substituted therefor.

Objections.

Any person interested may attend and object to the order at the time and place fixed by the notice, being not less than six, nor more than eight weeks after the giving thereof, when and where two or more Justices of the Peace for the said Province may hear and determine as to the proposed order and objections of which notice has been given, in a summary way, and an appeal from such order shall be allowed to the Local Court nearest to the road proposed to be closed, or the Local Court of Adelaide.

Justices to hear and determine.

Order in duplicate.

If it is decided to make the order, or any part thereof, the same shall be drawn up in duplicate, as near as circumstances will permit, to the form in the Schedule D, appropriate to the transaction.

Confirmation of order.

The order, and all objections (if any) shall be submitted to the Governor, who may, within three calendar months of the order being made, confirm the same, and direct that certificates of title shall be issued by the Surveyor-General to the persons respectively entitled to the lands mentioned in such order; and within the said period of three months' notice of such confirmation and direction, in the form in the Schedule E, to this Act annexed, shall be inserted in the *South Australian Government Gazette*.

Effect of confirmation.

From and after the confirmation of the order, the road or part of a road therein described to be closed or diverted, 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.

Old road not to be closed until new road ready.

Provided that if any substituted road shall be ordered to be made, the road ordered to be stopped or diverted shall not be stopped or diverted 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.

Justices not to have power to take land from unwilling owners.
Justices not to make any order affecting a corporate town.

9. Nothing herein contained shall empower Justices of the Peace 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.

District Council may reserve road, if not owner of adjoining land may buy same.

10. The owner of the land adjoining any road or part of a road ordered to be stopped, or through whose land any road

road or part of a road ordered to be stopped 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, or Surveyor-General when the road is not within the limits of a District, 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 Surveyor-General may issue to the person acquiring the same, a certificate of title, in the form F in the Schedule 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 the District Council at any time, after reserving a road, from selling any reserved road to the person entitled to buy the same.

11. 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.

No order affecting more than one road to be therefore invalid.

12. 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 maps used before the Justices or Commissioners making the order, shall forthwith be transmitted by them to the Surveyor-General: Provided that any order made by Commissioners shall not be transmitted until after confirmation by the Governor.

Orders to vest estate to be transmitted to Surveyor-General.

13. Upon the receipt of any order vesting land, or dedicating land to the public, or for District purposes, the Surveyor-General shall cause separate certificates of title, on parchment of the form prescribed in the form H in the Schedule to this Act annexed, to be issued in duplicate to the Commissioners or to any person entitled thereto, and the Surveyor-General after signing such certificate shall deliver the same to the Registrar-General.

Surveyor-General to issue certificate of title to Registrar-General.

14. Upon receipt of any certificate of title given under the provisions hereof, the Registrar-General shall make inquiries to ascertain whether the proceedings for the purpose of obtaining the order on which the certificate is granted have been regular, and, when required, whether the order has been confirmed as hereinbefore provided, and if he shall be satisfied thereof, he shall, after the expiration of three months from the date of the order, endorse on the certificate of title a certificate in the form I in the Schedule to this Act annexed; and shall therefrom 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,

On receipt of certificate Registrar-General to endorse certificate and register same under Real Property Act.

and shall deliver the other of such certificates of title to the Commissioners or person or persons entitled thereto.

After registry of certificate of title Real Property Act to be applicable to land.

15. 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.

No order made to be removable into Supreme Court after registration.

16. No order purporting to be made under the provisions of this Act shall, after the registration thereof 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 Justices of the Peace 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.

RICHARD GRAVES MACDONNELL,
Governor.

Government House, Adelaide,
29th November, 1861.

SCHEDULES REFERRED TO.

A

Particulars to be inserted in Book of Reference.

1. The names of the owners and occupiers, so far as known, of the land through which the road is proposed to pass.
2. The description and quantity of such land, and the enclosures, if any.
3. An estimate of the expense of the work.

B

Agreement made pursuant to the Roads Amendment Act, 1861, between the undersigned, the Commissioners of Main Roads of the one part [*or for the District of* (as the case may be)] and (owner of the land to be taken in exchange) of (owner) of and (occupier, if any, other than the owner) of 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 situate 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. Dated the 18 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 .

C

Notice by District Council of intention to close, or open, and exchange roads.

In pursuance of the "Roads Amendment Act, 1861," we, the Commissioners of Main Roads [*or for the District of*] hereby give notice, that we propose to [*here state what the Commissioners intend to order, giving a general description of any road intended to be closed or opened, and stating also the time and place of meeting*] and we have caused a survey map, and also a book of reference, to be deposited with the Surveyor-General, at Adelaide, which said map and book of reference contain, so far as known, the several particulars required by the said Act: And we hereby require all persons within forty days of the first publication of this notice, to deliver to us or our Clerk, in writing, any objection to such discontinuance and exchange.

Dated the day of 18 .

D

D

Order to close old roads and exchange same.

Whereas it appears to us the Commissioners of Main Roads [or for the District of *as the case may be*] [or two of Her Majesty's Justices of the Peace for the Province of South Australia] that the piece of land, hereinafter described, is no longer required for a road, and that the same road should be exchanged for the piece of land secondly described, and that the last-mentioned piece of land shall be henceforth a road. And whereas notice has been given, and the other requirements of the "Roads Amendment Act, 1861," duly complied with, and no objections made [or no valid and reasonable objections made]: Now, therefore, we do hereby order that all that piece of land [here describe the road to be closed as fully as in the notice, and by reference to the survey plan] shall be continued and cease to be road. And we do further order, that in exchange for the piece of land next hereinafter described, the said piece of land hereinbefore described shall be, and is hereby vested in his heirs and assigns for ever. And we do further order, that all that piece of land [here describe as fully as aforesaid the piece of land to be given in exchange] shall be henceforth a road.

Dated this day of 18 .

Order to open new and close and sell or vest old roads.

Whereas it appears to us, the Commissioners of Main Roads for the Province of South Australia [or for the District of , as the case may be], that the piece of land, firstly hereinafter described, should be opened as a new line of road, and that the pieces of land, secondly hereinafter described, are no longer required for a road [and should be dedicated to District purposes] [sold to the person entitled to buy the same (if any such person)] or [should be sold, and that should be the purchaser thereof]. And whereas notice has been given, and the other requirements of the "Roads Amendment Act, 1861," duly complied with, and no objections made [or no valid and reasonable objections made]: Now, therefore, we do hereby order, that there shall be forthwith made and opened as a new road, the following piece of land, that is to say—All that [here describe the piece of land to be opened as a road as fully as in the notice, by reference to the plans]. And we do further order, that the piece of land hereinafter described, and heretofore used as a public road shall be discontinued and cease to be a road, that is to say—All that [describe as last before mentioned]. And we do further order, that such last-mentioned piece of land shall be sold to [the person entitled to buy the same, (if such person)] for the sum of £ , and he having paid the same, we do hereby order, that the said last-mentioned piece of land shall be, and is hereby vested in him, his heirs, and assigns for ever.

Dated this day of , 18 .

Receipt, where money is paid, to be indorsed as near as convenient, as in the last-mentioned form.

NOTE.—From these two orders such an order may easily be framed as may be required to meet the various cases occurring.

E

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 Justices] having made order that [here give a general description of the nature and effect of the order] His Excellency the Governor-in-Chief has been pleased to confirm the said order, and to direct that the Surveyor-General shall issue Certificate of Title to the persons entitled respectively to the lands mentioned in such order.

Dated the day of 18 .

F

Certificate of Title by the Surveyor-General, under clause 10.

Pursuant to the Roads Amendment Act, 1861, and of an order of Justices [or Commissioners of Main Roads, or Commissioners of Roads for the District of (as the case may be)] made on the _____ day of _____, 18____, in consideration of _____ Pounds, paid by _____ to the Commissioners of Main Roads [or of roads for the District of, or to the Treasurer (as the case may be)]: I, _____ Surveyor-General of this Province, do hereby certify that _____ is now seised of an estate in fee simple; subject nevertheless to such encumbrance, liens, and interests, as are notified by memorandum endorsed hereon in that [here describe the road to be conveyed].

G

Notice by owner of intention to apply to Justices to close roads.

In pursuance of the Roads Amendment Act, 1861, I, _____ of _____ being the owner of land adjoining the road hereinafter mentioned, do hereby give notice that it is my intention to apply to two Justices of the Peace, on the _____ day of _____ inst., at _____ of the clock in the _____ noon, for an order to stop the following road which is not required for the use of the public, that is to say [here fully describe the road intended to be stopped, with the boundaries and termini thereof, and by reference to the survey map] and to substitute therefor the following piece of land, that is to say [here describe the piece of land to be substituted, with the boundaries and termini thereof, and by reference to the survey map].

Dated this _____ day of _____ 18____.

H

SOUTH AUSTRALIA.

Certificate of Title by Surveyor-General under Road Order.

Register Book, vol. _____ folio _____

I, _____ Surveyor-General 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 _____ is [or are] now seised of an estate in fee simple; subject, nevertheless, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in That

I

Certificate to be endorsed by Registrar-General on Certificate of Title that Road Order has been regularly obtained.

I, _____ Registrar-General of South Australia, do hereby certify that I have inquired concerning the proceedings upon which the order within mentioned was obtained, and that the same appear to me to have been regular.