

*Tramways.***No. 5 of 1873.****An Ordinance to facilitate the construction and regulate the working of Tramways in Ceylon.**

## Preamble.

**W**HEREAS the Municipal Council of the town of Colombo are under treaty with the promoters of a tramway scheme for that town, and it is expedient to pass an Ordinance to give the said promoters, or any other person or company, the necessary powers and facilities to make tramways, and to construct the necessary works therefor, and regulate the working thereof: It is hereby enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows:

## Commencement.

**1** This Ordinance shall come into operation on the date of the passing thereof.

## Interpretation clause.

**2** The following expressions in this Ordinance shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction:

- (1) "Government" shall mean the Governor of this island, acting with the advice of the Executive Council.
- (2) "Promoters" shall mean any person, corporation, or company, authorized by Proclamation in the *Government Gazette*, to be issued by the Governor, with the advice of the Executive Council, for that purpose, to construct and work tramways in any part of this island, and any person, corporation, or company claiming under the said promoters.
- (3) "Council" shall mean any municipal council in this island.
- (4) "Road" shall mean any carriage-way being a public highway, and the carriage-way of any bridge forming part of or leading to the same.
- (5) "Road authority" shall mean the local authority, board, council, committee, or other body or persons in whom a road is vested, or who have the power to repair such road.

## Power to break up streets, &amp;c.

**3** The promoters from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly proclaimed, or any part or parts thereof respectively, may open and break up any road, subject to the following regulations:

- (1) They shall give to the road authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given fourteen days at least before the commencement of the work;

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- (2) They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work ;
- (3) They shall pay all reasonable expenses to which the road authority is put on account of such superintendence ;
- (4) They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length, the promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

4 When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations ; namely,

Completion of works and re-instatement of road.

- (1) They shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consent in writing), complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good a condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling, material, or rubbish occasioned thereby ;
- (2) They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night ;
- (3) They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance, or to any other remedy against them) be liable to a penalty not exceeding two hundred rupees, and to a further penalty not exceeding fifty rupees for each day during which any such failure continues after the first day on which such penalty is incurred.

5 The promoters shall, at their own expense, at all times maintain and keep in good condition and repair, with such materials and in such manner as the road authority shall direct, and to their satisfaction, so much of any road whereon

Repair of part of road where tramway is laid.

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any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway. If the promoters (with the consent of the council under treaty with whom such tramway shall have been laid down, or the Government) abandon their undertaking, or any part of the same, and take up any tramway, or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the road authority otherwise consent in writing), fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling, material, or rubbish occasioned by such work; and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night. Provided always that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after seven days' notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned, and the expense incurred by the road authority in so doing shall be repaid to them by the promoters.

Penalty for obstruction of promoters in laying out tramway.

**6** If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of the tramway, or damages or destroys any property of any promoters, he shall for every such offence be liable to a penalty not exceeding fifty rupees.

Penalty for wilful injury or obstruction to tramways, &c.

**7** If any person without lawful excuse (the proof whereof shall lie on him) wilfully—

- (1) Interferes with, removes, or alters any part of a tramway or of the works connected therewith; or
- (2) Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway; or
- (3) Does or causes to be done anything in such manner as to obstruct any carriage using a tramway; or to endanger the lives of persons therein or thereon; or
- (4) Knowingly aids or assists in the doing of any such thing;

he shall for every such offence be liable (in addition to any proceeding by way of indictment or otherwise to which he may be subject) to a penalty not exceeding fifty rupees.

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8 If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage every such person shall for every such offence be liable to a penalty not exceeding twenty rupees.

Penalty on passengers practising frauds on promoters.

9 It shall be lawful for any officer or servant of the promoters of any tramway, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant, until such person can be conveniently taken before a justice of the peace, or until he be otherwise discharged by due course of law.

Transient offenders.

10 No person shall be entitled to carry, or to require to be carried, on any tramway, any goods which may be of a dangerous nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding two hundred rupees for every such offence, and it shall be lawful for such promoters to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Penalty for bringing dangerous goods on the tramway.

11 If any person (except under a lease from or by agreement with the promoters) uses a tramway or any part thereof with carriages having flange wheels, or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding two hundred rupees.

Penalty for persons using tramways with carriages with flange wheels, &c.

12 The promoters shall be answerable for all accidents, damages, and injuries happening through their act or default or through the act or default of any person in their employment, by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries.

Promoters, &c., to be responsible for all damages.

13 Notwithstanding anything in this Ordinance contained, the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway, nor shall anything contained in this Ordinance exempt the promoters of any

Right of user only.

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tramway, or any other person using such tramway, from the payment of such tolls as may be levied in respect of the use of such road.

Power of road authority to widen road reserved.

14 Nothing in this Ordinance shall take away or affect any power which any road authority, or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have to widen, alter, divert, or improve any road, railway, tramway, or inland navigation.

Power of local police to regulate traffic reserved.

15 Nothing in this Ordinance shall limit the powers of the police or of the officers of the municipal council in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such police or officers as aforesaid may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters as to the traffic of other persons.

Right of public to use road reserved.

16 Nothing in this Ordinance shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flanged wheels or wheels suitable only to run on the rail of the tramway.

Specification of offences and penalties to be affixed to carriages.

17 The promoters shall be bound to affix to some conspicuous part of their carriages a paper in the English, Sinhalese, and Tamil languages, specifying the offences and penalties created by the 8th, 9th, and 10th clauses of this Ordinance, together with the table of fares.

Power of sale.

18 It shall be lawful for the promoters, with the consent of the Government, but not otherwise, to sell their undertaking to any person, corporation, or company; and when any such sale has been made, all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, corporation, or company to whom the same has been sold, in like manner as if such tramway was constructed by such person, corporation, or company, and in reference to the same they shall be deemed to be the promoters.

Proceeding if promoters discontinue working of tramway, or of insolvency of promoters.

19 If at any time after the opening of any tramway for traffic the promoters discontinue the working of such tramway, or of any part thereof, for the space of three months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Government, or, if at such time as aforesaid, it appears to the Government that the promoters are insolvent, so that they are unable to maintain such tramway, or work the same with advantage to the public, the said Government, if they think fit, may by order declare that the powers and privileges of the promoters in respect of

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such tramway or the part thereof so discontinued, or of such promoters so become insolvent, shall, from the date of such order, be at an end, and thereupon the said powers of the promoters shall cease and determine. Where any such order has been made, the Government (or if the tramway shall have been laid down in a municipal town under treaty with the council thereof, such council) may, with the sanction of Government, at any time after the date of such order take up and work the tramway, or cause the same to be removed, as it may consider right in the interests of the public. If the removal of the tramway or part thereof be determined upon, the Government or council as aforesaid shall cause the same to be removed, and the promoters shall pay to such Government or council the cost of such removal and of making good the road, and any damage sustained in consequence of any such discontinuance. Such cost shall be certified by some officer authorized by the Government, whose certificate shall be final and conclusive, and shall form a first charge on the property of the promoters; and if the promoters fail to pay the amount so certified within one month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of the tramway removed, either by public auction or private sale, and for such sum, and to such person, as the Government or council may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost, certified as aforesaid, and of the cost of sale; and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

20 If the Government or council determine upon working the said tramway, as provided in the preceding section, such Government or council shall pay to the promoters the value (exclusive of any allowance for past or future profits of the undertaking or other consideration whatsoever) of all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking; such value to be, in case of difference, determined by two arbitrators, one to be chosen by the Government or council taking over the tramway, and the other to be chosen by the promoters, and in case of difference between the arbitrators, of an umpire to be chosen by them. And for the purposes of such arbitration the provisions of "The Arbitration Ordinance, 1866" (or any other Ordinance to be hereafter enacted in its stead), so far as the same are applicable hereto, shall be deemed to be in force and applicable to such arbitration as if the same were inserted herein.

Value how to be determined.

21 Nothing in section 19 contained shall be held to prevent the Government, or, with its sanction, the council under treaty with whom any tramway shall have been laid

Council or Government may, however,

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work the tramway pending the three months specified in section 19.

down (if the Government shall be satisfied that it will be for the convenience of the public that it should continue to work the tramway), to assume charge of and work such tramway, at the expense of the promoters and on their account, immediately any tramway or part thereof is discontinued, or immediately the Government has reason to believe that the promoters of any tramway are insolvent, so that they are unable to maintain such tramway or work the same with advantage to the public, and until the expiration of the three months in the said section specified. And the promoters shall pay to the Government or council, as the case may be, the cost of such working, which said cost shall be certified by some authorized officer of the Government, whose certificate shall be final and conclusive, and shall form a first charge on the property of the promoters; and if the promoters fail to pay the amount so certified within one month of the delivery to them of such certificate or a copy thereof, the Government may (but without prejudice to any other remedy which they may have for the recovery of the amount) seize and sell and dispose of any property of the promoters not wanted for the working of the said tramway, and reimburse themselves the cost of the working certified as aforesaid, and of the cost of sale; and the balance, if any, of the proceeds of the sale shall be paid over by the road authority for and on account of the promoters.

Government to make regulations.

**22** It shall be lawful for the Government, from time to time, to make such regulations as shall be necessary for the due working of tramways, and the traffic connected therewith, and the prevention of accidents.

3rd February, 1873.