



Railways Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 33

Temporary Use of Lands

And with respect to the temporary Occupation of Lands near the Railway during the Construction thereof, be it enacted as follows :

XXV Company may occupy temporarily private Roads within Five hundred Yards of the Railway.

Subject to the Provisions herein and in the special Act contained, it shall be lawful for the Company at any Time before the Expiration of the Period by the special Act limited for the Completion of the Railway, to enter upon and use any existing private Road being a Road gravelled or formed with Stones or other hard Materials and not being an Avenue, or a planted or ornamental Road or an Approach to any Mansion House within the prescribed Limits, if any, or, if no Limits be prescribed, not being more than Five hundred Yards distant from the Centre of the Railway, as delineated on the Plans ; but before the Company shall enter upon or use any such existing Road they shall give Three Weeks Notice of their Intention to the Owners and Occupiers of such Road and of the Lands over which the same shall pass, and shall in such Notice state the Time during which, and the Purposes for which, they intend to occupy such Road, and shall pay to the Owners and Occupiers of such Road, and of the Lands through which the same shall pass, such Compensation for the Use and Occupation of such Road, either in a gross Sum of Money or by half-yearly Instalments, as shall be agreed upon between such Owners and Occupiers respectively and the Company, or, in case they differ about the Compensation, the same shall be settled by the Sheriff in the same Manner as any Compensation not exceeding Fifty Pounds is directed to be settled by the Lands Clauses Consolidation (*Scotland*) Act, 1845.

XXVI Power to Owners and Occupiers of Road and Land to object that other Roads should be taken.

It shall be lawful for the Owners and Occupiers of any such Road, and of the Lands over which the same passes, within Ten Days after the Service of the aforesaid Notice, by Notice in Writing to the Company, to object to the Company making Use of such Road, on the ground that other Roads, such as the Company are hereinbefore authorized to use for the Purposes aforesaid, or that some public Road would be more fitting to be used for the same, and upon the Objection being so made such Proceedings may be had as are herein-after mentioned with respect to Lands temporarily occupied by the Company, in respect of which Three Weeks Notice is hereinafter required to be given, and in the same Manner as if-in the Provisions relative to such Proceedings the Word Road or Roads or the Words Road and the Land over which the same passes, as the Case may require, had been substituted in such Provisions the Word Lands.

XXVII Power to take temporary Possession of Land without previous Payment of Price.

Subject to the Provisions herein and in the special Act contained, it shall be lawful for the Company, at any Time before the Expiration of the Period by the special Act limited for the Completion of the Railway, without making any previous Payment, Tender, or Deposit, to enter upon any Lands, within the prescribed Limits, or if no Limits be prescribed, not being more than Two hundred Yards distant from the Centre of the Railway, as delineated on the Plans, and not being a Garden, Orchard, or Plantation attached or belonging to a House, nor a Park, planted Walk, Avenue, or Ground ornamentally planted, and not being nearer to the Mansion House of the Owner of any such Lands than the prescribed Distance, or if no Distance be prescribed, then not nearer than Five hundred Yards therefrom, and to occupy the said Lands so long as may be necessary for the Construction or Repair of that Portion of the Railway, or of the Accommodation Works connected therewith; herein-after mentioned, "and to use the same for any of the following Purposes ;(that is to say,)

For the Purpose of taking Earth or Soil by Side Cuttings therefrom ;

For the Purpose of depositing Spoil thereon ;

For the Purpose of obtaining Materials therefrom for the Construction or Repair of the Railway or such Accommodation Works as aforesaid; or

For the Purpose of forming Roads thereon to or from or by the Side of the Railway;

And in exercise of the Powers aforesaid it shall be lawful for the Company to deposit and also to manufacture and work upon such Lands Materials of every Kind used in constructing the Railway, and also to dig and take from out of any such Lands any Clay, Stone, Gravel, Sand, or other Things that may be found therein useful or proper for constructing the Railway or any such Roads as aforesaid, and for the Purposes aforesaid to erect thereon Workshops, Sheds, and other Buildings of a temporary Nature : Provided always, that nothing in this Act contained shall exempt the Company from an Action for Nuisance or other Injury, if any done, in the Exercise of the Powers herein-before given to the Lands or Habitations of any Party other than the Party whose Lands shall be so taken or used for any of the Purposes aforesaid: Provided always, that no Stone or Slate Quarry, Brick Field, or other like Place, which at the Time of the passing of the special Act shall be commonly worked or used for getting Materials therefrom for the Purpose of selling or disposing of the same, shall be taken or used by the Company, either wholly or in part, for any of the Purposes lastly herein-before mentioned.

XXVIII Company to give Notice previous to such temporary Possession.

In case any such Lands shall be required for Spoil Banks or for Side Cuttings, or for obtaining Materials for the Construction or repairing of the Railway, the Company shall before entering thereon (except in the Case of Accident to the Railway requiring immediate Reparation) give Three Weeks Notice in Writing to the Owners and Occupiers of such Lands of their Intention to enter upon the same for such Purposes, and in case the said Lands are required for any of the other Purposes herein-before mentioned the Company shall (except in the Cases aforesaid) give Ten Days like Notice thereof; and the Company shall in such Notices respectively state the Substance of the Provisions herein-after contained respecting the Right of such Owner or Occupier to require the Company to purchase any such Lands, or to receive Compensation for the temporary Occupation thereof, as the Case may be.

XXIX Service of Notices on Owners and. Occupiers of Lands.

The said Notice shall either be served personally on such Owners and Occupiers, or left at their last usual Place of Abode, if any such can, after diligent Inquiry, be found, and in case any such Owner shall be absent from the United Kingdom, or cannot be found after diligent Inquiry, such Notice shall be served on the Factor or Agent (if any) of such Owner, and shall also be left with the Occupier of such Lands, or, if there be no such Occupier, shall be affixed upon some conspicuous Part of such Lands.

XXX Power to Owner to object that other Lands ought to be taken.

In any Case in which, a Notice of Three Weeks is hereinbefore required to be given it shall be lawful for the Owner or Occupier of the Lands therein referred to, within Ten Days after the Service of such Notice, by Notice in Writing to the Company, to object to the Company making use of such Lands, either on the ground that the Lands proposed to be taken for the Purposes aforesaid, or some Part thereof, or of the Materials contained therein, are essential to be retained by such Owner, in order to the beneficial Enjoyment of other neighbouring Lands belonging to him, or on the ground that other Lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such Purposes by the Company; and upon Objection being so made such Proceedings may be had as herein-after mentioned ; and if in such Case the Company shall refuse to occupy such other Lands in lieu of those mentioned in the Notice, it shall be lawful for the Sheriff, on the Application of such Owner or Occupier, to summon the Company and the Owners and Occupiers of such other Lands to appear before him at a Time and Place to be named in such Summons, such Time not being more than Fourteen Days after such Application nor less than Seven Days from the Service of such Summons ; and on the Appearance of the Parties, or in the Absence of any of them, upon Proof of due Service of the Summons, it shall be lawful for such Sheriff to determine summarily which of the said Lands shall be used by the Company for the Purposes aforesaid, and to authorize the Company to occupy and use the same accordingly.

XXXI Power to the Sheriff to summon other Owners before him.

If in the Case last mentioned it shall appear to such Sheriff, upon the Inquiry before him, that the Lands of any other Party not summoned before him, being sufficient in Quantity, and such as the Company are herein-before authorized to take or use for the Purposes aforesaid, would be more fitting to be used by the Company than the Lands of the Person who shall have been so summoned as aforesaid, it shall be lawful for

the said Sheriff to adjourn such Inquiry, and to summon such other Person to appear before him at any Time, not being more than Fourteen Days from such Inquiry nor less than Seven Days from the Service of such Summons; and on the Appearance of the Parties, or, in the Absence of any of them, on Proof of due Service of the Summons, it shall be lawful for such Sheriff, to determine finally which Lands shall be used for the Purposes aforesaid, and to authorize the Company to occupy and use the same accordingly.

XXXII The Company to give Sureties, if required.

Before entering, under the Provisions herein-before contained, upon any such Lands as shall be required for Spoil Banks or for Side Cuttings, or for obtaining Materials or forming Roads, as aforesaid, the Company shall, if required by the Owner or Occupier thereof, Seven Days at least before the Expiration of the Notice to take such Lands as herein-before mentioned, find Two sufficient Persons, to be approved of by the Sheriff, in case the Parties differ, who shall enter into a Bond to such Owner or Occupier in a Sum to such Amount as shall be approved of by the Sheriff, in case the Parties differ, for the Payment of such Compensation as may become payable in respect of the same in manner herein mentioned.

XXXIII Company to separate the Lands before using them.

Before the Company shall use any such Lands for any of the Purposes aforesaid they shall, if required so to do by the Owner or Occupier thereof, separate the same by a sufficient Fence from the Lands adjoining thereto, with such Gates as may be required by the said Owner or Occupier for the convenient Occupation of such Lands, and shall also, to all private Roads used by them as aforesaid, put up Fences and Gates, in like Manner, in all Cases where the same may be necessary, to prevent the straying of Cattle from or upon the Lands traversed by such Roads, and in case of any Difference between the Owners or Occupiers of such Roads and Lands and the Company as to the Necessity for such Fences and Gates, such Fences and Gates as any Two Justices shall deem necessary for the Purposes aforesaid, on Application being made to them, in like Manner as herein-before is provided in respect of the Use of such Road.

XXXIV Stone Quarries, &c. to be worked as Surveyor or Owner shall direct.

That if any Land shall be taken or used by the Company, under the Provisions of this or the special Act, for the Purpose of getting Materials therefrom for the Construction or Repair of the Railway or the Accommodation Works connected therewith, they shall work the same in such Manner as the Surveyor or Agent of the Owner of such Land shall direct; or, in case of Disagreement between such Surveyor or Agent and the Company, in such Manner as any Justice shall direct, on the Application of either Party, after Notice of the hearing of the Application shall have been given to the other Party.

XXXV Owners of Lands may compel Company to purchase Lands so temporarily occupied.

In all Cases in which the Company shall in exercise of the Powers aforesaid enter upon any Lands for the Purpose of -making Spoil Banks or Side Cuttings thereon, or for obtaining therefrom Materials for the Construction or Repair of the Railway, it shall be lawful for the Owners or Occupiers of such Lands, or Parties having such

Interests therein as, under the Provisions in the said Lands Clauses Consolidation Act mentioned, are capable of being by them sold or conveyed to the Company, at any Time during the Possession of any such Lands by the Company, and, before such Owners or Occupiers shall have accepted Compensation from the Company in respect of such temporary Occupation, to serve a Notice in Writing on the Company requiring them to purchase the said Lands, or Interests therein capable of being sold and conveyed by them respectively ; and in such Notice such Owners or Occupiers shall Set forth the Particulars of such their Interest in such Lands, and the Amount of their Claim in respect thereof; and the Company shall thereupon be bound to purchase the said Lands, or the Interest therein capable of being' sold and conveyed by the Parties serving such Notice.

XXXVICompensation to be made for temporary Occupation.

In any of the Cases aforesaid, where the Company shall not be required to purchase such Lands, and in all other Cases where they shall take temporary Possession of Lands: by Virtue of the Powers herein or in the special Act granted, it shall be incumbent on the Company, within One Month after their Entry upon such Lands, upon being required so to do, to pay to the Occupier of the said Lands the Value of any Crop or Dressing that may "be. Thereon, as well as full Compensation for any other Damage of a temporary Nature which he may sustain by reason of their so taking possession of his Lands, and shall also from Time to Time during their Occupation of the said Lands pay half-yearly to such Occupier or to the Owner of the Lands, as the Case may require, a Rent, to be fixed by the Sheriff, in case the Parties differ, and shall also within Six Months after they shall have ceased to occupy the said Lands, and not later than Six Months after the Expiration of the Time by the special Act limited for the Completion of the Railway, pay to such Owner and Occupier, or deposit in the Bank for the Benefit of all Parties interested, as the Case may require, Compensation for all permanent or other Loss, Damage, or Injury that may have been sustained by them by reason of the Exercise, as regards the said Lands, of the Powers herein or in the special Act granted, including the full Value of all Clay, Stone, Gravel, Sand, and other Things taken from such Lands.

XXXVICompensation to be ascertained under the Lands Clauses Act.

The Amount and Application of the Purchase Money and other Compensation payable by the Company in any of the Cases aforesaid shall be determined in the Manner provided by the said Lands Clauses Consolidation Act for determining the Amount and Application of the Compensation to be paid for Lands taken under the Provisions thereof.