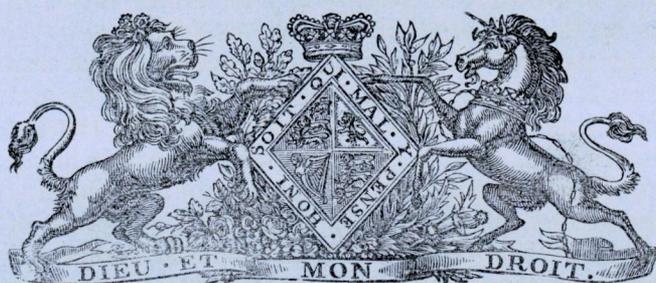


*This PRIVATE BILL originated in the LEGISLATIVE ASSEMBLY, and having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL, for its concurrence.*

*Legislative Assembly Chamber,  
Sydney, 9th December, A.D., 1859. }*

R. O'CONNOR,  
*Clerk of Legislative Assembly.*

## New South Wales.



ANNO VICESIMO TERTIO

## VICTORIÆ REGINÆ.

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### An Act to Incorporate "The Newcastle Wallsend Coal Company."

**W**HEREAS a Joint Stock Company called "The Newcastle Wallsend Coal Company" has been lately established at Sydney in the Colony of New South Wales under and subject to the rules regulations and provisions contained in a certain Deed of Settlement bearing date the twentieth day of January in the year of our Lord one thousand eight hundred and fifty-nine purporting to be a Deed of Settlement of the said Company And whereas by the said Deed of Settlement the several parties thereto have respectively and mutually covenanted and agreed that they whilst holding shares in the Capital of the said Company should be and continue until dissolved under the provisions in that behalf therein contained a Joint Stock Company or partnership under the name and title of "The Newcastle Wallsend Coal Company" for working the coal or other mines in or upon any land of which the said Company might from time to time be owners or lessees for the purchase or leasing of coal or other mineral lands for following up and acting upon any trade or purpose mentioned in any regulations for the management or conduct of coal or other mines in the said Colony then promulgated or thereafter to be promulgated for purchasing the necessary machinery for working the said mines or for testing the mining capabilities of any land purchased or intended to be purchased by the Company or for draining any mines or any other purpose in connection therewith for exporting selling or otherwise disposing of all coal or other minerals to be raised from any land belonging to or leased by the said Company for disposing of the timber on any such land for leasing or selling any such lands and for constructing railways

*Newcastle Wallsend Coal Company's Incorporation Act.—1859.*

railways roads wharves and other matters necessary for the promotion of the objects of the said Company and it was by the same Deed of Settlement agreed that the capital of the said Company should consist of one hundred thousand pounds to be contributed in ten thousand shares of ten pounds each and of such further sum or sums as might thereafter be raised by the creation and sale of new shares of the like amount as therein provided And whereas by the said Deed of Settlement provision has been made for the due management of the affairs of the Company by certain Directors already appointed and by other Directors to be from time to time elected and appointed as their successors by the shareholders of the said Company And whereas the said Company is desirous of being incorporated and it is expedient that the said Company should be incorporated accordingly subject to the provisions hereinafter contained Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1. Such and so many persons as have already become or at any time or times hereafter shall and may in the manner provided by and subject to the rules regulations and provisions contained in the said Deed of Settlement become proprietors of shares of or in the capital for the time being of the said Company shall (subject nevertheless to the conditions regulations and provisions hereinafter contained) be one body politic and corporate in name and in deed by the name of "The Newcastle Wallsend Coal Company" and by that name shall and may sue and be sued by any persons whether members of the said Corporation or not and shall and may implead and be impleaded in all Courts whatsoever at law or in equity and may prefer lay and prosecute any indictment information and prosecution against any person whomsoever for any stealing embezzlement fraud forgery or other crime or offence and in all indictments informations and prosecutions it shall be lawful to state the money and goods effects bills notes securities or other property of the said Company to be the money goods effects bills notes securities or other property of the said Corporation and to designate the said Company by its corporate name whenever for the purpose of any allegation of an intent to defraud or otherwise howsoever such designation shall be necessary and the said Corporation shall have perpetual succession with a Common Seal which may be altered varied and changed from time to time at the pleasure of the said Corporation.

Company incorporated.

2. The several laws rules regulations clauses and agreements contained in the said Deed of Settlement or to be made under or by virtue or in pursuance thereof shall be deemed and considered to be and shall be the by-laws for the time being of the said Corporation save and except in so far as any of them are or shall be or may be altered varied or repealed by or are or shall or may be inconsistent or incompatible with or repugnant to any of the provisions of this Act or of any of the Laws or statutes now or hereinafter to be in force in the said Colony but no rule or by-law shall on any account or pretence whatsoever be made by the said Corporation either under or by virtue of the said Deed of Settlement or of this Act in opposition to the general scope or true intent and meaning of this Act or of any of the laws or statutes in force for the time being in the said Colony.

Deed of Settlement confirmed.

3. It shall be lawful for the said Corporation from time to time to extend or increase its capital for the time being by the creation and disposal of new shares in the manner specified and set forth and subject to the rules regulations and provisions contained in the hereinbefore in part recited Deed of Settlement.

Increase of capital.

4. The capital or joint stock for the time being and all the funds and property of the said Corporation and the several shares therein and the

Capital and shares to be personalty.

*Newcastle Wallsend Coal Company's Incorporation Act.—1859.*

the profits and advantages to be derived therefrom shall be and be deemed personal estate and be transmissible accordingly subject to the regulations of the said Deed of Settlement.

5 The Corporation shall not be bound in any manner by any trusts <sup>Trusts or equitable</sup>  
 5 or equitable interests or demands affecting any shares of the Capital <sup>interests affecting</sup>  
 standing in the name of any person as the ostensible proprietor thereof <sup>shares</sup>  
 or be required to take any notice of such trusts or equitable interests or  
 demands but the receipt of the person in whose name the shares shall  
 stand in the books of the Corporation shall notwithstanding such trusts  
 10 or equitable interests or demands and notice thereof to the said  
 Corporation be a good valid and conclusive discharge to the Corporation  
 for or in respect of any dividend or other money payable by the said  
 Corporation in respect of such shares and a transfer of the said shares  
 in accordance with the regulations in that behalf contained in the  
 15 said Deed of Settlement by the person in whose name such shares shall  
 so stand shall notwithstanding as aforesaid be binding and conclusive  
 as far as may concern the said Corporation against all persons  
 claiming by virtue of such trusts or equitable interests or demands  
 Provided always that nothing therein contained shall be deemed  
 20 or taken to interfere with or abridge the right and power of a  
 Court of Equity to restrain the payment of any such dividend or other  
 money payable thereafter by the Corporation in respect of any such  
 shares or the transfer thereafter of any such shares or to direct the  
 payment of such dividends or other money by the Corporation or the  
 25 transfer of such shares by the person in whose name they may stand to  
 such other person as such Court may think fit.

6. It shall be lawful for the said Corporation notwithstanding any <sup>Power to take and</sup>  
 statute or law to the contrary to purchase take hold and enjoy to them <sup>hold lands, &c.</sup>  
 and their successors for any estate term of years or interest and under  
 30 license any coal or other mineral lands whatsoever and all such houses  
 offices buildings and other lands and hereditaments as may be necessary  
 or proper for the purpose of managing and conducting and carrying on  
 the affairs concerns and business of the said Corporation and to sell  
 convey assign assure lease and otherwise dispose of or act in respect of  
 35 such coal or other mineral lands houses offices buildings and other lands  
 and hereditaments as occasion may require.

7. It shall and may be lawful to and for all persons who are or <sup>Conveyance to the</sup>  
 shall be otherwise competent so to do to grant sell alien and convey <sup>Corporation.</sup>  
 demise assign assure and dispose of unto and to the use of the said Cor-  
 40 poration and their successors for the purposes aforesaid or any of them  
 any such houses offices lands mines hereditaments and other real estate  
 whatsoever as aforesaid accordingly.

8. No dividend or bonus shall in any case be declared or paid <sup>Dividend from the</sup>  
 out of the subscribed capital for the time being of the said Company or <sup>profits.</sup>  
 45 otherwise than out of the declared surplus capital net gains and profits of  
 the business.

9. In any action or suit to be brought by the said Corporation against <sup>Actions or suits for</sup>  
 any proprietor of any shares in the capital of the said Corporation to <sup>calls.</sup>  
 recover any sum of money due and payable to the said Corporation for or  
 50 by reason of any call made by virtue of this Act or of the said Deed of  
 Settlement it shall be sufficient for the Corporation to declare and allege  
 that the defendant being a proprietor of such or so many shares in the  
 capital of the said Corporation is indebted to the said Corporation in such  
 sum of money (as the call in arrears shall amount to) for such call of  
 55 such sum of money upon such or so many shares belonging to the said  
 defendant whereby an action hath accrued to the said Corporation without  
 setting forth any special matter and on the trial of such action or suit it  
 shall not be necessary to prove the appointment of the Directors who  
 made

*Newcastle Wallsend Coal Company's Incorporation Act.—1859.*

made such call or any other matters except that the defendant at the time of making such call was a holder or proprietor of one or more share or shares in the capital of the said Corporation and that such call was in fact made and that such notice thereof and of the time fixed for the  
5 payment thereof was given as is directed by the said Deed of Settlement and the said Corporation shall thereupon be entitled to recover what shall appear due.

10 10. The Share Register of the said Company shall at all times be primâ facie evidence to show who are the proprietors for the time being of the capital thereof and the number of shares held by each proprietor. Share Register to be evidence of ownership.

15 11. Nothing herein contained shall prejudice or be deemed to prejudice any call made or any contract or other act deed matter or thing entered into made or done by the said Company prior to or under or by virtue of the said Deed of Settlement before this Act shall come into  
15 operation but the same call contract act deed matter or thing shall be as valid and effectual to all intents and purposes as if this Act had not been passed and may be enforced in like manner as if the said Company had been incorporated before the same call contract act deed matter or thing had been made entered into or done. Contracts &c. under the Deed of Settlement before Act.

20 12. In the event of the assets of the Corporation being insufficient to meet its engagements the shareholders shall in addition to the amount of their subscribed shares in the capital of the said Corporation be responsible to the extent only of a sum equal to the amount of their said shares. Liability of shareholders.

25 13. The Directors for the time being shall have the custody of the Common Seal of the said Corporation and the form thereof and all other matters relating thereto shall from time to time be determined by the Directors in the same manner as is provided in and by the said Deed of Settlement for the determination of other matters by the Board of Directors  
30 and the Directors present at a Board of Directors of the said Corporation shall have power to use such Common Seal for the affairs and concerns of the said Corporation and under such seal to authorize and empower any person without such seal to execute any deeds and do all or any such other  
35 matters and things as may be required to be executed and done on behalf of the said Company in conformity with the provisions of the said Deed of Settlement and of this Act but it shall not be necessary to use the Corporate Seal in respect of any of the ordinary business of the Company or for the appointment of an Attorney or Solicitor for the prosecution or defence of any action suit or proceeding. Custody and use of Corporate Seal.

40 14. The Directors and Secretary of the said Company appointed by the said Deed of Settlement shall go out of office at the general meeting of the shareholders of the said Company to be held in the month of January one thousand eight hundred and sixty and thereupon a new Board of Directors shall be elected of the number and in the manner provided by  
45 the said Deed of Settlement And thereafter the said Board of Directors shall be changed and all vacancies therein filled up at the times and in manner provided by the said Deed of Settlement. Retirement and election of Directors.

50 15. It shall and may be lawful for the Directors in pursuance of a resolution to that effect to be passed at special general meetings of the shareholders to be called for the purpose from time to time to borrow upon mortgage of the property of the Company or upon debentures chargeable thereon issued under the hands of any two of the Directors named in such resolutions any sum or sums of money not exceeding in the whole an amount equal to one-half of the paid up capital of the Company Provided  
55 always that the shareholders present at any such meeting either in person or by proxy specially given for the occasion shall hold shares representing not less than one-third of the paid up capital of the Company. Power to borrow on mortgage or debentures.

*Newcastle Wallsend Coal Company's Incorporation Act.—1859.*

16. This Act shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by the Judges of the Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its dependencies without  
 5 being specially pleaded and the same whenever cited shall be sufficiently described as "The Newcastle Wallsend Coal Company's  
 Act 1859." Act to be deemed a public Act.  
 To be cited as "The Newcastle Wallsend Coal Company's Act."

17. And be it enacted that in this Act the following words shall  
 have the following meanings hereby assigned to them unless there be  
 10 something in the subject or context repugnant to such construction (that is to say) words importing the plural number shall include the singular number and words importing the masculine gender shall include females and bodies Corporate as well as individuals. Interpretation clause.



New South Wales.



ANNO VICESIMO TERTIO

VICTORIÆ REGINÆ.

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An Act to Incorporate "The Newcastle Wallsend Coal Company."

[Assented to, 6th February, 1860.]

**W**HEREAS a Joint Stock Company called "The Newcastle Walls-<sup>Preamble.</sup>  
end Coal Company" has been lately established at Sydney in the Colony of New South Wales under and subject to the rules regulations and provisions contained in a certain Deed of Settlement bearing date the twentieth day of January in the year of our Lord one thousand eight hundred and fifty-nine purporting to be a Deed of Settlement of the said Company And whereas by the said Deed of Settlement the several parties thereto have respectively and mutually covenanted and agreed that they whilst holding shares in the Capital of the said Company should be and continue until dissolved under the provisions in that behalf therein contained a Joint Stock Company or partnership under the name and title of "The Newcastle Wallsend Coal Company" for working the coal or other mines in or upon any land of which the said Company might from time to time be owners or lessees for the purchase or leasing of coal or other mineral lands for following up and acting upon any trade or purpose mentioned in any regulations for the management or conduct of coal or other mines in the said Colony then promulgated or thereafter to be promulgated for purchasing the necessary machinery for working the said mines or for testing the mining capabilities of any land purchased or intended to be purchased by the Company or for draining any mines or any other purpose in connection therewith for exporting selling or otherwise disposing of all coal or other minerals to be raised from any land belonging to or leased by the said Company for disposing of the timber on any such land for leasing or selling any such lands and for constructing railways

*Newcastle Wallsend Coal Company's Incorporation Act.—1859.*

railways roads wharves and other matters necessary for the promotion of the objects of the said Company and it was by the same Deed of Settlement agreed that the capital of the said Company should consist of one hundred thousand pounds to be contributed in ten thousand shares of ten pounds each and of such further sum or sums as might thereafter be raised by the creation and sale of new shares of the like amount as therein provided And whereas by the said Deed of Settlement provision has been made for the due management of the affairs of the Company by certain Directors already appointed and by other Directors to be from time to time elected and appointed as their successors by the shareholders of the said Company And whereas the said Company is desirous of being incorporated and it is expedient that the said Company should be incorporated accordingly subject to the provisions hereinafter contained Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Company incorpo-  
rated.

1. Such and so many persons as have already become or at any time or times hereafter shall and may in the manner provided by and subject to the rules regulations and provisions contained in the said Deed of Settlement become proprietors of shares of or in the capital for the time being of the said Company shall (subject nevertheless to the conditions regulations and provisions hereinafter contained) be one body politic and corporate in name and in deed by the name of "The Newcastle Wallsend Coal Company" and by that name shall and may sue and be sued by any persons whether members of the said Corporation or not and shall and may implead and be impleaded in all Courts whatsoever at law or in equity and may prefer lay and prosecute any indictment information and prosecution against any person whomsoever for any stealing embezzlement fraud forgery or other crime or offence and in all indictments informations and prosecutions it shall be lawful to state the money and goods effects bills notes securities or other property of the said Company to be the money goods effects bills notes securities or other property of the said Corporation and to designate the said Company by its corporate name whenever for the purpose of any allegation of an intent to defraud or otherwise howsoever such designation shall be necessary and the said Corporation shall have perpetual succession with a Common Seal which may be altered varied and changed from time to time at the pleasure of the said Corporation.

Deed of Settlement  
confirmed.

2. The several laws rules regulations clauses and agreements contained in the said Deed of Settlement or to be made under or by virtue or in pursuance thereof shall be deemed and considered to be and shall be the by-laws for the time being of the said Corporation save and except in so far as any of them are or shall be or may be altered varied or repealed by or are or shall or may be inconsistent or incompatible with or repugnant to any of the provisions of this Act or of any of the Laws or statutes now or hereinafter to be in force in the said Colony but no rule or by-law shall on any account or pretence whatsoever be made by the said Corporation either under or by virtue of the said Deed of Settlement or of this Act in opposition to the general scope or true intent and meaning of this Act or of any of the laws or statutes in force for the time being in the said Colony.

Increase of capital.

3. It shall be lawful for the said Corporation from time to time to extend or increase its capital for the time being by the creation and disposal of new shares in the manner specified and set forth and subject to the rules regulations and provisions contained in the hereinbefore in part recited Deed of Settlement.

Capital and shares to  
be personalty.

4. The capital or joint stock for the time being and all the funds and property of the said Corporation and the several shares therein and  
the

*Newcastle Wallsend Coal Company's Incorporation Act.—1859.*

the profits and advantages to be derived therefrom shall be and be deemed personal estate and be transmissible accordingly subject to the regulations of the said Deed of Settlement.

5. The Corporation shall not be bound in any manner by any trusts or equitable interests or demands affecting any shares of the Capital standing in the name of any person as the ostensible proprietor thereof or be required to take any notice of such trusts or equitable interests or demands but the receipt of the person in whose name the shares shall stand in the books of the Corporation shall notwithstanding such trusts or equitable interests or demands and notice thereof to the said Corporation be a good valid and conclusive discharge to the Corporation for or in respect of any dividend or other money payable by the said Corporation in respect of such shares and a transfer of the said shares in accordance with the regulations in that behalf contained in the said Deed of Settlement by the person in whose name such shares shall so stand shall notwithstanding as aforesaid be binding and conclusive as far as may concern the said Corporation against all persons claiming by virtue of such trusts or equitable interests or demands Provided always that nothing therein contained shall be deemed or taken to interfere with or abridge the right and power of a Court of Equity to restrain the payment of any such dividend or other money payable thereafter by the Corporation in respect of any such shares or the transfer thereafter of any such shares or to direct the payment of such dividends or other money by the Corporation or the transfer of such shares by the person in whose name they may stand to such other person as such Court may think fit.

6. It shall be lawful for the said Corporation notwithstanding any statute or law to the contrary to purchase take hold and enjoy to them and their successors for any estate term of years or interest and under license any coal or other mineral lands whatsoever and all such houses offices buildings and other lands and hereditaments as may be necessary or proper for the purpose of managing and conducting and carrying on the affairs concerns and business of the said Corporation and to sell convey assign assure lease and otherwise dispose of or act in respect of such coal or other mineral lands houses offices buildings and other lands and hereditaments as occasion may require.

7. It shall and may be lawful to and for all persons who are or shall be otherwise competent so to do to grant sell alien and convey demise assign assure and dispose of unto and to the use of the said Corporation and their successors for the purposes aforesaid or any of them any such houses offices lands mines hereditaments and other real estate whatsoever as aforesaid accordingly.

8. No dividend or bonus shall in any case be declared or paid out of the subscribed capital for the time being of the said Company or otherwise than out of the declared surplus capital net gains and profits of the business.

9. In any action or suit to be brought by the said Corporation against any proprietor of any shares in the capital of the said Corporation to recover any sum of money due and payable to the said Corporation for or by reason of any call made by virtue of this Act or of the said Deed of Settlement it shall be sufficient for the Corporation to declare and allege that the defendant being a proprietor of such or so many shares in the capital of the said Corporation is indebted to the said Corporation in such sum of money (as the call in arrears shall amount to) for such call of such sum of money upon such or so many shares belonging to the said defendant whereby an action hath accrued to the said Corporation without setting forth any special matter and on the trial of such action or suit it shall not be necessary to prove the appointment of the Directors who made

*Newcastle Wallsend Coal Company's Incorporation Act.—1859.*

made such call or any other matters except that the defendant at the time of making such call was a holder or proprietor of one or more share or shares in the capital of the said Corporation and that such call was in fact made and that such notice thereof and of the time fixed for the payment thereof was given as is directed by the said Deed of Settlement and the said Corporation shall thereupon be entitled to recover what shall appear due.

Share Register to be evidence of ownership.

10. The Share Register of the said Company shall at all times be primâ facie evidence to show who are the proprietors for the time being of the capital thereof and the number of shares held by each proprietor.

Contracts &c. under the Deed of Settlement before Act.

11. Nothing herein contained shall prejudice or be deemed to prejudice any call made or any contract or other act deed matter or thing entered into made or done by the said Company prior to or under or by virtue of the said Deed of Settlement before this Act shall come into operation but the same call contract act deed matter or thing shall be as valid and effectual to all intents and purposes as if this Act had not been passed and may be enforced in like manner as if the said Company had been incorporated before the same call contract act deed matter or thing had been made entered into or done.

Liability of shareholders.

12. In the event of the assets of the Corporation being insufficient to meet its engagements the shareholders shall in addition to the amount of their subscribed shares in the capital of the said Corporation be responsible to the extent only of a sum equal to the amount of their said shares.

Custody and use of Corporate Seal.

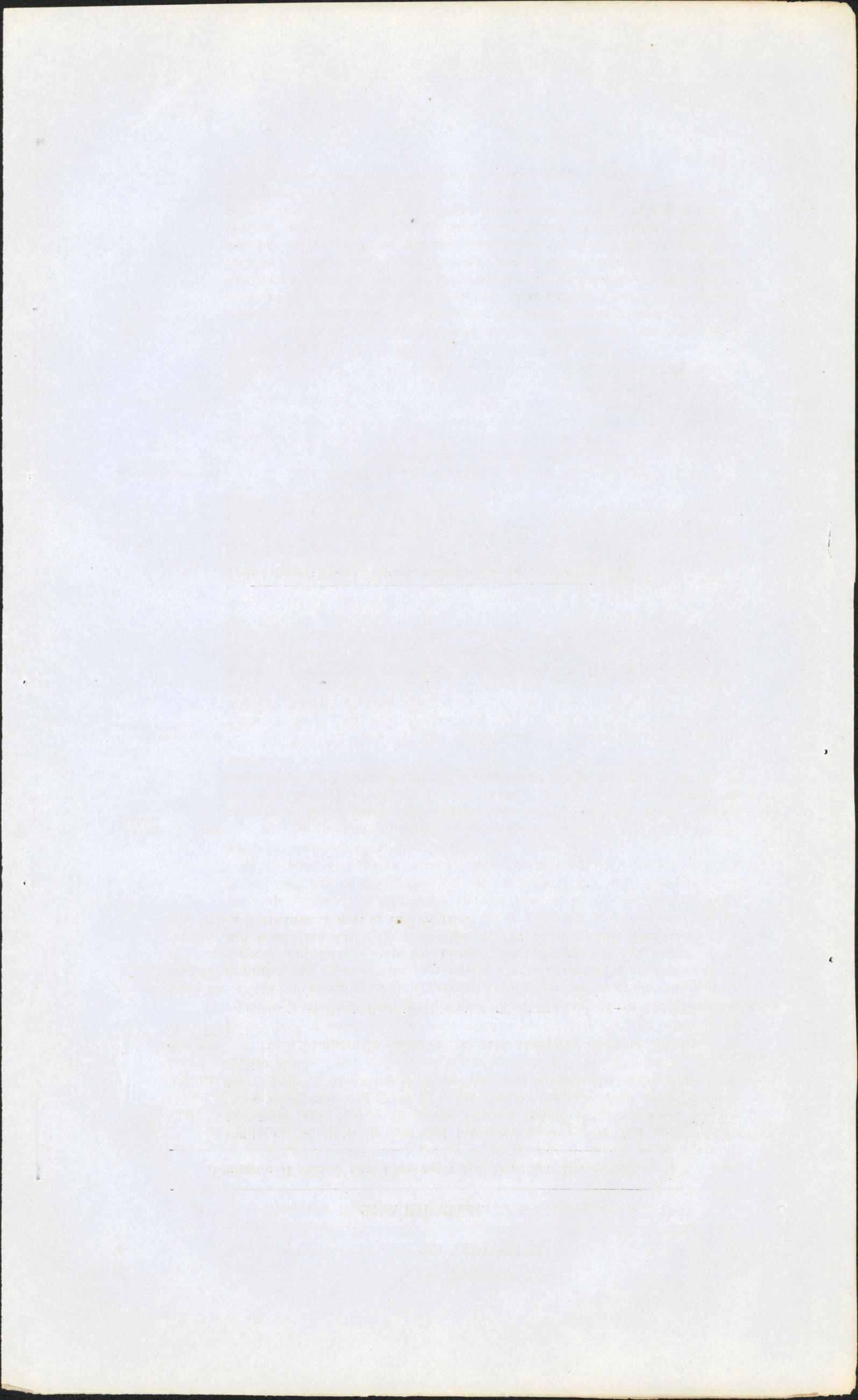
13. The Directors for the time being shall have the custody of the Common Seal of the said Corporation and the form thereof and all other matters relating thereto shall from time to time be determined by the Directors in the same manner as is provided in and by the said Deed of Settlement for the determination of other matters by the Board of Directors and the Directors present at a Board of Directors of the said Corporation shall have power to use such Common Seal for the affairs and concerns of the said Corporation and under such seal to authorize and empower any person without such seal to execute any deeds and do all or any such other matters and things as may be required to be executed and done on behalf of the said Company in conformity with the provisions of the said Deed of Settlement and of this Act but it shall not be necessary to use the Corporate Seal in respect of any of the ordinary business of the Company or for the appointment of an Attorney or Solicitor for the prosecution or defence of any action suit or proceeding.

Retirement and election of Directors.

14. The Directors and Secretary of the said Company appointed by the said Deed of Settlement shall go out of office at the general meeting of the shareholders of the said Company to be held in the month of January one thousand eight hundred and sixty and thereupon a new Board of Directors shall be elected of the number and in the manner provided by the said Deed of Settlement And thereafter the said Board of Directors shall be changed and all vacancies therein filled up at the times and in manner provided by the said Deed of Settlement.

Power to borrow on mortgage or debentures.

15. It shall and may be lawful for the Directors in pursuance of a resolution to that effect to be passed at special general meetings of the shareholders to be called for the purpose from time to time to borrow upon mortgage of the property of the Company or upon debentures chargeable thereon issued under the hands of any two of the Directors named in such resolutions any sum or sums of money not exceeding in the whole an amount equal to one-half of the paid up capital of the Company Provided always that the shareholders present at any such meeting either in person or by proxy specially given for the occasion shall hold shares representing not less than one-third of the paid up capital of the Company.



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*Newcastle Wallsend Coal Company's Incorporation Act.—1859.*

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16. This Act shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by the Judges of the Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its dependencies without being specially pleaded and the same whenever cited shall be sufficiently described as "The Newcastle Wallsend Coal Company's Incorporation Act 1859."

Act to be deemed a public Act.

To be cited as "The Newcastle Wallsend Coal Company's Act."

17. And be it enacted that in this Act the following words shall have the following meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction (that is to say) words importing the plural number shall include the singular number and words importing the masculine gender shall include females and bodies Corporate as well as individuals.

Interpretation clause

*This PRIVATE BILL originated in the LEGISLATIVE ASSEMBLY, and having this day passed is now ready for presentation to the LEGISLATIVE COUNCIL, for its concurrence.*

*Legislative Assembly Chamber,  
Sydney, 17 February, A.D. 1860. }*

CHA. TOMPSON,  
*Clerk of Legislative Assembly.*

## New South Wales.



ANNO VICESIMO TERTIO.

## VICTORIÆ REGINÆ.

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An Act to enable certain persons carrying on business at Sydney under the name or style of "The Newcastle Wallsend Coal Company" to construct a Railway from land near Newcastle belonging to them to and to connect the same with the Great Northern Railway.

**W**HEREAS certain persons trading in Sydney under the name and style of "The Newcastle Wallsend Coal Company" have opened Coal Mines and established Collieries on a parcel of land situate near Newcastle in the County of Northumberland and in order to facilitate communication between the said Coal Mines and Collieries and the Great Northern Railway are desirous of constructing a Railway from their said Coal Mines to the said Great Northern Railway but as part of such proposed Railway is intended to be made upon and pass through lands in the said County believed to be the property of Messrs. Cowper and Miller as Trustees for Mrs. Brooks John Whitehill Stevens Esquire the Crown and the Australian Agricultural Company respectively the same cannot be made without Legislative authority And whereas the said Coal Mines and Collieries are likely to prove beneficial to the Colony and the public are concerned in promoting such an increase in and facilities for the supply of Coal for local consumption steam navigation and export as would result from the construction of the said proposed Railway and the traffic on the Great Northern Railway would be increased thereby it is therefore desirable to authorise by Legislative enactment the construction of the said Railway subject to the provisions hereinafter contained upon payment of compensation to the several parties through whose lands the same shall pass for such portions of their respective lands as may be required to be occupied thereby Be it therefore enacted by the

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

the Queen's Most Excellent Majesty by and with the advice of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1. It shall be lawful for the promoters to make and construct a  
 5 Railway from the northern boundary of their said land unto and through  
 the land known as the grant to Messrs. Cowper and Miller as Trustees  
 for Mrs. Brooks unto and through land known as Weller's Grant and now  
 belonging or supposed to belong to the said J. W. Stevens unto and through  
 Crown Land known as Commonage Reserve unto and through land known  
 10 as Platt's Grant now the property of the Australian Agricultural Company  
 and terminating at a point four miles fifty-three and a-half chains or  
 thereabouts from Newcastle at such termination to effect a junction  
 between the said line and the Great Northern Railway in accordance  
 with section ninety-nine of the Government Railways Act of 1858 such  
 15 Railway to be in the line described in the schedule and as shewn on  
 the plan hereunto annexed but so that the same shall not occupy in any  
 part thereof a greater space in breadth than ninety-nine feet excepting at  
 a creek on the Australian Agricultural Company's property at twenty-  
 eight chains from the junction with the Great Northern Railway where  
 20 the width will be one hundred and fifty feet including the supports  
 abutments and foundations thereof Provided that the Railway shall be  
 constructed and brought into use within the term of five years from the  
 passing of this Act and that the promoters in constructing and connecting  
 the same with the Great Northern Railway shall do so in a proper and  
 25 workmanlike manner and repair all damages caused by so doing.

2. The ground and soil of so much of the site of the Railway as  
 passes over the lands of the said owners of land respectively and over  
 Crown Land together with such right of ingress egress and regress upon  
 the adjacent land as may be necessary for the making and repair thereof  
 30 shall be vested by virtue of this Act and without the necessity of any  
 conveyance in the promoters for the purposes of the Railway Provided  
 that no lands vested in the Commissioner for Railways shall by  
 virtue of this Act be vested in the Company Provided also that if  
 in the exercise of the powers hereby granted it be found necessary  
 35 to cross cut through raise sink or use any part of any road whether  
 carriage road or horse road so as to render it impassable for or  
 dangerous or inconvenient to the persons entitled to the use thereof the  
 promoters shall before the commencement of any such operations cause a  
 sufficient road to be made instead of any road interfered with and shall at  
 40 their own expense maintain such substituted road in a state as convenient  
 as the road interfered with or as nearly as may be and the promoters  
 before they use the said lands of the said owners of land respectively and  
 the said Crown Land for any of the purposes aforesaid shall if required  
 so to do separate the same by a sufficient fence from the land adjoining  
 45 thereto with such gates as may be required for the convenient occupation  
 of such land 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  
 50 or occupiers of such roads and lands and the promoters as to the necessity  
 for such fences and gates such fences and gates shall be put up by the  
 promoters as any two Justices of the Peace shall deem necessary for the  
 purposes aforesaid on application being made to them.

3. The railway and locomotives shall be open to public use upon  
 55 payment of a toll to the promoters of three-pence per ton per mile the  
 party seeking transit supplying and loading his own trucks or waggons  
 and all trucks when emptied shall be conveyed on their return free of cost.

Site of Railway shall be vested in the promoters without conveyance.

Railway open to the public.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

4. And be it enacted that it shall be lawful for the owners or occupiers of the lands traversed by the said Railway to lay down upon their own lands any collateral branches of Railway to communicate with the said Railway for the purpose of bringing carriages to or from or upon the said Railway and the promoters shall if required at the expense of such owners or occupiers make openings in the rails and such additional lines of Railway as may be necessary for effecting such communication in places where the communication can be made with safety to the public and without injury to the said Railway and without inconvenience to the traffic thereupon and the promoters shall not take any rate or toll or other moneys for the passing of any passengers goods or other things along any branch so to be made by any such owner or occupier or other person but this enactment shall be subject to the following restrictions and conditions (that is to say)
- 15 No such Railway shall run parallel to the said Railway the promoters shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere nor upon any inclined plane or bridge nor in any tunnel.
- 20 The persons making or using such branch Railways shall be subject to all by-laws and regulations of the promoters from time to time made with respect to passing upon or crossing the Railway and otherwise and the persons making or using such branch Railways shall be bound to construct and from time to time as need may require to renew the off-set plates and switches according to the most approved plan adopted by the promoters under the direction of their engineer.
- 25
5. For the purposes and subject to the provisions hereinafter contained it shall be lawful for the promoters their deputies agents servants and workmen and all other persons by them authorised and empowered to divert or alter the course of any Road or Way crossing the Railway or to raise or sink any Road or Way in order the more conveniently to carry the same over or under or by the side of the Railway.
- 30
6. If the promoters do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted and such penalty shall be paid to the Trustees Commissioners Surveyor or other persons having the management of such road if a public road and shall be applied for the purposes thereof or in case of a private road the same shall be paid to the owner thereof and every such penalty shall be recoverable with costs by action in any of the Superior Courts.
- 35
7. If in the course of making the Railway the promoters shall use or interfere with any road they shall from time to time make good all damage done by them to such road and if any question shall arise as to the damage done to any such road by the promoters or as to the repair thereof by them such question shall be referred to the determination of two Justices and such Justices may direct such repairs to be made in the state of such road in respect of damage done by promoters and within such period as they may think reasonable and may impose on the promoters for not carrying into effect such repairs any penalty not exceeding ten pounds per day as to such Justices shall seem fit and any such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the promoters if a public road and be applied for the purposes of such road or if a private road the same shall be paid to the owner thereof Provided always the said Justices shall have regard to and shall make full allowance for any tolls that may have been paid by the promoters on such road in the course of the using thereof.
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Branch Railways.

Power to divert or alter roads.

Penalty for not substituting a road.

Road repairs.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

8. If the line of Railway cross any Public Highway or Parish Road then either such Road shall be carried over the Railway or the Railway shall be carried over such Road by means of a Bridge of the height and width and with the ascent or descent by this Act in that behalf hereinafter provided and such Bridge with the immediate approaches and all other necessary works connected therewith shall be executed by and be at all times thereafter maintained at the expense of the promoters: Provided that with the consent of the Governor with the advice of the Executive Council it shall be lawful for the Promoters to carry the Railway across any Highway on the level.

Bridges to be constructed where railway crosses highway

9. Until the promoters shall have made the bridges or other proper communications which they shall under the provisions herein contained have been required to make between lands intersected by the Railway and no longer the owners and occupiers of such lands and any other persons whose right of way shall be affected by the want of such communications and their respective servants may at all times freely pass and repass with carriages horses and other animals directly but not otherwise across any part of the Railway made in or through their respective lands solely for the purpose of occupying the same lands or for the exercise of such right of way and so as not to obstruct the passage along the Railway or to damage the same nevertheless if the owner or occupier of any such lands have in his arrangements with the promoters received or agreed to receive compensation for or on account of any such communications instead of the same being formed such owner or occupier or those claiming under him shall not be entitled so to cross the Railway.

Owners crossing.

10. If the Railway cross any Public Highway or parish Road on a level the promoters shall erect and at all times maintain good and sufficient Gates across such Road on each side of the Railway where the same shall communicate therewith and shall employ proper persons to open and shut such gates and such gates shall be kept constantly closed across such Roads on both sides of the Railway except during the time when horses cattle carts or carriages passing along the same shall have to cross such Railway and such gates shall be of such dimensions and so constructed as when closed to fence in the Railway and prevent cattle or horses passing along the road from entering upon the Railway and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses cattle carts or carriages shall have passed through the same under a penalty of Forty shillings for every default therein Provided always that it shall be lawful for the Secretary for Public Works in any case in which he shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such Road shall be kept closed across the Railway to order that such gates shall be kept so closed instead of across the Road and in such case such gates shall be kept constantly closed across the Railway except when engines or carriages passing along the Railway shall have occasion to cross such Road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the Road.

Provisions in cases where roads are crossed on a level.

11. In case of accidents or slips happening or being apprehended to the cuttings embankments or other works of the said Railway it shall be lawful for the promoters and their workmen and servants to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose but in every such case the promoters shall within forty-eight hours after such entry make a report to the Secretary for Public Works specifying the nature of such accident or apprehended accident and of the works necessary to be done and such powers shall cease and determine if the said Secretary shall after considering the said report

Power to enter upon adjoining lands to repair accidents subject to certain restrictions.

certify

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

certify that their exercise is not necessary for the public safety Provided also that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of and shall be executed with all possible dispatch and full compensation shall be  
5 made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works the amount of which compensation in case of any dispute about the same shall be settled by arbitrators in the manner hereinafter mentioned and provided also that no land shall be taken permanently for any such works otherwise  
10 than is herein provided with respect to the lands originally taken for the purpose of making the said railway.

12. Every bridge to be erected for the purpose of carrying the railway over any road shall be built in conformity with the following  
regulations that is to say :— Construction of bridges over roads.

15 The width of the arch shall be such as to leave thereunder a clear space of not less than thirty feet if the arch be over a public highway and of twenty feet if over a parish road and of twelve feet if over a private road.

20 The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road and fifteen feet for a space of ten feet if over a public carriage road and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet the clear height of the arch for a space of nine feet shall not  
25 be less than fourteen feet over a private road.

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a public highway one foot in twenty feet if over a parish road and one foot in sixteen if over a private road not being a  
30 tramroad or railroad or if the same be a tramroad or railroad the descent shall not be greater than the ruling gradient of such tramroad or railroad.

13. Every bridge erected for carrying any road over the Railway shall be built in conformity with the following regulations that is to say :— Construction of bridges over railroad.

35 There shall be a good and sufficient fence on each side of the bridge of not less height than four feet and on each side of the immediate approaches of such bridge of not less than three feet.

40 The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a public highway and twenty-five feet if a parish road and twelve feet if a private road.

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road one foot in twenty feet if a parish road and one foot in sixteen feet if a private road not being a tramroad or  
45 railroad or if the same be a tramroad or railroad the ascent shall not be greater than the ruling gradient of such tramroad or railroad.

14. Provided always that in all cases where the average available width for the passing of carriages of any existing road within fifty yards of the points of crossing the same is less than the width hereinbefore  
50 prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads but so nevertheless that such bridges be not of less width in case of a public highway or parish road than twenty feet Provided also that if at any time after the construction of the Railway the average available width of  
55 any such road shall be increased beyond the width of such bridge on either side thereof the promoters shall be bound at their own expense to increase the width of the said bridge to such extent as they may be required by the Trustees or Surveyors of such road not exceeding the width of such road as so widened or the maximum width herein prescribed  
60 for a bridge in the like case over or under the Railway.

15.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

15. Provided also that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same or the inclination of such portion of any road as may be required to be altered or for which another road shall be substituted shall be steeper than the inclination hereinbefore required to be preserved by the promoters then the promoters may carry any such road over or under the railway or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed or of the road so requiring to be altered or for which another road shall be substituted.

Existing inclination of Roads crossed or diverted need not be improved.

16. The promoters shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway that is to say :—

Works for benefit of Owners.

Such and so many convenient gates bridges arches culverts and passages over under or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed or during the formation thereof.

Gates Bridges &c.

All sufficient posts rails hedges ditches mounds or other fences for separating the land taken for the use of the railway from the adjoining lands not taken and protecting such lands from trespass or the cattle of the owners or occupiers thereof from straying thereon by reason of the railway together with all necessary gates made to open towards such adjoining lands and not towards the railway and all necessary stiles and such posts rails and other fences shall be made forthwith after the taking of any such lands if the owners thereof shall so require and the said other works as soon as conveniently may be.

Fences.

Also all necessary arches tunnels culverts drains or other passages either over or under or by the sides of the Railway of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway or as nearly so as may be and such works shall be made from time to time as the railway works proceed.

Drains.

Also proper watering places for cattle or compensation in lieu thereof where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places and such watering places shall be so made as to be at all times sufficiently supplied with water as theretofore and as if the Railway had not been made or as nearly so as may be, and the said promoters shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places.

Watering Places.

Provided always that the promoters shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the Railway nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

17. If any person omit to shut and fasten any gate set up at either side of the Railway for the accommodation of the owners or occupiers of the adjoining lands so soon as he and the carriage cattle or other animals under his care have passed through the same he shall forfeit for every such offence any sum not exceeding ten pounds.

Penalty on persons omitting to fasten gates.

18. The promoters shall not be entitled to any mines of coal iron-stone slate or other minerals under any land whereof the surface is vested in them by virtue of this Act except only such parts thereof as shall be necessary

Minerals not to pass.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

necessary to be dug or carried away in the construction of the works hereby authorized and such mines shall not be deemed to vest in the said promoters.

19. If the owner lessee or occupier of any mines or minerals lying  
 5 under the Railway or any of the works connected therewith or within the distance of forty yards therefrom be desirous of working the same such owner lessee or occupier shall give to the promoters notice in writing of his intention so to do thirty days before the commencement of working and upon the receipt of such notice it shall be lawful for the promoters to  
 10 cause such mines to be inspected by any person appointed by them for the purpose And if it appear to the promoters that the working of such mines or minerals is likely to damage the works of the Railway and if the promoters be willing to make compensation for such mines or any part thereof to such owner lessee or occupier thereof then he shall not  
 15 work for or get the same And if the promoters and such owners lessee or occupier do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation.

Mines lying near the Railway not to be worked if Company willing to purchase them.

20. If before the expiration of such thirty days the promoters do  
 not state their willingness to treat with such owner lessee or occupier  
 20 for the payment of such compensation it shall be lawful for him to work the said mines or any part thereof for which the promoters shall not have agreed to pay compensation so that the same be done in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the district where the same  
 25 shall be situated and if any damage or obstruction be occasioned to the Railway or works by improper working of such mines the same shall be forthwith repaired or removed as the case may require and such damage made good by the owner lessee or occupier of such mines or minerals and at his own expense and if such repair or removal be not forthwith done  
 30 or if the promoters shall so think fit without waiting for the same to be done by such owner lessee or occupier it shall be lawful for the promoters to execute the same and recover from such owner lessee or occupier the expenses occasioned thereby by action in any of the Superior Courts.

If Company unwilling to purchase owner may work mines.

21. If the working of such mines under the Railway or works  
 35 or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to the Railway it shall be lawful for the respective owners lessees and occupiers of such mines and whose mines shall extend so as to be on both sides of the Railway to cut and make such and so many airways headways gateways or water levels  
 40 through the mines measures or strata the working whereof shall be so prevented as may be requisite to enable them to ventilate drain and work their said mines but no such airway headway gateway or water level shall be of greater dimensions or sections than eight feet wide and eight feet high nor shall the same be cut or made upon any part of the Railway or  
 45 works or so as to injure the same or to impede the passage thereon.

Mining communications.

22. The promoters shall from time to time pay to the owner lessee  
 or occupier of any such mines extending so as to lie on both sides of the  
 said Railway all such additional expenses and losses as shall be incurred  
 by such owner lessee or occupier by reason of the severance of the lands  
 50 lying over such mines by the Railway or of the continuous working of such mines being interrupted as aforesaid or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the Railway and for any minerals which cannot be obtained by reason of making and maintaining the Railway And if any dispute or  
 55 question shall arise between the promoters and such owners lessee or occupiers as aforesaid touching the amount of such losses or expenses the same shall be settled as in other cases of disputed compensation.

Compensation for severance and for restricted working of mines.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

23. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner lessee or occupier of such mines) by reason of making of any such airway or other work as aforesaid which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid the promoters shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him. Compensation for works rendered necessary.
- 10 24. For better ascertaining whether any such mines are being worked or have been worked so as to damage the Railway or works it shall be lawful for the promoters after giving twenty-four hours notice in writing to enter upon any lands through or near which the Railway passes wherein any such mines are being worked or are supposed so to be and to enter into and return from any such mines or the works connected therewith and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner lessee or occupier of such mines and to use all necessary means for discovering the distance from the Railway to the parts of such mines which are being worked or about so to be. Power of the Company to enter and inspect working of mines.
- 15 25. If any such owner lessee or occupier of any such mine shall refuse to allow any person appointed by the promoters for that purpose to enter into and inspect any such mines or works in the manner aforesaid every person so offending shall for every such refusal forfeit to the promoters a sum not exceeding twenty pounds. Penalty on obstructing such inspection.
- 20 26. If it appear that any such mines have been worked contrary to the provisions of this Act the promoters may if they think fit give notice to the owner lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the Railway and preventing injury thereto And if after such notice any such owner lessee or occupier do not forthwith proceed to construct the works necessary for making safe the Railway the promoters may themselves construct such works and recover the expenses thereof from such owner lessee or occupier by action in any of the superior Courts. Provision if mines improperly worked.
- 30 27. If within twenty-eight days after the passing of this Act the said persons through whose lands the Railway shall pass or any of them and the promoters shall not agree as to the amount of compensation to be paid by them for the said lands belonging to the said parties or any of them or for any damage that may be sustained by them or him by reason of the execution of the works the amount of such compensation shall be settled by Arbitrators in manner hereinafter mentioned, that is to say :— Compensation Clause.
- 35 Unless both parties shall concur in the appointment of a single Arbitrator each party on the request of the other party shall nominate and appoint an Arbitrator to whom such dispute or other matter shall be referred and every appointment of an Arbitrator shall be under the hand of such party and such appointment shall be delivered to the Arbitrator or Arbitrators and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made and after any appointment shall have been made neither party shall have power to revoke the same without the consent of the other nor shall the death of either party operate as a revocation and if for the space of fourteen days after any such dispute or other matter shall have arisen and after a request in writing shall have been served by the one party on the other party to appoint an Arbitrator such last-mentioned party fail to appoint such Arbitrator then upon such failure the party making the request and having himself appointed an Arbitrator may appoint such Arbitrator to act on behalf of both parties and such Arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single Arbitrator shall be final and conclusive. Appointment of Arbitrators.
- 40 45 50 55 60

Newcastle Wallsend Coal Company's Railway Act.—1859.

28. If before the matter so referred shall be determined any Arbitrator appointed by either party shall die or become incapable or refuse or for fourteen days neglect to act as Arbitrator the party by whom such Arbitrator was appointed may nominate and appoint in writing some other person to act in his place and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other Arbitrators may proceed alone and every Arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former Arbitrator at the time of such his death refusal neglect or disability as aforesaid.

Vacancy of Arbitration to be supplied.

29. Where more than one Arbitrator shall have been appointed such Arbitrators shall before they enter upon the matters referred to them nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ or which shall be referred to them under the provisions of this Act and if such umpire shall die or refuse or for seven days neglect to act after being called upon to do so by the Arbitrators they shall forthwith after such death refusal or neglect appoint another umpire in his place and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of Umpire.

30. If in either of the cases aforesaid the Arbitrator shall refuse or for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for any of the Judges of the Supreme Court on the application of either party to such arbitration to appoint an umpire and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Act shall be final.

One of the Judges of the Supreme Court to appoint Umpire on neglect.

31. If when a single Arbitrator shall have been appointed such Arbitrator shall die or become incapable or shall refuse or for fourteen days neglect to act before he shall have made his award the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such Arbitrator had not been appointed.

In case of death of single Arbitrator the matter to begin *de novo*.

32. If where more than one Arbitrator shall have been appointed either of the Arbitrators shall refuse or for seven days neglect to act the other Arbitrator may proceed alone and the decision of such other Arbitrator shall be as effectual as if he had been the single Arbitrator appointed by both parties.

If either Arbitrator refuse to act the other to proceed *ex parte*.

33. If where more than one Arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such Arbitrators shall fail to make their award within twenty-one days after the day on which the last of such Arbitrators shall have been appointed or within such extended time (if any) as shall have been appointed for that purpose by both of such Arbitrators under their hands the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

If Arbitrators fail to make their award within twenty-one days the matter to go to the Umpire.

34. The said Arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Powers of Arbitrators to call for books &c.

35. Before any Arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice of the Peace make and subscribe the following declaration (that is to say):—

Arbitrator or Umpire to make a declaration for faithful discharge of duty.

I A.B. do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the Newcastle Wallsend Coal Company's Railway Act

Made and subscribed in }  
the presence of..... }

A. B.

and such declaration shall be annexed to the award when made and if

Penalty for any Misconduct.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

any Arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

36. All the costs of any such arbitration and incident thereto to be settled by the Arbitrators shall be borne by the Promoters, unless the Arbitrators shall award the same or a less sum than shall have been offered by the Promoters in which case each party shall bear his own costs incident to the arbitration and the costs of the Arbitrators shall be borne by the parties in equal proportions unless the amount awarded shall be one-fourth less than the amount in which case the whole costs shall be paid by the claimant: Provided that if either party shall be dissatisfied with the costs allowed by the Arbitrators as aforesaid the costs may be taxed by the Prothonotary or other proper Officer of the Supreme Court and the amount allowed by such Officer shall be the amount of costs to be paid.

Cost of Arbitration how to be borne.

37. The Arbitrators shall deliver their award in writing to the promoters who shall retain the same and shall forthwith on demand at their own expense furnish a copy thereof to the other party and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose and the amount awarded shall be paid within sixty days after the publication of such award.

Award to be delivered to the Promoters.

38. The submission to any such arbitration may be made a rule of the Supreme Court on the application of either of the parties.

Submission may be made a Rule of Court.

39. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

Award not void through error in form.

40. The promoters shall make compensation and satisfaction to the said owners and occupiers the amount of such compensation and satisfaction to be ascertained and recovered in case of difference in the manner hereby provided for temporary permanent or recurring injury and all other damage loss costs charges and inconvenience which may in anywise be occasioned to the said owners or occupiers by the non-performance by the said promoters of any of the matters and things hereby required to be performed by them or otherwise.

Compensation for temporary permanent or recurring injuries.

41. In every case where the promoters shall take temporary possession of lands by virtue of the powers hereby granted it shall be incumbent on them 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 their lands and they 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 two Justices in case the parties differ and shall also within six months after 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 hereby granted including the full value of all clay stone gravel sand and other things taken from such lands.

Compensation to be made for temporary occupation.

42. The following words and expressions in this Act shall have the meaning hereby assigned to them unless there be something either in the subject or context repugnant to such construction The word "promoters" shall mean the said Newcastle Wallsend Coal Company the word "railway" shall mean the railway hereby authorised to be constructed and in citing this Act it shall be sufficient to use the expression the "The Newcastle Wallsend Coal Company's Railway Act 1859" the word "Justice" shall mean Justice of the Peace in and for the Territory of New South Wales and where any matter shall be authorised or required

Interpretation clause.

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*Newcastle Wallsend Coal Company's Railway Act.—1859.*

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required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions and where under the provisions of this Act any notice shall be required to be given to the owner of any land or where any act shall be authorised or required  
 5 to be done with the consent of any such owner the word "owner" shall be understood to mean any person or Corporation who under the provisions of this Act would be able to sell land to the promoters.

43. This Act shall be deemed and taken to be a public Act Act to be deemed a public Act. and shall be judicially taken notice of as such by the Judges of the  
 10 Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its Dependencies without being specially pleaded and the same whenever cited shall be sufficiently described as the "Newcastle Wallsend Coal Company's Railway Act 1859."

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THE SCHEDULE HEREINBEFORE REFERRED TO.

Commencing at a point on the Northern boundary of the land of the promoters and going in a north-easterly direction through land believed to be the property of Messrs. Cowper and Miller as Trustees for Mrs. Brooks until it meets the land late "Weller's" and now belonging or supposed to belong to John Whitehill Stevens Esq. through which  
 20 it passes in a similar direction to the boundary of land the property of the Crown known as Commonage Reserve through which it also passes in a similar direction to and through the land of the Australian Agricultural Company and in the same direction to the Great Northern Railway at a point seven chains short of the  $4\frac{3}{4}$  mile post.

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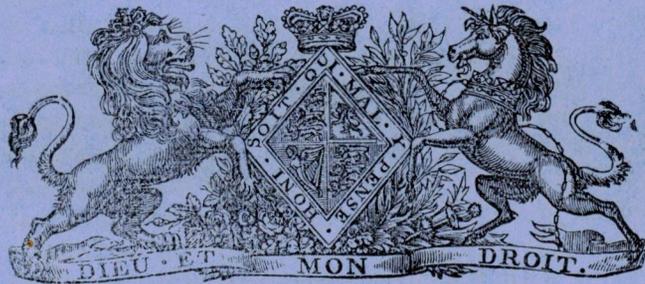
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*This PRIVATE BILL originated in the LEGISLATIVE ASSEMBLY, and having this day passed is now ready for presentation to the LEGISLATIVE COUNCIL, for its concurrence.*

*Legislative Assembly Chamber,  
Sydney, 17 February, A.D. 1860.* }

CHA. TOMPSON,  
*Clerk of Legislative Assembly.*

## New South Wales.



ANNO VICESIMO TERTIO.

## VICTORIÆ REGINÆ.

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*(As amended [on Recommittal] in Committee of the whole.)*

An Act to enable certain persons carrying on business at Sydney under the name or style of "The Newcastle Wallsend Coal Company" to construct a Railway from land near Newcastle belonging to them to and to connect the same with the Great Northern Railway.

**W**HEREAS certain persons trading in Sydney under the name and <sup>Preamble.</sup> style of "The Newcastle Wallsend Coal Company" have opened Coal Mines and established Collieries on a parcel of land situate near Newcastle in the County of Northumberland and in order to facilitate  
5 communication between the said Coal Mines and Collieries and the Great Northern Railway are desirous of constructing a Railway from their said Coal Mines to the said Great Northern Railway but as part of such proposed Railway is intended to be made upon and pass through lands in the said County believed to be the property of Messrs. Cowper and  
10 Miller as Trustees for Mrs. Brooks John Whitehill Stevens Esquire the Crown and the Australian Agricultural Company respectively the same cannot be made without Legislative authority And whereas the said Coal Mines and Collieries are likely to prove beneficial to the Colony and the public are concerned in promoting such an increase in and facilities  
15 for the supply of Coal for local consumption steam navigation and export as would result from the construction of the said proposed Railway and the traffic on the Great Northern Railway would be increased thereby it is therefore desirable to authorise by Legislative enactment the construction of the said Railway subject to the provisions hereinafter  
20 contained upon payment of compensation to the several parties through whose lands the same shall pass for such portions of their respective lands as may be required to be occupied thereby Be it therefore enacted by the  
the

NOTE.—The words to be omitted are *ruled through*; the words to be inserted are printed in **black** letter.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

the Queen's Most Excellent Majesty by and with the advice of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1. It shall be lawful for the promoters to make and construct a  
 5 Railway from the northern boundary of their said land unto and through the land known as the grant to Messrs. Cowper and Miller as Trustees for Mrs. Brooks unto and through land known as Weller's Grant and now belonging or supposed to belong to the said J. W. Stevens unto and through Crown Land known as Commonage Reserve unto and through land known  
 10 as Platt's Grant now the property of the Australian Agricultural Company and terminating at a point four miles fifty-three and a-half chains or thereabouts from Newcastle at such termination to effect a junction between the said line and the Great Northern Railway in accordance with section ninety-nine of the Government Railways Act of 1858 such  
 15 Railway to be in the line described in the schedule and as shewn on the plan hereunto annexed but so that the same shall not occupy in any part thereof a greater space in breadth than ninety-nine feet excepting at a creek on the Australian Agricultural Company's property at twenty-eight chains from the junction with the Great Northern Railway where  
 20 the width will be one hundred and fifty feet including the supports abutments and foundations thereof Provided that the Railway shall be constructed and brought into use within the term of five years from the passing of this Act and that the promoters in constructing and connecting the same with the Great Northern Railway shall do so in a proper and  
 25 workmanlike manner and repair all damages caused by so doing.
2. The ground and soil of so much of the site of the Railway as passes over the lands of the said owners of land respectively and over Crown Land together with such right of ingress egress and regress upon the adjacent land as may be necessary for the making and repair thereof  
 30 shall be vested by virtue of this Act and without the necessity of any conveyance in the promoters for the purposes of the Railway Provided that no lands vested in the Commissioner for Railways shall by virtue of this Act be vested in the Company **Provided also that if**  
 35 **the promoters their heirs and assigns shall cease to use the said Railway for the space of one year at any one time the ground and soil shall revert to and become re-vested in the said owners and nothing herein contained shall prevent the said owners from carrying on any mining operations beneath the said Railway which shall not interfere with the safety of the said road and the traffic thereon and the promoters shall**  
 40 **have no further right to the soil of the said lands beneath the surface than shall be requisite for the formation and repair of the said road by cutting embanking or otherwise** Provided also that if in the exercise of the powers hereby granted it be found necessary to cross cut through raise sink or use any part of any road whether  
 45 carriage road or horse road so as to render it impassable for or dangerous or inconvenient to the persons entitled to the use thereof the promoters shall before the commencement of any such operations cause a sufficient road to be made instead of any road interfered with and shall at their own expense maintain such substituted road in a state as convenient  
 50 as the road interfered with or as nearly as may be and the promoters before they use the said lands of the said owners of land respectively and the said Crown Land for any of the purposes aforesaid shall if required so to do separate the same by a sufficient fence from the land adjoining thereto with such gates as may be required for the convenient occupation  
 55 of such land 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

a Authority to construct Railway and construct same with Great Northern Railway.

Site of Railway shall be vested in the promoters without conveyance.

Provido.

or

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or occupiers of such roads and lands and the promoters as to the necessity for such fences and gates such fences and gates shall be put up by the promoters as any two Justices of the Peace shall deem necessary for the purposes aforesaid on application being made to them.

5        3. The railway and locomotives shall be open to public use upon payment of a toll to the promoters of three-pence per ton per mile the party seeking transit supplying and loading his own trucks or waggons and all trucks when emptied shall be conveyed on their return free of cost. Railway open to the public.

10       4. And be it enacted that it shall be lawful for the owners or occupiers of the lands traversed by the said Railway to lay down upon their own lands any collateral branches of Railway to communicate with the said Railway for the purpose of bringing carriages to or from or upon the said Railway and the promoters shall if required at the expense of such owners or occupiers make openings in the rails and such additional Branch Railways.  
15 lines of Railway as may be necessary for effecting such communication in places where the communication can be made with safety to the public and without injury to the said Railway and without inconvenience to the traffic thereupon and the promoters shall not take any rate or toll or other moneys for the passing of any passengers goods or other things  
20 along any branch so to be made by any such owner or occupier or other person but this enactment shall be subject to the following restrictions and conditions (that is to say)

25       No such Railway shall run parallel to the said Railway the promoters shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere nor upon any inclined plane or bridge nor in any tunnel.

30       The persons making or using such branch Railways shall be subject to all by-laws and regulations of the promoters from time to time made with respect to passing upon or crossing the Railway and otherwise and the persons making or using such branch Railways shall be bound to construct and from time to time as need may require to renew the off-set plates and switches according to the most approved  
35 plan adopted by the promoters under the direction of their engineer.

40       5. For the purposes and subject to the provisions hereinafter contained it shall be lawful for the promoters their deputies agents servants and workmen and all other persons by them authorised and empowered to divert or alter the course of any Road or Way crossing the Railway or to raise or sink any Road or Way in order the more conveniently to carry the same over or under or by the side of the Railway. Power to divert or alter roads.

45       6. If the promoters do not cause another sufficient road to be made before they interfere with any such existing road as aforesaid they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted and such penalty shall be paid to the Trustees Commissioners Surveyor or other persons having the management of such road if a public road and shall be applied for the purposes thereof or in case of a private road the  
50 same shall be paid to the owner thereof and every such penalty shall be recoverable with costs by action in any of the Superior Courts. Penalty for not substituting a road.

55       7. If in the course of making the Railway the promoters shall use or interfere with any road they shall from time to time make good all damage done by them to such road and if any question shall arise as to the damage done to any such road by the promoters or as to the repair thereof by them such question shall be referred to the determination of two Justices and such Justices may direct such repairs to be made in the state of such road in respect of damage done by promoters and within such Road repairs.

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such period as they may think reasonable and may impose on the promoters for not carrying into effect such repairs any penalty not exceeding ten pounds per day as to such Justices shall seem fit and any such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the promoters if a public road and be applied for the purposes of such road or if a private road the same shall be paid to the owner thereof Provided always the said Justices shall have regard to and shall make full allowance for any tolls that may have been paid by the promoters on such road in the course of the using thereof.

8. If the line of Railway cross any Public Highway or Parish Road then either such Road shall be carried over the Railway or the Railway shall be carried over such Road by means of a Bridge of the height and width and with the ascent or descent by this Act in that behalf hereinafter provided and such Bridge with the immediate approaches and all other necessary works connected therewith shall be executed by and be at all times thereafter maintained at the expense of the promoters: Provided that with the consent of the Governor with the advice of the Executive Council it shall be lawful for the Promoters to carry the Railway across any Highway on the level.

Bridges to be constructed where railway crosses highway

9. Until the promoters shall have made the bridges or other proper communications which they shall under the provisions herein contained have been required to make between lands intersected by the Railway and no longer the owners and occupiers of such lands and any other persons whose right of way shall be affected by the want of such communications and their respective servants may at all times freely pass and repass with carriages horses and other animals directly but not otherwise across any part of the Railway made in or through their respective lands solely for the purpose of occupying the same lands or for the exercise of such right of way and so as not to obstruct the passage along the Railway or to damage the same nevertheless if the owner or occupier of any such lands have in his arrangements with the promoters received or agreed to receive compensation for or on account of any such communications instead of the same being formed such owner or occupier or those claiming under him shall not be entitled so to cross the Railway.

Owners crossing.

10. If the Railway cross any Public Highway or parish Road on a level the promoters shall erect and at all times maintain good and sufficient Gates across such Road on each side of the Railway where the same shall communicate therewith and shall employ proper persons to open and shut such gates and such gates shall be kept constantly closed across such Roads on both sides of the Railway except during the time when horses cattle carts or carriages passing along the same shall have to cross such Railway and such gates shall be of such dimensions and so constructed as when closed to fence in the Railway and prevent cattle or horses passing along the road from entering upon the Railway and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses cattle carts or carriages shall have passed through the same under a penalty of Forty shillings for every default therein Provided always that it shall be lawful for the Secretary for Public Works in any case in which he shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such Road shall be kept closed across the Railway to order that such gates shall be kept so closed instead of across the Road and in such case such gates shall be kept constantly closed across the Railway except when engines or carriages passing along the Railway shall have occasion to cross such Road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the Road.

Provisions in cases where roads are crossed on a level.

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11. In case of accidents or slips happening or being apprehended to the cuttings embankments or other works of the said Railway it shall be lawful for the promoters and their workmen and servants to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose but in every such case the promoters shall within forty-eight hours after such entry make a report to the Secretary for Public Works specifying the nature of such accident or apprehended accident and of the works necessary to be done and such powers shall cease and determine if the said Secretary shall after considering the said report certify that their exercise is not necessary for the public safety. Provided also that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of and shall be executed with all possible dispatch and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works the amount of which compensation in case of any dispute about the same shall be settled by arbitrators in the manner hereinafter mentioned and provided also that no land shall be taken permanently for any such works otherwise than is herein provided with respect to the lands originally taken for the purpose of making the said railway.

Power to enter upon adjoining lands to repair accidents subject to certain restrictions.

12. Every bridge to be erected for the purpose of carrying the railway over any road shall be built in conformity with the following regulations that is to say:—

Construction of bridges over roads.

25 The width of the arch shall be such as to leave thereunder a clear space of not less than thirty feet if the arch be over a public highway and of twenty feet if over a parish road and of twelve feet if over a private road.

30 The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road and fifteen feet for a space of ten feet if over a public carriage road and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet the clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private road.

35 The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a public highway one foot in twenty feet if over a parish road and one foot in sixteen if over a private road not being a tramroad or railroad or if the same be a tramroad or railroad the descent shall not be greater than the ruling gradient of such tramroad or railroad.

13. Every bridge erected for carrying any road over the Railway shall be built in conformity with the following regulations that is to say:—

Construction of bridges over railroad.

45 There shall be a good and sufficient fence on each side of the bridge of not less height than four feet and on each side of the immediate approaches of such bridge of not less than three feet.

50 The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a public highway and twenty-five feet if a parish road and twelve feet if a private road.

55 The ascent shall not be more than one foot in thirty feet if the road be a turnpike road one foot in twenty feet if a parish road and one foot in sixteen feet if a private road not being a tramroad or railroad or if the same be a tramroad or railroad the ascent shall not be greater than the ruling gradient of such tramroad or railroad.

14. Provided always that in all cases where the average available width for the passing of carriages of any existing road within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed

The width of the Bridges need not exceed the width of the Road in certain cases.

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prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads but so nevertheless that such bridges be not of less width in case of a public highway or parish road than twenty feet. Provided also that if at any time after the construction of the Railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof the promoters shall be bound at their own expense to increase the width of the said bridge to such extent as they may be required by the Trustees or Surveyors of such road not exceeding the width of such road as so widened or the maximum width herein prescribed for a bridge in the like case over or under the Railway.

15. Provided also that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same or the inclination of such portion of any road as may be required to be altered or for which another road shall be substituted shall be steeper than the inclination hereinbefore required to be preserved by the promoters then the promoters may carry any such road over or under the railway or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed or of the road so requiring to be altered or for which another road shall be substituted.

Existing inclination of Roads crossed or diverted need not be improved.

16. The promoters shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway that is to say :—

Works for benefit of Owners.

Such and so many convenient gates bridges arches culverts and passages over under or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed or during the formation thereof.

Gates Bridges &c.

All sufficient posts rails hedges ditches mounds or other fences for separating the land taken for the use of the railway from the adjoining lands not taken and protecting such lands from trespass or the cattle of the owners or occupiers thereof from straying thereon by reason of the railway together with all necessary gates made to open towards such adjoining lands and not towards the railway and all necessary stiles and such posts rails and other fences shall be made forthwith after the taking of any such lands if the owners thereof shall so require and the said other works as soon as conveniently may be.

Fences.

Also all necessary arches tunnels culverts drains or other passages either over or under or by the sides of the Railway of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway or as nearly so as may be and such works shall be made from time to time as the railway works proceed.

Drains.

Also proper watering places for cattle or compensation in lieu thereof where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places and such watering places shall be so made as to be at all times sufficiently supplied with water as theretofore and as if the Railway had not been made or as nearly so as may be, and the said promoters shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places.

Watering Places.

Provided always that the promoters shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the Railway nor to make any accommodation works

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works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

17. If any person omit to shut and fasten any gate set up at either side of the Railway for the accommodation of the owners or occupiers of the adjoining lands so soon as he and the carriage cattle or other animals under his care have passed through the same he shall forfeit for every such offence any sum not exceeding ten pounds. Penalty on persons omitting to fasten gates.

18. The promoters shall not be entitled to any mines of coal iron-stone slate or other minerals under any land whereof the surface is vested in them by virtue of this Act except only such parts thereof as shall be necessary to be dug or carried away in the construction of the works hereby authorized and such mines shall not be deemed to vest in the said promoters. Minerals not to pass.

19. If the owner lessee or occupier of any mines or minerals lying under the Railway or any of the works connected therewith or within the distance of forty yards therefrom be desirous of working the same such owner lessee or occupier shall give to the promoters notice in writing of his intention so to do thirty days before the commencement of working and upon the receipt of such notice it shall be lawful for the promoters to cause such mines to be inspected by any person appointed by them for the purpose And if it appear to the promoters that the working of such mines or minerals is likely to damage the works of the Railway and if the promoters be willing to make compensation for such mines or any part thereof to such owner lessee or occupier thereof then he shall not work for or get the same And if the promoters and such owners lessee or occupier do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation. Mines lying near the Railway not to be worked if Company willing to purchase them.

20. If before the expiration of such thirty days the promoters do not state their willingness to treat with such owner lessee or occupier for the payment of such compensation it shall be lawful for him to work the said mines or any part thereof for which the promoters shall not have agreed to pay compensation so that the same be done in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the district where the same shall be situated and if any damage or obstruction be occasioned to the Railway or works by improper working of such mines the same shall be forthwith repaired or removed as the case may require and such damage made good by the owner lessee or occupier of such mines or minerals and at his own expense and if such repair or removal be not forthwith done or if the promoters shall so think fit without waiting for the same to be done by such owner lessee or occupier it shall be lawful for the promoters to execute the same and recover from such owner lessee or occupier the expenses occasioned thereby by action in any of the Superior Courts. If Company unwilling to purchase owner may work mines.

21. If the working of such mines under the Railway or works or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to the Railway it shall be lawful for the respective owners lessees and occupiers of such mines and whose mines shall extend so as to be on both sides of the Railway to cut and make such and so many airways headways gateways or water levels through the mines measures or strata the working whereof shall be so prevented as may be requisite to enable them to ventilate drain and work their said mines but no such airway headway gateway or water level shall be of greater dimensions or sections than eight feet wide and eight feet high nor shall the same be cut or made upon any part of the Railway or works or so as to injure the same or to impede the passage thereon. Mining communications.

22.

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22. The promoters shall from time to time pay to the owner lessee or occupier of any such mines extending so as to lie on both sides of the said Railway all such additional expenses and losses as shall be incurred by such owner lessee or occupier by reason of the severance of the lands lying over such mines by the Railway or of the continuous working of such mines being interrupted as aforesaid or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the Railway and for any minerals which cannot be obtained by reason of making and maintaining the Railway And if any dispute or question shall arise between the promoters and such owners lessee or occupiers as aforesaid touching the amount of such losses or expenses the same shall be settled as in other cases of disputed compensation.

Compensation for severance and for restricted working of mines.

23. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner lessee or occupier of such mines) by reason of making of any such airway or other work as aforesaid which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid the promoters shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

Compensation for works rendered necessary.

24. For better ascertaining whether any such mines are being worked or have been worked so as to damage the Railway or works it shall be lawful for the promoters after giving twenty-four hours notice in writing to enter upon any lands through or near which the Railway passes wherein any such mines are being worked or are supposed so to be and to enter into and return from any such mines or the works connected therewith and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner lessee or occupier of such mines and to use all necessary means for discovering the distance from the Railway to the parts of such mines which are being worked or about so to be.

Power of the Company to enter and inspect working of mines.

25. If any such owner lessee or occupier of any such mine shall refuse to allow any person appointed by the promoters for that purpose to enter into and inspect any such mines or works in the manner aforesaid every person so offending shall for every such refusal forfeit to the promoters a sum not exceeding twenty pounds.

Penalty on obstructing such inspection.

26. If it appear that any such mines have been worked contrary to the provisions of this Act the promoters may if they think fit give notice to the owner lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the Railway and preventing injury thereto And if after such notice any such owner lessee or occupier do not forthwith proceed to construct the works necessary for making safe the Railway the promoters may themselves construct such works and recover the expenses thereof from such owner lessee or occupier by action in any of the superior Courts.

Provision if mines improperly worked.

27. 19. If within twenty-eight days after the passing of this Act the said persons through whose lands the Railway shall pass or any of them and the promoters shall not agree as to the amount of compensation to be paid by them for the said lands belonging to the said parties or any of them or for any damage that may be sustained by them or him by reason of the execution of the works or if any other question as to compensation shall arise under this Act the amount of such compensation shall be settled by Arbitrators in manner hereinafter mentioned, that is to say:—

Compensation Clause.

Unless both parties shall concur in the appointment of a single Arbitrator each party on the request of the other party shall nominate and appoint an Arbitrator to whom such dispute or other matter shall be referred and every appointment of an Arbitrator shall be under the hand of such party and such appointment shall be delivered to the Arbitrator or Arbitrators and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made and after any such appointment

Appointment of Arbitrators.

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- appointment shall have been made neither party shall have power to revoke the same without the consent of the other nor shall the death of either party operate as a revocation and if for the space of fourteen days after any such dispute or other matter shall have arisen and after a request in writing shall have been served by the one party on the other party to appoint an Arbitrator such last-mentioned party fail to appoint such Arbitrator then upon such failure ~~the party making the request and having~~ **it shall be lawful for the Attorney General for the time being of the said Colony on the application of the party who has himself appointed** an Arbitrator ~~may~~ to appoint such Arbitrator to act on behalf of both parties and such Arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single Arbitrator shall be final and conclusive.
28. 20. If before the matter so referred shall be determined any Arbitrator appointed by either party shall die or become incapable or refuse or for fourteen days neglect to act as Arbitrator the party by whom such Arbitrator was appointed may nominate and appoint in writing some other person to act in his place and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other Arbitrators may proceed alone and every Arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former Arbitrator at the time of such his death refusal neglect or disability as aforesaid.
29. 21. Where more than one Arbitrator shall have been appointed such Arbitrators shall before they enter upon the matters referred to them nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ or which shall be referred to them under the provisions of this Act and if such umpire shall die or refuse or for seven days neglect to act after being called upon to do so by the Arbitrators they shall forthwith after such death refusal or neglect appoint another umpire in his place and the decision of every such umpire on the matters so referred to him shall be final.
30. 22. If in either of the cases aforesaid the Arbitrator shall refuse or for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for ~~any of the Judges of the Supreme Court~~ **the Attorney General for the time being** on the application of either party to such arbitration to appoint an umpire and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Act shall be final.
31. 23. If when a single Arbitrator shall have been appointed such Arbitrator shall die or become incapable or shall refuse or for fourteen days neglect to act before he shall have made his award the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such Arbitrator had not been appointed.
32. 24. If where more than one Arbitrator shall have been appointed either of the Arbitrators shall refuse or for seven days neglect to act the other Arbitrator may proceed alone and the decision of such other Arbitrator shall be as effectual as if he had been the single Arbitrator appointed by both parties.
33. 25. If where more than one Arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such Arbitrators shall fail to make their award within twenty-one days after the day on which the last of such Arbitrators shall have been appointed or within such extended time (if any) as shall have been appointed for that purpose by both of such Arbitrators under their hands the matters referred to them shall be determined by the umpire to be appointed as aforesaid.
34. 26. The said Arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute and may examine

Vacancy of Arbitration to be supplied.

Appointment of Umpire.

One of the Judges of the Supreme Court Attorney General to appoint Umpire on neglect.

In case of death of single Arbitrator the matter to begin *de novo*.

If either Arbitrator refuse to act the other to proceed *ex parte*.

If Arbitrators fail to make their award within twenty-one days the matter to go to the Umpire.

Powers of Arbitrators to call for books &c.

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examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

35. **27.** Before any Arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice of the Peace make and subscribe the following declaration (that is to say):—

I A.B. do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the Newcastle Wallsend Coal Company's Railway Act

10 Made and subscribed in }  
the presence of..... } A. B.

and such declaration shall be annexed to the award when made and if any Arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

15 36. **28.** All the costs of any such arbitration and incident thereto to be settled by the Arbitrators shall be borne by the Promoters, unless the Arbitrators shall award the same or a less sum than shall have been offered by the Promoters in which case each party shall bear his own costs incident to the arbitration and the costs of the Arbitrators shall be borne by the parties in equal proportions unless the amount awarded shall be one-fourth less than the amount in which case the whole costs shall be paid by the claimant: Provided that if either party shall be dissatisfied with the costs allowed by the Arbitrators as aforesaid the costs may be taxed by the Prothonotary or other proper Officer of the Supreme Court and 25 the amount allowed by such Officer shall be the amount of costs to be paid.

37. **29.** The Arbitrators shall deliver their award in writing to the promoters who shall retain the same and shall forthwith on demand at their own expense furnish a copy thereof to the other party and shall at all times on demand produce the said award and allow the same to be 30 inspected or examined by such party or any person appointed by him for that purpose and the amount awarded shall be paid within sixty days after the publication of such award.

38. **30.** The submission to any such arbitration may be made a rule of the Supreme Court on the application of either of the parties.

39. **31.** No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

40. **32.** The promoters shall make compensation and satisfaction to the said owners and occupiers the amount of such compensation and satisfaction to be ascertained and recovered in case of difference in the manner hereby provided for temporary permanent or recurring injury and all other damage loss costs charges and inconvenience which may in anywise be occasioned to the said owners or occupiers by the non-performance by the said promoters of any of the matters and things 45 hereby required to be performed by them or otherwise.

41. **33.** In every case where the promoters shall take temporary possession of lands by virtue of the powers hereby granted it shall be incumbent on them 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 50 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 their lands and they 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 55 a rent to be fixed by two Justices in case the parties differ and shall also within six months after 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

Arbitrator or Umpire to make a declaration for faithful discharge of duty.

Penalty for Misconduct.

Cost of Arbitration how to be borne.

Award to be delivered to the Promoters.

Submission may be made a Rule of Court.

Award not void through error in form.

Compensation for temporary permanent or recurring injuries.

Compensation to be made for temporary occupation.

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exercise as regards the said lands of the powers hereby granted including the full value of all clay stone gravel sand and other things taken from such lands.

42. **34.** The following words and expressions in this Act shall have <sup>Interpretation</sup> the meaning hereby assigned to them unless there be something either in <sup>clause.</sup> the subject or context repugnant to such construction. The word "promoters" shall mean the said Newcastle Wallsend Coal Company the word "railway" shall mean the railway hereby authorised to be constructed and in citing this Act it shall be sufficient to use the expression the "The Newcastle Wallsend Coal Company's Railway Act 1859" the word "Justice" shall mean Justice of the Peace in and for the Territory of New South Wales and where any matter shall be authorised or required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions and where under the provisions of this Act any notice shall be required to be given to the owner of any land or where any act shall be authorised or required to be done with the consent of any such owner the word "owner" shall be understood to mean any person or Corporation who under the provisions of this Act would be able to sell land to the promoters.
- 20 43. **35.** This Act shall be deemed and taken to be a public Act <sup>Act to be deemed a</sup> and shall be judicially taken notice of as such by the Judges of the <sup>public Act.</sup> Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its Dependencies without being specially pleaded and the same whenever cited shall be sufficiently described as the "Newcastle Wallsend Coal Company's Railway Act 1859."

## THE SCHEDULE HEREINBEFORE REFERRED TO.

- Commencing at a point on the Northern boundary of the land of the promoters and going in a north-easterly direction through land believed to be the property of Messrs. **30** Cowper and Miller as Trustees for Mrs. Brooks until it meets the land late "Weller's" and now belonging or supposed to belong to John Whitehill Stevens Esq. through which it passes in a similar direction to the boundary of land the property of the Crown known as Commonage Reserve through which it also passes in a similar direction to and through the land of the Australian Agricultural Company and in the same direction to the Great Northern **35** Railway at a point seven chains short of the  $4\frac{3}{4}$  mile post.



# New South Wales.



ANNO VICESIMO TERTIO.

## VICTORIÆ REGINÆ.

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An Act to enable certain persons carrying on business at Sydney under the name or style of "The Newcastle Wallsend Coal Company" to construct a Railway from land near Newcastle belonging to them to and to connect the same with the Great Northern Railway. [Assented to, 12th June, 1860.]

**W**HEREAS certain persons trading in Sydney under the name and <sup>Preamble.</sup> style of "The Newcastle Wallsend Coal Company" have opened Coal Mines and established Collieries on a parcel of land situate near Newcastle in the County of Northumberland and in order to facilitate communication between the said Coal Mines and Collieries and the Great Northern Railway are desirous of constructing a Railway from their said Coal Mines to the said Great Northern Railway but as part of such proposed Railway is intended to be made upon and pass through lands in the said County believed to be the property of Messrs. Cowper and Miller as Trustees for Mrs. Brooks John Whitehill Stevens Esquire the Crown and the Australian Agricultural Company respectively the same cannot be made without Legislative authority And whereas the said Coal Mines and Collieries are likely to prove beneficial to the Colony and the public are concerned in promoting such an increase in and facilities for the supply of Coal for local consumption steam navigation and export as would result from the construction of the said proposed Railway and the traffic on the Great Northern Railway would be increased thereby it is therefore desirable to authorise by Legislative enactment the construction of the said Railway subject to the provisions hereinafter contained upon payment of compensation to the several parties through whose lands the same shall pass for such portions of their respective lands as may be required to be occupied thereby Be it therefore enacted by  
the

*[Newcastle Wallsend Coal Company's Railway Act.—1859.]*

the Queen's Most Excellent Majesty by and with the advice of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

Authority to construct Railway and connect same with Great Northern Railway.

1. It shall be lawful for the promoters to make and construct a Railway from the northern boundary of their said land unto and through the land known as the grant to Messrs. Cowper and Miller as Trustees for Mrs. Brooks unto and through land known as Weller's Grant and now belonging or supposed to belong to the said J. W. Stevens unto and through Crown Land known as Commonage Reserve unto and through land known as Platt's Grant now the property of the Australian Agricultural Company and terminating at a point four miles fifty-three and a-half chains or thereabouts from Newcastle at such termination to effect a junction between the said line and the Great Northern Railway in accordance with section ninety-nine of the Government Railways Act of 1858 such Railway to be in the line described in the schedule and as shewn on the plan hereunto annexed but so that the same shall not occupy in any part thereof a greater space in breadth than ninety-nine feet excepting at a creek on the Australian Agricultural Company's property at twenty-eight chains from the junction with the Great Northern Railway where the width will be one hundred and fifty feet including the supports abutments and foundations thereof Provided that the Railway shall be constructed and brought into use within the term of five years from the passing of this Act and that the promoters in constructing and connecting the same with the Great Northern Railway shall do so in a proper and workmanlike manner and repair all damages caused by so doing.

Site of Railway shall be vested in the promoters without conveyance. |

2. The ground and soil of so much of the site of the Railway as passes over the lands of the said owners of land respectively and over Crown Land together with such right of ingress egress and regress upon the adjacent land as may be necessary for the making and repair thereof shall be vested by virtue of this Act and without the necessity of any conveyance in the promoters for the purposes of the Railway Provided that no lands vested in the Commissioner for Railways shall by virtue of this Act be vested in the Company Provided also that if the promoters their heirs and assigns shall cease to use the said Railway for the space of one year at any one time the ground and soil shall revert to and become re-vested in the said owners and nothing herein contained shall prevent the said owners from carrying on any mining operations beneath the said Railway which shall not interfere with the safety of the said road and the traffic thereon and the promoters shall have no further right to the soil of the said lands beneath the surface than shall be requisite for the formation and repair of the said road by cutting embanking or otherwise Provided also that if in the exercise of the powers hereby granted it be found necessary to cross cut through raise sink or use any part of any road whether carriage road or horse road so as to render it impassable for or dangerous or inconvenient to the persons entitled to the use thereof the promoters shall before the commencement of any such operations cause a sufficient road to be made instead of any road interfered with and shall at their own expense maintain such substituted road in a state as convenient as the road interfered with or as nearly as may be and the promoters before they use the said lands of the said owners of land respectively and the said Crown Land for any of the purposes aforesaid shall if required so to do separate the same by a sufficient fence from the land adjoining thereto with such gates as may be required for the convenient occupation of such land 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

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

or occupiers of such roads and lands and the promoters as to the necessity for such fences and gates such fences and gates shall be put up by the promoters as any two Justices of the Peace shall deem necessary for the purposes aforesaid on application being made to them.

3. The railway and locomotives shall be open to public use upon payment of a toll to the promoters of three-pence per ton per mile the party seeking transit supplying and loading his own trucks or waggons and all trucks when emptied shall be conveyed on their return free of cost. Railway open to the public.

4. And be it enacted that it shall be lawful for the owners or occupiers of the lands traversed by the said Railway to lay down upon their own lands any collateral branches of Railway to communicate with the said Railway for the purpose of bringing carriages to or from or upon the said Railway and the promoters shall if required at the expense of such owners or occupiers make openings in the rails and such additional lines of Railway as may be necessary for effecting such communication in places where the communication can be made with safety to the public and without injury to the said Railway and without inconvenience to the traffic thereupon and the promoters shall not take any rate or toll or other moneys for the passing of any passengers goods or other things along any branch so to be made by any such owner or occupier or other person but this enactment shall be subject to the following restrictions and conditions (that is to say) Branch Railways.

No such Railway shall run parallel to the said Railway the promoters shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere nor upon any inclined plane or bridge nor in any tunnel.

The persons making or using such branch Railways shall be subject to all by-laws and regulations of the promoters from time to time made with respect to passing upon or crossing the Railway and otherwise and the persons making or using such branch Railways shall be bound to construct and from time to time as need may require to renew the off-set plates and switches according to the most approved plan adopted by the promoters under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter contained it shall be lawful for the promoters their deputies agents servants and workmen and all other persons by them authorised and empowered to divert or alter the course of any Road or Way crossing the Railway or to raise or sink any Road or Way in order the more conveniently to carry the same over or under or by the side of the Railway. Power to divert or alter roads.

6. If the promoters do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted and such penalty shall be paid to the Trustees Commissioners Surveyor or other persons having the management of such road if a public road and shall be applied for the purposes thereof or in case of a private road the same shall be paid to the owner thereof and every such penalty shall be recoverable with costs by action in any of the Superior Courts. Penalty for not substituting a road.

7. If in the course of making the Railway the promoters shall use or interfere with any road they shall from time to time make good all damage done by them to such road and if any question shall arise as to the damage done to any such road by the promoters or as to the repair thereof by them such question shall be referred to the determination of two Justices and such Justices may direct such repairs to be made in the state of such road in respect of damage done by promoters and within such Road repairs.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

such period as they may think reasonable and may impose on the promoters for not carrying into effect such repairs any penalty not exceeding ten pounds per day as to such Justices shall seem fit and any such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the promoters if a public road and be applied for the purposes of such road or if a private road the same shall be paid to the owner thereof Provided always the said Justices shall have regard to and shall make full allowance for any tolls that may have been paid by the promoters on such road in the course of the using thereof.

Bridges to be constructed where railway crosses highway

8. If the line of Railway cross any Public Highway or Parish Road then either such Road shall be carried over the Railway or the Railway shall be carried over such Road by means of a Bridge of the height and width and with the ascent or descent by this Act in that behalf hereinafter provided and such Bridge with the immediate approaches and all other necessary works connected therewith shall be executed by and be at all times thereafter maintained at the expense of the promoters: Provided that with the consent of the Governor with the advice of the Executive Council it shall be lawful for the Promoters to carry the Railway across any Highway on the level.

Owners crossing.

9. Until the promoters shall have made the bridges or other proper communications which they shall under the provisions herein contained have been required to make between lands intersected by the Railway and no longer the owners and occupiers of such lands and any other persons whose right of way shall be affected by the want of such communications and their respective servants may at all times freely pass and repass with carriages horses and other animals directly but not otherwise across any part of the Railway made in or through their respective lands solely for the purpose of occupying the same lands or for the exercise of such right of way and so as not to obstruct the passage along the Railway or to damage the same nevertheless if the owner or occupier of any such lands have in his arrangements with the promoters received or agreed to receive compensation for or on account of any such communications instead of the same being formed such owner or occupier or those claiming under him shall not be entitled so to cross the Railway.

Provisions in cases where roads are crossed on a level.

10. If the Railway cross any Public Highway or parish Road on a level the promoters shall erect and at all times maintain good and sufficient Gates across such Road on each side of the Railway where the same shall communicate therewith and shall employ proper persons to open and shut such gates and such gates shall be kept constantly closed across such Roads on both sides of the Railway except during the time when horses cattle carts or carriages passing along the same shall have to cross such Railway and such gates shall be of such dimensions and so constructed as when closed to fence in the Railway and prevent cattle or horses passing along the road from entering upon the Railway and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses cattle carts or carriages shall have passed through the same under a penalty of Forty shillings for every default therein Provided always that it shall be lawful for the Secretary for Public Works in any case in which he shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such Road shall be kept closed across the Railway to order that such gates shall be kept so closed instead of across the Road and in such case such gates shall be kept constantly closed across the Railway except when engines or carriages passing along the Railway shall have occasion to cross such Road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the Road.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

11. In case of accidents or slips happening or being apprehended to the cuttings embankments or other works of the said Railway it shall be lawful for the promoters and their workmen and servants to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose but in every such case the promoters shall within forty-eight hours after such entry make a report to the Secretary for Public Works specifying the nature of such accident or apprehended accident and of the works necessary to be done and such powers shall cease and determine if the said Secretary shall after considering the said report certify that their exercise is not necessary for the public safety Provided also that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of and shall be executed with all possible dispatch and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works the amount of which compensation in case of any dispute about the same shall be settled by arbitrators in the manner hereinafter mentioned and provided also that no land shall be taken permanently for any such works otherwise than is herein provided with respect to the lands originally taken for the purpose of making the said railway.

Power to enter upon adjoining lands to repair accidents subject to certain restrictions.

12. Every bridge to be erected for the purpose of carrying the railway over any road shall be built in conformity with the following regulations that is to say:—

Construction of bridges over roads.

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty feet if the arch be over a public highway and of twenty feet if over a parish road and of twelve feet if over a private road.

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road and fifteen feet for a space of ten feet if over a public carriage road and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet the clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private road.

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a public highway one foot in twenty feet if over a parish road and one foot in sixteen if over a private road not being a tramroad or railroad or if the same be a tramroad or railroad the descent shall not be greater than the ruling gradient of such tramroad or railroad.

13. Every bridge erected for carrying any road over the Railway shall be built in conformity with the following regulations that is to say:—

Construction of bridges over railroad.

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet and on each side of the immediate approaches of such bridge of not less than three feet.

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a public highway and twenty-five feet if a parish road and twelve feet if a private road.

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road one foot in twenty feet if a parish road and one foot in sixteen feet if a private road not being a tramroad or railroad or if the same be a tramroad or railroad the ascent shall not be greater than the ruling gradient of such tramroad or railroad.

14. Provided always that in all cases where the average available width for the passing of carriages of any existing road within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed

The width of the Bridges need not exceed the width of the Road in certain cases.

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prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads but so nevertheless that such bridges be not of less width in case of a public highway or parish road than twenty feet Provided also that if at any time after the construction of the Railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof the promoters shall be bound at their own expense to increase the width of the said bridge to such extent as they may be required by the Trustees or Surveyors of such road not exceeding the width of such road as so widened or the maximum width herein prescribed for a bridge in the like case over or under the Railway.

Existing inclination of Roads crossed or diverted need not be improved.

15. Provided also that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same or the inclination of such portion of any road as may be required to be altered or for which another road shall be substituted shall be steeper than the inclination hereinbefore required to be preserved by the promoters then the promoters may carry any such road over or under the railway or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed or of the road so requiring to be altered or for which another road shall be substituted.

Works for benefit of Owners.

16. The promoters shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway that is to say :—

Gates Bridges &c.

Such and so many convenient gates bridges arches culverts and passages over under or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed or during the formation thereof.

Fences.

All sufficient posts rails hedges ditches mounds or other fences for separating the land taken for the use of the railway from the adjoining lands not taken and protecting such lands from trespass or the cattle of the owners or occupiers thereof from straying thereon by reason of the railway together with all necessary gates made to open towards such adjoining lands and not towards the railway and all necessary stiles and such posts rails and other fences shall be made forthwith after the taking of any such lands if the owners thereof shall so require and the said other works as soon as conveniently may be.

Drains.

Also all necessary arches tunnels culverts drains or other passages either over or under or by the sides of the Railway of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway or as nearly so as may be and such works shall be made from time to time as the railway works proceed.

Watering Places.

Also proper watering places for cattle or compensation in lieu thereof where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places and such watering places shall be so made as to be at all times sufficiently supplied with water as theretofore and as if the Railway had not been made or as nearly so as may be, and the said promoters shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places.

Provided always that the promoters shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the Railway nor to make any accommodation works

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

17. If any person omit to shut and fasten any gate set up at either side of the Railway for the accommodation of the owners or occupiers of the adjoining lands so soon as he and the carriage cattle or other animals under his care have passed through the same he shall forfeit for every such offence any sum not exceeding ten pounds.

Penalty on persons omitting to fasten gates.

18. The promoters shall not be entitled to any mines of coal iron-stone slate or other minerals under any land whereof the surface is vested in them by virtue of this Act except only such parts thereof as shall be necessary to be dug or carried away in the construction of the works hereby authorized and such mines shall not be deemed to vest in the said promoters.

Minerals not to pass.

19. If within twenty-eight days after the passing of this Act the said persons through whose lands the Railway shall pass or any of them and the promoters shall not agree as to the amount of compensation to be paid by them for the said lands belonging to the said parties or any of them or for any damage that may be sustained by them or him by reason of the execution of the works or if any other question as to compensation shall arise under this Act the amount of such compensation shall be settled by Arbitrators in manner hereinafter mentioned, that is to say:— Unless both parties shall concur in the appointment of a single Arbitrator each party on the request of the other party shall nominate and appoint an Arbitrator to whom such dispute or other matter shall be referred and every appointment of an Arbitrator shall be under the hand of such party and such appointment shall be delivered to the Arbitrator or Arbitrators and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other nor shall the death of either party operate as a revocation and if for the space of fourteen days after any such dispute or other matter shall have arisen and after a request in writing shall have been served by the one party on the other party to appoint an Arbitrator such last-mentioned party fail to appoint such Arbitrator then upon such failure it shall be lawful for the Attorney General for the time being of the said Colony on the application of the party who has himself appointed an Arbitrator to appoint such Arbitrator to act on behalf of both parties and such Arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single Arbitrator shall be final and conclusive.

Compensation Clause.

Appointment of Arbitrators.

20. If before the matter so referred shall be determined any Arbitrator appointed by either party shall die or become incapable or refuse or for fourteen days neglect to act as Arbitrator the party by whom such Arbitrator was appointed may nominate and appoint in writing some other person to act in his place and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other Arbitrators may proceed alone and every Arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former Arbitrator at the time of such his death refusal neglect or disability as aforesaid.

Vacancy of Arbitration to be supplied.

21. Where more than one Arbitrator shall have been appointed such Arbitrators shall before they enter upon the matters referred to them nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ or which shall be referred to them under the provisions of this Act and if such umpire shall die or refuse or for seven days neglect to act after being called upon to do so by the Arbitrators they shall forthwith after such death refusal or neglect appoint

Appointment of Umpire.

Newcastle Wallsend Coal Company's Railway Act.—1859.

appoint another umpire in his place and the decision of every such umpire on the matters so referred to him shall be final.

Attorney General to appoint Umpire on neglect.

22. If in either of the cases aforesaid the Arbitrator shall refuse or for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for the Attorney General for the time being on the application of either party to such arbitration to appoint an umpire and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Act shall be final.

In case of death of single Arbitrator the matter to begin de novo.

23. If when a single Arbitrator shall have been appointed such Arbitrator shall die or become incapable or shall refuse or for fourteen days neglect to act before he shall have made his award the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such Arbitrator had not been appointed.

If either Arbitrator refuse to act the other to proceed ex parte.

24. If where more than one Arbitrator shall have been appointed either of the Arbitrators shall refuse or for seven days neglect to act the other Arbitrator may proceed alone and the decision of such other Arbitrator shall be as effectual as if he had been the single Arbitrator appointed by both parties.

If Arbitrators fail to make their award within twenty-one days the matter to go to the Umpire.

25. If where more than one Arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such Arbitrators shall fail to make their award within twenty-one days after the day on which the last of such Arbitrators shall have been appointed or within such extended time (if any) as shall have been appointed for that purpose by both of such Arbitrators under their hands the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Powers of Arbitrators to call for books &c.

26. The said Arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Arbitrator or Umpire to make a declaration for faithful discharge of duty.

27. Before any Arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice of the Peace make and subscribe the following declaration (that is to say):—  
I A.B. do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the Newcastle Wallsend Coal Company's Railway Act  
Made and subscribed in }  
the presence of..... } A. B.

Penalty for Misconduct.

and such declaration shall be annexed to the award when made and if any Arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

Cost of Arbitration how to be borne.

28. All the costs of any such arbitration and incident thereto to be settled by the Arbitrators shall be borne by the Promoters, unless the Arbitrators shall award the same or a less sum than shall have been offered by the Promoters in which case each party shall bear his own costs incident to the arbitration and the costs of the Arbitrators shall be borne by the parties in equal proportions unless the amount awarded shall be one-fourth less than the amount in which case the whole costs shall be paid by the claimant: Provided that if either party shall be dissatisfied with the costs allowed by the Arbitrators as aforesaid the costs may be taxed by the Prothonotary or other proper Officer of the Supreme Court and the amount allowed by such Officer shall be the amount of costs to be paid.

Award to be delivered to the Promoters.

29. The Arbitrators shall deliver their award in writing to the promoters who shall retain the same and shall forthwith on demand at their own expense furnish a copy thereof to the other party and shall at all times on demand produce the said award and allow the same to be inspected

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

inspected or examined by such party or any person appointed by him for that purpose and the amount awarded shall be paid within sixty days after the publication of such award.

30. The submission to any such arbitration may be made a rule of the Supreme Court on the application of either of the parties. Submission may be made a Rule of Court.

31. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form. Award not void through error in form.

32. The promoters shall make compensation and satisfaction to the said owners and occupiers the amount of such compensation and satisfaction to be ascertained and recovered in case of difference in the manner hereby provided for temporary permanent or recurring injury and all other damage loss costs charges and inconvenience which may in anywise be occasioned to the said owners or occupiers by the non-performance by the said promoters of any of the matters and things hereby required to be performed by them or otherwise. Compensation for temporary permanent or recurring injuries.

33. In every case where the promoters shall take temporary possession of lands by virtue of the powers hereby granted it shall be incumbent on them 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 their lands and they 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 two Justices in case the parties differ and shall also within six months after 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 hereby granted including the full value of all clay stone gravel sand and other things taken from such lands. Compensation to be made for temporary occupation.

34. The following words and expressions in this Act shall have the meaning hereby assigned to them unless there be something either in the subject or context repugnant to such construction The word "promoters" shall mean the said Newcastle Wallsend Coal Company the word "railway" shall mean the railway hereby authorised to be constructed and in citing this Act it shall be sufficient to use the expression the "Newcastle Wallsend Coal Company's Railway Act 1859" the word "Justice" shall mean Justice of the Peace in and for the Territory of New South Wales and where any matter shall be authorised or required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions and where under the provisions of this Act any notice shall be required to be given to the owner of any land or where any act shall be authorised or required to be done with the consent of any such owner the word "owner" shall be understood to mean any person or Corporation who under the provisions of this Act would be able to sell land to the promoters. Interpretation clause.

35. This Act shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by the Judges of the Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its Dependencies without being specially pleaded and the same whenever cited shall be sufficiently described as the "Newcastle Wallsend Coal Company's Railway Act 1859." Act to be deemed a public Act.

*Newcastle Wallsend Coal Company's Railway Act.—1859.*

THE SCHEDULE HEREINBEFORE REFERRED TO.

Commencing at a point on the Northern boundary of the land of the promoters and going in a north-easterly direction through land believed to be the property of Messrs. Cowper and Miller as Trustees for Mrs Brooks until it meets the land late "Weller's" and now belonging or supposed to belong to John Whitehill Stevens Esq. through which it passes in a similar direction to the boundary of land the property of the Crown known as Commonage Reserve through which it also passes in a similar direction to and through the land of the Australian Agricultural Company and in the same direction to the Great Northern Railway at a point seven chains short of the 4 $\frac{1}{2}$  mile post.

By Authority: THOMAS RICHARDS, Government Printer, Sydney.—1860.

[Price, 1s. 2d.]

*This PRIVATE BILL originated in the LEGISLATIVE ASSEMBLY, and having this day passed is now ready for presentation to the LEGISLATIVE COUNCIL, for its concurrence.*

*Legislative Assembly Chamber,  
Sydney, 17 February, A.D. 1860. }*

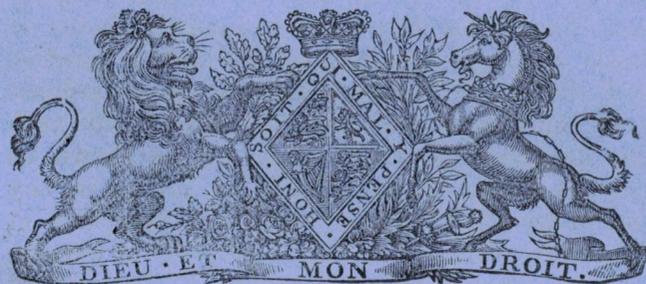
*CHA. TOMPSON,  
Clerk of Legislative Assembly.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.*

*Legislative Council Chamber, }  
Sydney, 25 May, 1860. }*

*R. O'CONNOR,  
Clerk of the Legislative Council.*

## New South Wales.



ANNO VICESIMO TERTIO.

## VICTORIÆ REGINÆ.

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An Act to enable certain persons carrying on business at Sydney under the name or style of "The Newcastle Wallsend Coal Company" to construct a Railway from land near Newcastle belonging to them to and to connect the same with the Great Northern Railway.

**W**HEREAS certain persons trading in Sydney under the name and style of "The Newcastle Wallsend Coal Company" have opened Coal Mines and established Collieries on a parcel of land situate near Newcastle in the County of Northumberland and in order to facilitate communication between the said Coal Mines and Collieries and the Great Northern Railway are desirous of constructing a Railway from their said Coal Mines to the said Great Northern Railway but as part of such proposed Railway is intended to be made upon and pass through lands in the said County believed to be the property of Messrs. Cowper and Miller as Trustees for Mrs. Brooks John Whitehill Stevens Esquire the Crown and the Australian Agricultural Company respectively the same cannot be made without Legislative authority And whereas the said Coal Mines and Collieries are likely to prove beneficial to the Colony and the public are concerned in promoting such an increase in and facilities for the supply of Coal for local consumption steam navigation and export as would result from the construction of the said proposed Railway and the traffic on the Great Northern Railway would be increased thereby it is therefore desirable to authorise by Legislative enactment the construction of the said Railway subject to the provisions hereinafter contained upon payment of compensation to the several parties through whose lands the same shall pass for such portions of their respective lands as may be required to be occupied thereby Be it therefore enacted by the

NOTE.—The words to be omitted are ruled through; the words to be inserted are printed in black letter.

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the Queen's Most Excellent Majesty by and with the advice of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. It shall be lawful for the promoters to make and construct a  
 5 Railway from the northern boundary of their said land unto and through the land known as the grant to Messrs. Cowper and Miller as Trustees for Mrs. Brooks unto and through land known as Weller's Grant and now belonging or supposed to belong to the said J. W. Stevens unto and through Crown Land known as Commonage Reserve unto and through land known  
 10 as Platt's Grant now the property of the Australian Agricultural Company and terminating at a point four miles fifty-three and a-half chains or thereabouts from Newcastle at such termination to effect a junction between the said line and the Great Northern Railway in accordance with section ninety-nine of the Government Railways Act of 1853 such  
 15 Railway to be in the line described in the schedule and as shewn on the plan hereunto annexed but so that the same shall not occupy in any part thereof a greater space in breadth than ninety-nine feet excepting at a creek on the Australian Agricultural Company's property at twenty-eight chains from the junction with the Great Northern Railway where  
 20 the width will be one hundred and fifty feet including the supports abutments and foundations thereof. Provided that the Railway shall be constructed and brought into use within the term of five years from the passing of this Act and that the promoters in constructing and connecting the same with the Great Northern Railway shall do so in a proper and  
 25 workmanlike manner and repair all damages caused by so doing.

2. The ground and soil of so much of the site of the Railway as passes over the lands of the said owners of land respectively and over Crown Land together with such right of ingress egress and regress upon the adjacent land as may be necessary for the making and repair thereof  
 30 shall be vested by virtue of this Act and without the necessity of any conveyance in the promoters for the purposes of the Railway. Provided that no lands vested in the Commissioner for Railways shall by virtue of this Act be vested in the Company. Provided also that if  
 35 the promoters their heirs and assigns shall cease to use the said Railway for the space of one year at any one time the ground and soil shall revert to and become re-vested in the said owners and nothing herein contained shall prevent the said owners from carrying on any mining operations beneath the said Railway which shall not interfere with the safety of the said road and the traffic thereon and the promoters shall  
 40 have no further right to the soil of the said lands beneath the surface than shall be requisite for the formation and repair of the said road by cutting embanking or otherwise. Provided also that if in the exercise of the powers hereby granted it be found necessary to cross cut through raise sink or use any part of any road whether  
 45 carriage road or horse road so as to render it impassable for or dangerous or inconvenient to the persons entitled to the use thereof the promoters shall before the commencement of any such operations cause a sufficient road to be made instead of any road interfered with and shall at their own expense maintain such substituted road in a state as convenient  
 50 as the road interfered with or as nearly as may be and the promoters before they use the said lands of the said owners of land respectively and the said Crown Land for any of the purposes aforesaid shall if required so to do separate the same by a sufficient fence from the land adjoining thereto with such gates as may be required for the convenient occupation  
 55 of such land 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

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or occupiers of such roads and lands and the promoters as to the necessity for such fences and gates such fences and gates shall be put up by the promoters as any two Justices of the Peace shall deem necessary for the purposes aforesaid on application being made to them.

5 3. The railway and locomotives shall be open to public use upon <sup>Railway open to the public.</sup> payment of a toll to the promoters of three-pence per ton per mile the party seeking transit supplying and loading his own trucks or waggons and all trucks when emptied shall be conveyed on their return free of cost.

10 4. And be it enacted that it shall be lawful for the owners or <sup>Branch Railways.</sup> occupiers of the lands traversed by the said Railway to lay down upon their own lands any collateral branches of Railway to communicate with the said Railway for the purpose of bringing carriages to or from or upon the said Railway and the promoters shall if required at the expense of such owners or occupiers make openings in the rails and such additional  
15 lines of Railway as may be necessary for effecting such communication in places where the communication can be made with safety to the public and without injury to the said Railway and without inconvenience to the traffic thereupon and the promoters shall not take any rate or toll or other moneys for the passing of any passengers goods or other things  
20 along any branch so to be made by any such owner or occupier or other person but this enactment shall be subject to the following restrictions and conditions (that is to say)

25 No such Railway shall run parallel to the said Railway the promoters shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere nor upon any inclined plane or bridge nor in any tunnel.

30 The persons making or using such branch Railways shall be subject to all by-laws and regulations of the promoters from time to time made with respect to passing upon or crossing the Railway and otherwise and the persons making or using such branch Railways shall be bound to construct and from time to time as need may require to renew the off-set plates and switches according to the most approved  
35 plan adopted by the promoters under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter con- <sup>Power to divert or alter roads.</sup> tained it shall be lawful for the promoters their deputies agents servants and workmen and all other persons by them authorised and empowered to  
40 divert or alter the course of any Road or Way crossing the Railway or to raise or sink any Road or Way in order the more conveniently to carry the same over or under or by the side of the Railway.

6. If the promoters do not cause another sufficient road to be so <sup>Penalty for not substituting a road.</sup> made before they interfere with any such existing road as aforesaid they  
45 shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted and such penalty shall be paid to the Trustees Commissioners Surveyor or other persons having the management of such road if a public road and shall be applied for the purposes thereof or in case of a private road the  
50 same shall be paid to the owner thereof and every such penalty shall be recoverable with costs by action in any of the Superior Courts.

7. If in the course of making the Railway the promoters shall <sup>Road repairs.</sup> use or interfere with any road they shall from time to time make good all damage done by them to such road and if any question shall arise as to  
55 the damage done to any such road by the promoters or as to the repair thereof by them such question shall be referred to the determination of two Justices and such Justices may direct such repairs to be made in the state of such road in respect of damage done by promoters and within such

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such period as they may think reasonable and may impose on the promoters for not carrying into effect such repairs any penalty not exceeding ten pounds per day as to such Justices shall seem fit and any such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the promoters if a public road and be applied for the purposes of such road or if a private road the same shall be paid to the owner thereof Provided always the said Justices shall have regard to and shall make full allowance for any tolls that may have been paid by the promoters on such road in the course of the using thereof.

8. If the line of Railway cross any Public Highway or Parish Road then either such Road shall be carried over the Railway or the Railway shall be carried over such Road by means of a Bridge of the height and width and with the ascent or descent by this Act in that behalf hereinafter provided and such Bridge with the immediate approaches and all other necessary works connected therewith shall be executed by and be at all times thereafter maintained at the expense of the promoters: Provided that with the consent of the Governor with the advice of the Executive Council it shall be lawful for the Promoters to carry the Railway across any Highway on the level.

Bridges to be constructed where railway crosses highway

9. Until the promoters shall have made the bridges or other proper communications which they shall under the provisions herein contained have been required to make between lands intersected by the Railway and no longer the owners and occupiers of such lands and any other persons whose right of way shall be affected by the want of such communications and their respective servants may at all times freely pass and repass with carriages horses and other animals directly but not otherwise across any part of the Railway made in or through their respective lands solely for the purpose of occupying the same lands or for the exercise of such right of way and so as not to obstruct the passage along the Railway or to damage the same nevertheless if the owner or occupier of any such lands have in his arrangements with the promoters received or agreed to receive compensation for or on account of any such communications instead of the same being formed such owner or occupier or those claiming under him shall not be entitled so to cross the Railway.

Owners crossing.

10. If the Railway cross any Public Highway or parish Road on a level the promoters shall erect and at all times maintain good and sufficient Gates across such Road on each side of the Railway where the same shall communicate therewith and shall employ proper persons to open and shut such gates and such gates shall be kept constantly closed across such Roads on both sides of the Railway except during the time when horses cattle carts or carriages passing along the same shall have to cross such Railway and such gates shall be of such dimensions and so constructed as when closed to fence in the Railway and prevent cattle or horses passing along the road from entering upon the Railway and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses cattle carts or carriages shall have passed through the same under a penalty of Forty shillings for every default therein Provided always that it shall be lawful for the Secretary for Public Works in any case in which he shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such Road shall be kept closed across the Railway to order that such gates shall be kept so closed instead of across the Road and in such case such gates shall be kept constantly closed across the Railway except when engines or carriages passing along the Railway shall have occasion to cross such Road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the Road.

Provisions in cases where roads are crossed on a level.

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11. In case of accidents or slips happening or being apprehended to the cuttings embankments or other works of the said Railway it shall be lawful for the promoters and their workmen and servants to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose but in every such case the promoters shall within forty-eight hours after such entry make a report to the Secretary for Public Works specifying the nature of such accident or apprehended accident and of the works necessary to be done and such powers shall cease and determine if the said Secretary shall after considering the said report certify that their exercise is not necessary for the public safety Provided also that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of and shall be executed with all possible dispatch and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works the amount of which compensation in case of any dispute about the same shall be settled by arbitrators in the manner hereinafter mentioned and provided also that no land shall be taken permanently for any such works otherwise than is herein provided with respect to the lands originally taken for the purpose of making the said railway.

Power to enter upon adjoining lands to repair accidents subject to certain restrictions.

12. Every bridge to be erected for the purpose of carrying the railway over any road shall be built in conformity with the following regulations that is to say :—

Construction of bridges over roads.

25 The width of the arch shall be such as to leave thereunder a clear space of not less than thirty feet if the arch be over a public highway and of twenty feet if over a parish road and of twelve feet if over a private road.

30 The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road and fifteen feet for a space of ten feet if over a public carriage road and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet the clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private road.

35 The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a public highway one foot in twenty feet if over a parish road and one foot in sixteen if over a private road not being a tramroad or railroad or if the same be a tramroad or railroad the descent shall not be greater than the ruling gradient of such tramroad or railroad.

13. Every bridge erected for carrying any road over the Railway shall be built in conformity with the following regulations that is to say :—

Construction of bridges over railroad.

45 There shall be a good and sufficient fence on each side of the bridge of not less height than four feet and on each side of the immediate approaches of such bridge of not less than three feet.

50 The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a public highway and twenty-five feet if a parish road and twelve feet if a private road.

55 The ascent shall not be more than one foot in thirty feet if the road be a turnpike road one foot in twenty feet if a parish road and one foot in sixteen feet if a private road not being a tramroad or railroad or if the same be a tramroad or railroad the ascent shall not be greater than the ruling gradient of such tramroad or railroad.

14. Provided always that in all cases where the average available width for the passing of carriages of any existing road within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed

The width of the Bridges need not exceed the width of the Road in certain cases.

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prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads but so nevertheless that such bridges be not of less width in case of a public highway or parish road than twenty feet Provided also that if at any  
 5 time after the construction of the Railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof the promoters shall be bound at their own expense to increase the width of the said bridge to such extent as they may be required by the Trustees or Surveyors of such road not exceeding the  
 10 width of such road as so widened or the maximum width herein prescribed for a bridge in the like case over or under the Railway.

15. Provided also that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same or the inclination of such portion of any road as may be required to be altered  
 15 or for which another road shall be substituted shall be steeper than the inclination hereinbefore required to be preserved by the promoters then the promoters may carry any such road over or under the railway or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed or of the road  
 20 so requiring to be altered or for which another road shall be substituted.

16. The promoters shall make and at all times thereafter main-  
 25 tain the following works for the accommodation of the owners and occupiers of lands adjoining the railway that is to say :—

Such and so many convenient gates bridges arches culverts and  
 25 passages over under or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made and such works shall be made forthwith after the part of the railway passing over such lands  
 30 shall have been laid out or formed or during the formation thereof.

All sufficient posts rails hedges ditches mounds or other fences  
 35 for separating the land taken for the use of the railway from the adjoining lands not taken and protecting such lands from trespass or the cattle of the owners or occupiers thereof from straying thereon by reason of the railway together with all necessary gates made to open towards such adjoining lands and not towards the railway and all necessary stiles and such posts rails and other fences shall be made forthwith after the taking of any such lands if the owners thereof shall so require and the said other  
 40 works as soon as conveniently may be.

Also all necessary arches tunnels culverts drains or other  
 45 passages either over or under or by the sides of the Railway of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway or as nearly so as may be and such works shall be made from time to time as the railway works proceed.

Also proper watering places for cattle or compensation in lieu  
 50 thereof where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places and such watering places shall be so made as to be at all times sufficiently supplied with water as theretofore and as if the Railway had not been made or as nearly so as may be, and the said promoters shall make all necessary watercourses and drains for the purpose of conveying water to  
 55 the said watering places.

Provided always that the promoters shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the Railway nor to make any accommodation  
 works

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works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

17. If any person omit to shut and fasten any gate set up at either side of the Railway for the accommodation of the owners or occupiers of the adjoining lands so soon as he and the carriage cattle or other animals under his care have passed through the same he shall forfeit for every such offence any sum not exceeding ten pounds.

Penalty on persons omitting to fasten gates.

18. The promoters shall not be entitled to any mines of coal iron stone slate or other minerals under any land whereof the surface is vested in them by virtue of this Act except only such parts thereof as shall be necessary to be dug or carried away in the construction of the works hereby authorized and such mines shall not be deemed to vest in the said promoters.

Minerals not to pass.

19. If the owner lessee or occupier of any mines or minerals lying under the Railway or any of the works connected therewith or within the distance of forty yards therefrom be desirous of working the same such owner lessee or occupier shall give to the promoters notice in writing of his intention so to do thirty days before the commencement of working and upon the receipt of such notice it shall be lawful for the promoters to cause such mines to be inspected by any person appointed by them for the purpose. And if it appear to the promoters that the working of such mines or minerals is likely to damage the works of the Railway and if the promoters be willing to make compensation for such mines or any part thereof to such owner lessee or occupier thereof then he shall not work for or get the same. And if the promoters and such owners lessee or occupier do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation.

Mines lying near the Railway not to be worked if Company willing to purchase them.

20. If before the expiration of such thirty days the promoters do not state their willingness to treat with such owner lessee or occupier for the payment of such compensation it shall be lawful for him to work the said mines or any part thereof for which the promoters shall not have agreed to pay compensation so that the same be done in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the district where the same shall be situated and if any damage or obstruction be occasioned to the Railway or works by improper working of such mines the same shall be forthwith repaired or removed as the case may require and such damage made good by the owner lessee or occupier of such mines or minerals and at his own expense and if such repair or removal be not forthwith done or if the promoters shall so think fit without waiting for the same to be done by such owner lessee or occupier it shall be lawful for the promoters to execute the same and recover from such owner lessee or occupier the expenses occasioned thereby by action in any of the Superior Courts.

If Company unwilling to purchase owner may work mines.

21. If the working of such mines under the Railway or works or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to the Railway it shall be lawful for the respective owners lessees and occupiers of such mines and whose mines shall extend so as to be on both sides of the Railway to cut and make such and so many airways headways gateways or water levels through the mines measures or strata the working whereof shall be so prevented as may be requisite to enable them to ventilate drain and work their said mines but no such airway headway gateway or water level shall be of greater dimensions or sections than eight feet wide and eight feet high nor shall the same be cut or made upon any part of the Railway or works or so as to injure the same or to impede the passage thereon.

Mining communications.

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22. The promoters shall from time to time pay to the owner lessee or occupier of any such mines extending so as to lie on both sides of the said Railway all such additional expenses and losses as shall be incurred by such owner lessee or occupier by reason of the severance of the lands lying over such mines by the Railway or of the continuous working of such mines being interrupted as aforesaid or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the Railway and for any minerals which cannot be obtained by reason of making and maintaining the Railway. And if any dispute or question shall arise between the promoters and such owners lessee or occupiers as aforesaid touching the amount of such losses or expenses the same shall be settled as in other cases of disputed compensation.

Compensation for severance and for restricted working of mines.

23. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner lessee or occupier of such mines) by reason of making of any such airway or other work as aforesaid which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid the promoters shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

Compensation for works rendered necessary.

24. For better ascertaining whether any such mines are being worked or have been worked so as to damage the Railway or works it shall be lawful for the promoters after giving twenty-four hours notice in writing to enter upon any lands through or near which the Railway passes wherein any such mines are being worked or are supposed so to be and to enter into and return from any such mines or the works connected therewith and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner lessee or occupier of such mines and to use all necessary means for discovering the distance from the Railway to the parts of such mines which are being worked or about so to be.

Power of the Company to enter and inspect working of mines.

25. If any such owner lessee or occupier of any such mine shall refuse to allow any person appointed by the promoters for that purpose to enter into and inspect any such mines or works in the manner aforesaid every person so offending shall for every such refusal forfeit to the promoters a sum not exceeding twenty pounds.

Penalty on obstructing such inspection.

26. If it appear that any such mines have been worked contrary to the provisions of this Act the promoters may if they think fit give notice to the owner lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the Railway and preventing injury thereto. And if after such notice any such owner lessee or occupier do not forthwith proceed to construct the works necessary for making safe the Railway the promoters may themselves construct such works and recover the expenses thereof from such owner lessee or occupier by action in any of the superior Courts.

Provision if mines improperly worked.

27. 19. If within twenty-eight days after the passing of this Act the said persons through whose lands the Railway shall pass or any of them and the promoters shall not agree as to the amount of compensation to be paid by them for the said lands belonging to the said parties or any of them or for any damage that may be sustained by them or him by reason of the execution of the works or if any other question as to compensation shall arise under this Act the amount of such compensation shall be settled by Arbitrators in manner hereinafter mentioned, that is to say:—

Compensation Clause.

Unless both parties shall concur in the appointment of a single Arbitrator each party on the request of the other party shall nominate and appoint an Arbitrator to whom such dispute or other matter shall be referred and every appointment of an Arbitrator shall be under the hand of such party and such appointment shall be delivered to the Arbitrator or Arbitrators and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made and after any such appointment

Appointment of Arbitrators.

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- appointment shall have been made neither party shall have power to revoke the same without the consent of the other nor shall the death of either party operate as a revocation and if for the space of fourteen days after any such dispute or other matter shall have arisen and after a request in writing shall have been served by the one party on the other party to appoint an Arbitrator such last-mentioned party fail to appoint such Arbitrator then upon such failure ~~the party making the request and having~~ it shall be lawful for the **Attorney General for the time being of the said Colony on the application of the party who has himself appointed** an Arbitrator ~~may~~ to appoint such Arbitrator to act on behalf of both parties and such Arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single Arbitrator shall be final and conclusive.
28. 20. If before the matter so referred shall be determined any Arbitrator appointed by either party shall die or become incapable or refuse or for fourteen days neglect to act as Arbitrator the party by whom such Arbitrator was appointed may nominate and appoint in writing some other person to act in his place and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other Arbitrators may proceed alone and every Arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former Arbitrator at the time of such his death refusal neglect or disability as aforesaid.
29. 21. Where more than one Arbitrator shall have been appointed such Arbitrators shall before they enter upon the matters referred to them nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ or which shall be referred to them under the provisions of this Act and if such umpire shall die or refuse or for seven days neglect to act after being called upon to do so by the Arbitrators they shall forthwith after such death refusal or neglect appoint another umpire in his place and the decision of every such umpire on the matters so referred to him shall be final.
30. 22. If in either of the cases aforesaid the Arbitrator shall refuse or for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for ~~any of the Judges of the Supreme Court~~ **the Attorney General for the time being** on the application of either party to such arbitration to appoint an umpire and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Act shall be final.
31. 23. If when a single Arbitrator shall have been appointed such Arbitrator shall die or become incapable or shall refuse or for fourteen days neglect to act before he shall have made his award the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such Arbitrator had not been appointed.
32. 24. If where more than one Arbitrator shall have been appointed either of the Arbitrators shall refuse or for seven days neglect to act the other Arbitrator may proceed alone and the decision of such other Arbitrator shall be as effectual as if he had been the single Arbitrator appointed by both parties.
33. 25. If where more than one Arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such Arbitrators shall fail to make their award within twenty-one days after the day on which the last of such Arbitrators shall have been appointed or within such extended time (if any) as shall have been appointed for that purpose by both of such Arbitrators under their hands the matters referred to them shall be determined by the umpire to be appointed as aforesaid.
34. 26. The said Arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute and may examine

Vacancy of Arbitration to be supplied.

Appointment of Umpire.

One of the Judges of the Supreme Court **Attorney General** to appoint Umpire on neglect.

In case of death of single Arbitrator the matter to begin *de novo*.

If either Arbitrator refuse to act the other to proceed *ex parte*.

If Arbitrators fail to make their award within twenty-one days the matter to go to the Umpire.

Powers of Arbitrators to call for books &c.

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examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

35. **27.** Before any Arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice of the Peace make and subscribe the following declaration (that is to say):—

I A.B. do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the Newcastle Wallsend Coal Company's Railway Act

10 Made and subscribed in }  
the presence of..... } A. B.

and such declaration shall be annexed to the award when made and if any Arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor

15 36. **28.** All the costs of any such arbitration and incident thereto to be settled by the Arbitrators shall be borne by the Promoters, unless the Arbitrators shall award the same or a less sum than shall have been offered by the Promoters in which case each party shall bear his own costs incident to the arbitration and the costs of the Arbitrators shall be borne by the parties in equal proportions unless the amount awarded shall be one-fourth less than the amount in which case the whole costs shall be paid by the claimant: Provided that if either party shall be dissatisfied with the costs allowed by the Arbitrators as aforesaid the costs may be taxed by the Prothonotary or other proper Officer of the Supreme Court and the amount allowed by such Officer shall be the amount of costs to be paid.

25 37. **29.** The Arbitrators shall deliver their award in writing to the promoters who shall retain the same and shall forthwith on demand at their own expense furnish a copy thereof to the other party and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose and the amount awarded shall be paid within sixty days after the publication of such award.

38. **30.** The submission to any such arbitration may be made a rule of the Supreme Court on the application of either of the parties.

35 39. **31.** No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

40 40. **32.** The promoters shall make compensation and satisfaction to the said owners and occupiers the amount of such compensation and satisfaction to be ascertained and recovered in case of difference in the manner hereby provided for temporary permanent or recurring injury and all other damage loss costs charges and inconvenience which may in anywise be occasioned to the said owners or occupiers by the non-performance by the said promoters of any of the matters and things hereby required to be performed by them or otherwise.

45 41. **33.** In every case where the promoters shall take temporary possession of lands by virtue of the powers hereby granted it shall be incumbent on them 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 their lands and they 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 two Justices in case the parties differ and shall also within six months after 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

Arbitrator or Umpire to make a declaration for faithful discharge of duty.

Penalty for Misconduct.

Cost of Arbitration how to be borne.

Award to be delivered to the Promoters.

Submission may be made a Rule of Court.

Award not void through error in form.

Compensation for temporary permanent or recurring injuries.

Compensation to be made for temporary occupation.

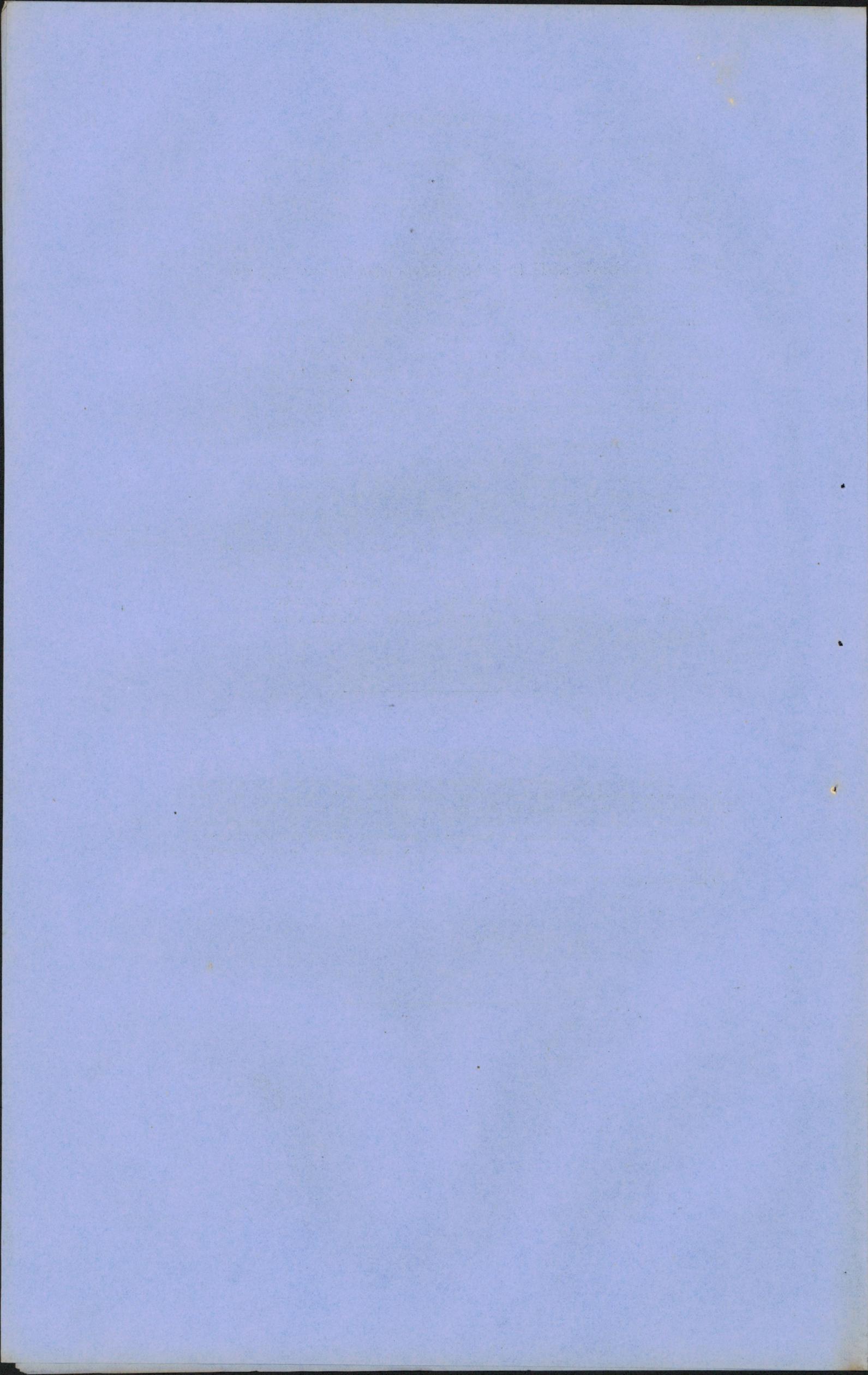
*Newcastle Wallsend Coal Company's Railway Act.—1859.*

exercise as regards the said lands of the powers hereby granted including the full value of all clay stone gravel sand and other things taken from such lands.

42. 34. The following words and expressions in this Act shall have Interpretation  
 5 the meaning hereby assigned to them unless there be something either in clause.  
 the subject or context repugnant to such construction The word  
 "promoters" shall mean the said Newcastle Wallsend Coal Company the  
 word "railway" shall mean the railway hereby authorised to be con-  
 10 the "The Newcastle Wallsend Coal Company's Railway Act 1859" the  
 word "Justice" shall mean Justice of the Peace in and for the Territory  
 of New South Wales and where any matter shall be authorised or  
 required to be done by two Justices the expression "two Justices" shall mean  
 15 two Justices assembled and acting together in Petty Sessions and where  
 under the provisions of this Act any notice shall be required to be given  
 to the owner of any land or where any act shall be authorised or required  
 to be done with the consent of any such owner the word "owner" shall  
 be understood to mean any person or Corporation who under the provi-  
 sions of this Act would be able to sell land to the promoters.
- 20 43. 35. This Act shall be deemed and taken to be a public Act Act to be deemed a  
 and shall be judicially taken notice of as such by the Judges of the public Act.  
 Supreme Court of New South Wales and by all other Judges Justices  
 and others within the Colony of New South Wales and its Dependencies  
 without being specially pleaded and the same whenever cited shall  
 25 be sufficiently described as the "Newcastle Wallsend Coal Company's  
 Railway Act 1859."

## THE SCHEDULE HEREINBEFORE REFERRED TO.

- Commencing at a point on the Northern boundary of the land of the promoters and  
 going in a north-easterly direction through land believed to be the property of Messrs.  
 30 Cowper and Miller as Trustees for Mrs. Brooks until it meets the land late "Weller's"  
 and now belonging or supposed to belong to John Whitehill Stevens Esq. through which  
 it passes in a similar direction to the boundary of land the property of the Crown known as  
 Commonage Reserve through which it also passes in a similar direction to and through the  
 land of the Australian Agricultural Company and in the same direction to the Great Northern  
 35 Railway at a point seven chains short of the  $4\frac{3}{4}$  mile post.



NEWCASTLE WALLSEND COAL COMPANY'S  
RAILWAY BILL.

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*SCHEDULE of the Amendments made by the Legislative Council in the Bill, intituled,  
" An Act to enable certain persons carrying on business at Sydney under the name or  
" style of 'The Newcastle Wallsend Coal Company' to construct a Railway from land  
" near Newcastle belonging to them to and to connect the same with the Great Northern  
" Railway,"—returned to the Legislative Assembly with Message of 25 May, 1860.*

R. O'CONNOR,  
*Clerk of the Legislative Council.*

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- Page 2, clause 2, line 33. *After " Company," insert " Provided also that if the pro-  
" moters their heirs and assigns shall cease to use the said Railway for the space of  
" one year at any one time the ground and soil shall revert to and become re-vested  
" in the said owners and nothing herein contained shall prevent the said owners  
" from carrying on any mining operations beneath the said Railway which shall  
" not interfere with the safety of the said road and the traffic thereon and the  
" promoters shall have no further right to the soil of the said lands beneath the  
" surface than shall be requisite for the formation and repair of the said road by  
" cutting embanking or otherwise."*
- „ 7, *omit* clauses 19, 20, and 21.
- „ 8, *omit* clauses 22, 23, 24, 25, and 26.
- „ 8, clause 27, **19**, line 52, after " works", *insert* " or if any other question as to com-  
" pensation shall arise under this Act".
- „ 9, clause 27, **19**, line 7, *omit* " the party making the request and having", *insert* " it  
" shall be lawful for the Attorney General for the time being of the said Colony  
" on the application of the party who has".
- „ 9, clause 27, **19**, line 10, after " arbitrator", *substitute* " to" for " may".
- „ 9, clause 30, **22**, lines 35 and 36, *omit* " any of the Judges of the Supreme Court",  
*insert* " the Attorney General for the time being".
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