

## SECTION.

- 37. (1) Abandonment of railway.
- (3) Option for Government to acquire.
- 38. Application of penal provisions of Cap. 134.
- 39. Power to make rules.

## CHAPTER 135.

## PROPRIETARY RAILWAYS.

30 of 1909.  
Sec. 2 of  
12 of 1928.

**An Ordinance to make provision as to the construction of railways by private enterprise and for their regulation.**

[31ST DECEMBER, 1909.]

Short title.

1. This Ordinance may be cited as the Proprietary Railways Ordinance, and shall apply to the Colony and Protectorate.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

“ railway ” includes a tramway and every kind of railway constructed by private enterprise, and intended for the conveyance of goods, or passengers, or both, by means of vehicles drawn or impelled by the power of steam, or by electricity, or by any other mechanical power.

Prohibition of construction of railway without licence.

3. (1) No person shall construct, or attempt or commence to construct, or be concerned in the construction of, any railway for the conveyance of goods or passengers, or any buildings or works for use in connection with any such intended railway, except by licence from the Governor, and subject to such terms and conditions as the Governor in Council shall think fit.

(2) Any person contravening the provisions of this section shall be liable to a penalty not exceeding fifty pounds, or to imprisonment, with or without hard labour, for a period not exceeding six months, and all plant, materials, and things used in the commission of any offence under this section shall be liable to forfeiture.

Saving.

(3) Nothing in this section shall prevent a landowner or a concession holder from constructing without such licence, and working a railway within the limits of his land or concession, to be used exclusively in connection with the development of his land, or with the exercise of the rights granted by the concession, as the case may be:

Provided that he comply with any directions that may be given him in writing by any inspector appointed under this Ordinance with a view to ensuring the safety of the general public and of persons using or working the railway.

4. (1) An application for a licence shall be in writing, and shall contain such particulars with reference to the proposed railway as may be prescribed; and there shall be deposited therewith, or within such time as the Governor may direct, such plans and sections as may be prescribed.

Form of application.

(2) Notice of every such application shall be published in the *Gazette*, and copies thereof posted at such place or places as the Governor shall direct, and such notice shall specify some public place where the plans and sections in connection therewith can be seen.

Gazetting and posting.

(3) Any person desiring to object to the construction of the proposed railway, or any part thereof, shall send full particulars of his objections, and the reasons therefor, to the Minister within two months after the date of the publication of the said notice in the *Gazette*.

Objections.

5. (1) It shall be lawful for the Governor to grant to any person desiring to lodge an application under the preceding section a provisional licence to survey the projected route of the proposed railway for the purpose of preparing the prescribed plans and sections.

Provisional licence for survey.

(2) A provisional licence shall empower the person named therein, his servants and workmen—

Powers of entry, etc.

(a) to enter upon and survey and take levels of any lands along the projected route of the proposed railway;

(b) to dig or bore into the sub-soil;

(c) to do all other acts necessary to ascertain whether the land is adapted for the purpose of railway construction;

(d) to set out the boundaries of the land proposed to be acquired, and the intended line of the work (if any) proposed to be made thereon;

(e) to mark such levels, boundaries and line by placing marks and cutting trenches; and

(f) when otherwise the survey cannot be completed, the levels taken, or the boundaries or line of the work marked, to cut down and clear away any standing crop, fence, tree, or other growth:

Provided that no person shall enter into any building, or upon any enclosed land attached to a building, unless with the consent of the occupier thereof, without giving such occupier, or posting on some conspicuous part of the building if no occupier can be found, seven days' notice in writing of his intention so to do.

(3) So soon as conveniently may be after any entry made under this section, the person so authorised as aforesaid shall pay for all damage done, and, in case of dispute as to the amount to be paid for such damage, he shall at once refer the dispute to the Magistrate of the district wherein the lands are situated, whose decision shall be final.

Reference of  
application to  
Commission  
of Inquiry.  
Cap. 54.

6. (1) It shall be lawful for the Governor, upon receipt of any such application, to appoint a commission of inquiry under the Commissions of Inquiry Ordinance, to inquire into and report upon the application.

(2) The costs of such Commission of Inquiry shall be paid by the applicant, and it shall be lawful for the Governor to require the applicant, within a specified time, to deposit with the Accountant General such sum as the Governor may think proper, to be applied towards the payment of such costs, and the surplus, if any, to be returned to the applicant; and if any applicant shall make default in depositing such sum within the prescribed time, his application shall be deemed to have been refused. No licence shall be granted under section 8 hereof until the costs of any Commission of Inquiry into the application shall have been paid in full by the applicant.

Power for  
Governor to  
refuse  
application.

7. It shall be lawful for the Governor either, on receipt of the report of the commission appointed under the preceding section, or without appointing any Commission of Inquiry, to refuse any application without assigning any reason to the applicant.

Grant of  
licence to  
construct.

8. If the Governor decide to entertain the application for a licence he shall grant to the applicant a licence for construction, wherein shall be imposed such conditions with reference to the construction and maintenance of the intended railway as the Governor in Council may deem expedient; and, subject to such conditions, the railway shall be made and maintained in the lines and according to the levels shown in the deposited plans and sections, with all proper bridges, viaducts, stations, sidings, approaches, junctions, roads, buildings, yards, works and conveniences connected therewith and incidental thereto:

Provided that it shall be lawful for the licensee to deviate from the line of railway shown on the deposited plans, but so that no such deviation shall extend beyond the limits of deviation shown on the said plans.

9. (1) On the granting of a licence under the preceding section, the lands situate in the Colony required for the construction of the railway shall be deemed to be required for the service of the Colony within the meaning of the Public Lands Ordinance, and may be acquired under the provisions of that Ordinance:

Mode of  
acquisition  
of land  
required.  
Cap. 116.

Provided that all costs of, and incidental to, such acquisition shall be paid by the licensee, and that any lands not used for the purposes of the railway within the time specified by the Governor for its construction, or if no such time be specified, within ten years from the date of the licence, shall be retransferred to the owner of such lands, subject to such conditions as the Governor may impose.

(2) Before putting any of the provisions of the said Ordinance into force in order to acquire the said lands, the Governor shall require the licensee to enter into an agreement with him, providing to the satisfaction of the Governor for the following matters—

(a) the payment to the Colonial Government of the cost of acquisition, including any lands which the Government may agree to sell to the licensee;

(b) the transfer of the lands to the licensee;

(c) the terms on which the lands shall be held; and

(d) the performance of the conditions imposed by the licence.

(3) Before acquiring any lands in the Protectorate, the Governor shall require the licensee to enter into an agreement with him, providing to the satisfaction of the Governor for the following matters—

(a) the payment of the customary presents to the Paramount Chiefs of the chiefdoms through which the railway passes, for the acquisition of lands required for the purposes of the railway.

(b) the payment of compensation to inhabitants of the Protectorate being owners or occupiers of, or parties interested in, any buildings enclosed, or cultivated lands required for the purposes of the railway.

(4) It shall be lawful for the Governor, in addition to such agreements, to require the licensee, at any time before or during

acquisition of the lands or any part thereof, to deposit with the Accountant General such sums as the Governor may think proper, to be applied towards the payment of the costs and incidental to the acquisition of the lands generally, or of any particular lands, and the surplus, if any, to be returned to the licensee.

Authority  
for licensee  
to execute  
all necessary  
works.

10. (1) Subject to the provisions of his licence and of this Ordinance, and of any contract under the last preceding section, and subject also, as regards the parties thereto, to the provisions of any contract entered into between the licensee and the owner or occupiers, or other parties interested in any lands taken or used for the licensed railway, the licensee may, for the purpose of constructing such railway, or the accommodation, or other works connected therewith—

(a) make or construct in, upon, across, under or over any lands or any streets, hills, valleys, roads, railways, or tramways, or any rivers, brooks, streams or other waters, or any drains, water-pipes, electric wires or posts, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, lines of railway, ways, passages, conduits, drains, piers, abutments, cuttings and fences, as the licensee thinks proper.

(b) alter the course of any rivers, brooks, streams or watercourses for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them; and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams, or watercourses, or any roads, streets or ways; or raise or sink the level thereof in order the more conveniently to carry them over, or under, or by the side of the railway, as the licensee thinks proper;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery, apparatus, and other works and conveniences, as the licensee thinks proper;

(e) alter, repair or discontinue such buildings, works and conveniences, as aforesaid, or any of them, and substitute others in their stead; and

(f) do all other acts necessary for making, maintaining, altering or repairing, and using the railway.