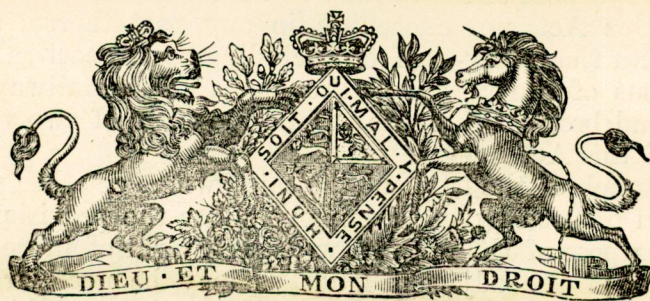


New South Wales.



ANNO QUINQUAGESIMO TERTIO

VICTORIÆ REGINÆ.

An Act to enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Lithgow belonging to the said Company, and to connect the same with the Great Western Railway. [Assented to, 21st September, 1889.]

WHEREAS the Oakey Park Coal-mining Company, Limited, a Preamble. joint stock company, duly registered under and in accordance with the provisions of the "Companies Act," and hereinafter designated the Company, have opened coal-mines on land situated near Lithgow, in the parish of Lett, county of Cook, and are desirous of constructing a railway from the said coal-mines to the Great Western Railway, near to Lithgow aforesaid, but as part of such railway is intended to be made upon and pass through lands in the said county not belonging to the Company, but believed to be the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand, and others, or some of them respectively, the same cannot be made without Legislative authority. And whereas the said coal-mines are likely to prove beneficial to this Colony, and the public are concerned in promoting such an increase in the facilities for the supply of coal for local consumption, steam navigation, and export, as would result from the construction of the railway; it is therefore desirable to

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authorize

Oakey Park Coal-mining Company's Railway.

authorize by Legislative enactment the construction of the 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 taken and occupied thereby. 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 :—

Authority to construct railway and to connect the same with the Great Western Railway.

1. It shall be lawful for the Company to make and construct the railway from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with the Great Western Railway, in accordance with the "Public Works Act of 1888," and use so much of the said lands as the Company may require for the purpose of the railway in the direction described in the Schedule of this Act, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments, and foundations of the railway. Provided that the railway shall be constructed and brought into use within the term of two years from the passing of this Act.

Lands vested in the Company without conveyance.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this Act for the purpose of the railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands 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 occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices shall deem necessary for the purposes aforesaid, on application being made to them.

Railway open to the public.

3. The railway shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton per mile in respect of every ton of goods for every transit, the party seeking transit supplying and loading his own trucks or waggons, and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of the

Oakey Park Coal-mining Company's Railway.

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power, the Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of repairing and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners or Branch railways. occupiers of the lands traversed by the railway to lay down upon their own lands any collateral branches of railway to communicate with the railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say)—

The Company 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 bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company 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 Company under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter Power to divert or alter roads or watercourses. contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse crossing the railway, or to raise, sink, or divert any roadway or watercourse, in order the more conveniently to carry the same over, or under, or by the side of the railway.

6. If the Company do not cause another sufficient road, or new Penalty for not substituting roads or watercourses. creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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.

7. If in the course of making the railway, the Company shall Repairs of roads. use or interfere with any road they shall from time to time make good all

Oakey Park Coal-mining Company's Railway.

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 Company, 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 the Company, and within such period as they may think reasonable, and may impose on the Company 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 Company, 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 Company on such road in the course of using thereof.

Bridges to be constructed where the railway crosses highway.

8. If the 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on the level.

Owners and occupiers crossing.

9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions in this Act 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 said 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 land have in his arrangements with the Company 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 Company shall, if ordered by two Justices so to do, 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, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross the 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 entrusted 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 Railway Commissioners of New South Wales, in any case in which they shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road

Oakey Park Coal-mining Company's Railway.

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 trucks 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.

11. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the railway it shall be lawful for the Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the Railway Commissioners of New South Wales, 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 Commissioners shall, after considering the said report, certify that their exercise is not necessary for the public safety. Power to enter upon adjoining lands to repair accidents subject to certain restrictions. Provided also, that such works shall be as little injurious to the 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 herein-after mentioned; and provided also, that no land shall be taken permanently for any such works otherwise than is in this Act provided with respect to the lands originally taken for the purpose of making the 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.

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 main 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 feet 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

Oakey Park Coal-mining Company's Railway.

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 main 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.

The width of the bridges need not exceed the width of the road in certain cases.

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 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 Company 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 on 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 mean 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 Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mean 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 Company 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, buildings, &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; 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,
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Oakey Park Coal-mining Company's 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 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 as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places. Watering-places.

Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid compensation instead of the making of 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 animals under his care have passed through the same, he shall forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices. Penalty on persons omitting to fasten gates.

18. The Company shall not be entitled to any mines of coal, iron-stone, slate, or other minerals under any private 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 Company. Minerals not to pass.

19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the railway shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or any of them 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 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, the party who has himself appointed an arbitrator may appoint such Appointment of arbitrators.

Oakey Park Coal-mining Company's Railway.

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.

Vacancy in arbitration to be supplied.

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 arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Appointment of umpire.

21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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.

Attorney-General to appoint umpire on neglect.

22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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 a 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.

Power of arbitrators to call for books.

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.

Oakey Park Coal-mining Company's Railway.

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, Notary Public, or Commissioner for Affidavits, 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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.

Penalty for misconduct.

28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

29. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the Company.

Award to be delivered to the Company.

30. If the person or persons through whose lands the railway shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto.

How compensation to be paid when any of parties under any disability.

31. 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.

32. 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.

33. The Company shall make 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 Company of any of the matters and things hereby required to be performed by it, or otherwise.

Compensation for temporary or recurring injuries.

34. If in any case in which, according to the provisions of this Act, the Company is authorized to enter upon and take possession

Sheriff authorized to give possession of certain lands.

Oakey Park Coal-mining Company's Railway.

of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the Company from entering upon or taking possession of the same, it shall be lawful for the Company to issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such person refusing to give possession, or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

Lands belonging to Commissioners not to be taken.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Commissioners, or to alter or interfere with the Great Western Railway, or any other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

Commissioners may erect signals and appoint watchmen and switchmen.

36. The said Commissioners shall from time to time erect such signals and conveniences incident to the junction either upon their own lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, and other persons as may be necessary for the prevention of danger to, or interference with, the traffic at or near the junction, and in all cases at the expense of the Company.

Working of signals to be under regulations of Commissioners.

37. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the said Commissioners.

Railway Commissioners may appoint inspectors.

38. The Railway Commissioners may from time to time appoint any person to be inspector, for the purpose of inspecting the railway and of making any inquiry with respect to the condition of the works, or into the cause of any accident, provided that no person so appointed shall exercise any powers of interference in the affairs of the Company.

Powers of inspectors.

39. Every Inspector under this Act shall, for the purpose of any inspection or inquiry which he is directed by the Railway Commissioners to make or conduct, have the following powers, that is to say :—

- (I) He may enter and inspect the railway and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto.
- (II) He may, by summons under his hand, require the attendance of any person who is engaged in the management, service, or employment of the Company, and whom he thinks fit to call before him and examine for the said purpose, and may require answers or returns to such inquiries for the said purpose as he thinks fit to make.
- (III) He may require and enforce the production of all books, papers, and documents of the Company which he considers important for the said purpose.

Accidents.

40. Where, in or about the railway, or any of the works or buildings connected with such railway, or any building or place whether

Oakey Park Coal-mining Company's Railway.

whether open or enclosed in connection with such railway, any of the following accidents take place in the course of working, that is to say :—

- (I) Any accident attended with loss of life or personal injury to any person whomsoever.
- (II) Any collision where one of the trains is a passenger train.
- (III) Any passenger train, or any part of a passenger train, accidentally leaving the rails.
- (IV) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused, or to be likely to cause, loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Railway Commissioners.

The Company working such railway shall send notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby, to the Railway Commissioners.

41. Such notice shall be in such form and shall contain such particulars as the Railway Commissioners may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place. Form of notice of accident.

42. The Railway Commissioners may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. While such order is in force notice of every accident of the class to which the order relates shall be sent to the Railway Commissioners by telegraph immediately after the accident takes place. Failure to comply with the provisions of this section shall render the Company liable for each offence to a penalty not exceeding twenty pounds. Notice of certain accidents to be sent by telegraph.

43. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such railway upon giving to the said Company three months notice in writing of his intention to do so. If the amount tendered for the purchase of the property be considered inadequate by the Company, the amount shall be ascertained by assessment in terms of the "Public Lands Acquisition Act," before a Judge or jury. Power of purchase of railway by Government.

44. Nothing herein contained shall alter or repeal or otherwise affect the "Government Railways Act of 1888," and the "Public Works Act of 1888." Railways and Public Works Acts of 1888 not repealed or altered.

45. 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 "Railway" shall mean the railway by this Act authorized to be constructed. The word "Justice" shall mean any Justice of the Peace in and for the Colony of New South Wales, and where any matter shall be authorized 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 authorized or required to be done with the consent of any such owner, the word "Owner" shall mean any person or Corporation who, under the provisions of this Act would be able to sell land to the Company. Interpretation clause.

46. This Act shall be styled and cited as the "Oakey Park Coal-mining Company's Railway Act of 1889." Short title.

Oakey Park Coal-mining Company's Railway.

SCHEDULE.

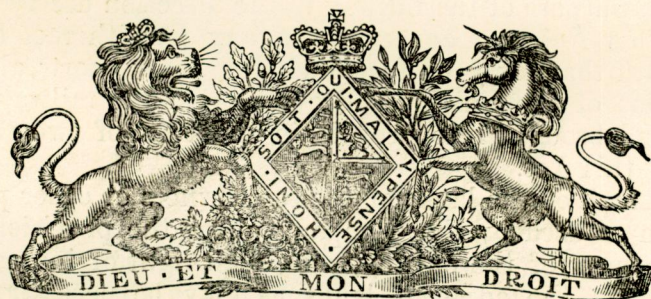
Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one-half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

By Authority: CHARLES POTTER, Government Printer, Sydney, 1889.

[9d.]

New South Wales.



ANNO QUINQUAGESIMO TERTIO

VICTORIÆ REGINÆ.

An Act to enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Lithgow belonging to the said Company, and to connect the same with the Great Western Railway. [Assented to, 21st September, 1889.]

WHEREAS the Oakey Park Coal-mining Company, Limited, a joint stock company, duly registered under and in accordance with the provisions of the "Companies Act," and hereinafter designated the Company, have opened coal-mines on land situated near Lithgow, in the parish of Lett, county of Cook, and are desirous of constructing a railway from the said coal-mines to the Great Western Railway, near to Lithgow aforesaid, but as part of such railway is intended to be made upon and pass through lands in the said county not belonging to the Company, but believed to be the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand, and others, or some of them respectively, the same cannot be made without Legislative authority. And whereas the said coal-mines are likely to prove beneficial to this Colony, and the public are concerned in promoting such an increase in the facilities for the supply of coal for local consumption, steam navigation, and export, as would result from the construction of the railway; it is therefore desirable to authorize

A

Oakey Park Coal-mining Company's Railway.

authorize by Legislative enactment the construction of the 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 taken and occupied thereby. 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 :—

Authority to construct railway and to connect the same with the Great Western Railway.

1. It shall be lawful for the Company to make and construct the railway from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with the Great Western Railway, in accordance with the "Public Works Act of 1888," and use so much of the said lands as the Company may require for the purpose of the railway in the direction described in the Schedule of this Act, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments, and foundations of the railway. Provided that the railway shall be constructed and brought into use within the term of two years from the passing of this Act.

Lands vested in the Company without conveyance.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this Act for the purpose of the railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands 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 occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices shall deem necessary for the purposes aforesaid, on application being made to them.

Railway open to the public.

3. The railway shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton per mile in respect of every ton of goods for every transit, the party seeking transit supplying and loading his own trucks or waggons, and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of the

Oakey Park Coal-mining Company's Railway.

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power, the Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of repairing and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners or **Branch railways.** occupiers of the lands traversed by the railway to lay down upon their own lands any collateral branches of railway to communicate with the railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say)—

The Company 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 bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company 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 Company under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter **Power to divert or** contained, it shall be lawful for the Company, their deputies, agents, **alter roads or** servants, and workmen, and all other persons by them authorized and **watercourses.** empowered to divert or alter the course of any roadway or watercourse crossing the railway, or to raise, sink, or divert any roadway or watercourse, in order the more conveniently to carry the same over, or under, or by the side of the railway.

6. If the Company do not cause another sufficient road, or new **Penalty for not** creek, or watercourse to be so made before they interfere with any **substituting roads** such existing road, creek, or watercourse as aforesaid, they shall forfeit **or watercourses.** ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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.

7. If in the course of making the railway, the Company shall **Repairs of roads.** use or interfere with any road they shall from time to time make good
all

Oakey Park Coal-mining Company's Railway.

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 Company, 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 the Company, and within such period as they may think reasonable, and may impose on the Company 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 Company, 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 Company on such road in the course of using thereof.

Bridges to be constructed where the railway crosses highway.

8. If the 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on the level.

Owners and occupiers crossing.

9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions in this Act 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 said 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 land have in his arrangements with the Company 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 Company shall, if ordered by two Justices so to do, 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, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross the 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 entrusted 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 Railway Commissioners of New South Wales, in any case in which they shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road

Oakey Park Coal-mining Company's Railway.

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 trucks 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.

11. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the railway it shall be lawful for the Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the Railway Commissioners of New South Wales, 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 Commissioners 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 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 in this Act provided with respect to the lands originally taken for the purpose of making the 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 main 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 feet 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

Oakey Park Coal-mining Company's Railway.

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 main 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.

The width of the bridges need not exceed the width of the road in certain cases.

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 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 Company 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 on 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 mean 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 Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mean 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 Company 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, buildings, &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; 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

Oakey Park Coal-mining Company's 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 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 as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places. Watering-places.

Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid compensation instead of the making of 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 animals under his care have passed through the same, he shall forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices. Penalty on persons omitting to fasten gates.

18. The Company shall not be entitled to any mines of coal, iron-stone, slate, or other minerals under any private 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 Company. Minerals not to pass.

19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the railway shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or any of them 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 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, the party who has himself appointed an arbitrator may appoint such Appointment of arbitrators.

Oakey Park Coal-mining Company's Railway.

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.

Vacancy in arbitration to be supplied.

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 arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Appointment of umpire.

21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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.

Attorney-General to appoint umpire on neglect.

22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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 a 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.

Power of arbitrators to call for books.

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.

Oakey Park Coal-mining Company's Railway.

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, Notary Public, or Commissioner for Affidavits, 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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.

Penalty for misconduct.

28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

29. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the Company.

Award to be delivered to the Company.

30. If the person or persons through whose lands the railway shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto.

How compensation to be paid when any of parties under any disability.

31. 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.

32. 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.

33. The Company shall make 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 Company of any of the matters and things hereby required to be performed by it, or otherwise.

Compensation for temporary or recurring injuries.

34. If in any case in which, according to the provisions of this Act, the Company is authorized to enter upon and take possession of

Sheriff authorized to give possession of certain lands.

Oakey Park Coal-mining Company's Railway.

of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the Company from entering upon or taking possession of the same, it shall be lawful for the Company to issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such person refusing to give possession, or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

Lands belonging to Commissioners not to be taken.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Commissioners, or to alter or interfere with the Great Western Railway, or any other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

Commissioners may erect signals and appoint watchmen and switchmen.

36. The said Commissioners shall from time to time erect such signals and conveniences incident to the junction either upon their own lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, and other persons as may be necessary for the prevention of danger to, or interference with, the traffic at or near the junction, and in all cases at the expense of the Company.

Working of signals to be under regulations of Commissioners.

37. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the said Commissioners.

Railway Commissioners may appoint inspectors.

38. The Railway Commissioners may from time to time appoint any person to be inspector, for the purpose of inspecting the railway and of making any inquiry with respect to the condition of the works, or into the cause of any accident, provided that no person so appointed shall exercise any powers of interference in the affairs of the Company.

Powers of inspectors.

39. Every Inspector under this Act shall, for the purpose of any inspection or inquiry which he is directed by the Railway Commissioners to make or conduct, have the following powers, that is to say:—

- (I) He may enter and inspect the railway and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto.
- (II) He may, by summons under his hand, require the attendance of any person who is engaged in the management, service, or employment of the Company, and whom he thinks fit to call before him and examine for the said purpose, and may require answers or returns to such inquiries for the said purpose as he thinks fit to make.
- (III) He may require and enforce the production of all books, papers, and documents of the Company which he considers important for the said purpose.

Accidents.

40. Where, in or about the railway, or any of the works or buildings connected with such railway, or any building or place whether

Oakey Park Coal-mining Company's Railway.

whether open or enclosed in connection with such railway, any of the following accidents take place in the course of working, that is to say :—

- (I) Any accident attended with loss of life or personal injury to any person whomsoever.
- (II) Any collision where one of the trains is a passenger train.
- (III) Any passenger train, or any part of a passenger train, accidentally leaving the rails.
- (IV) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused, or to be likely to cause, loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Railway Commissioners.

The Company working such railway shall send notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby, to the Railway Commissioners.

41. Such notice shall be in such form and shall contain such particulars as the Railway Commissioners may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place. Form of notice of accident.

42. The Railway Commissioners may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. While such order is in force notice of every accident of the class to which the order relates shall be sent to the Railway Commissioners by telegraph immediately after the accident takes place. Failure to comply with the provisions of this section shall render the Company liable for each offence to a penalty not exceeding twenty pounds. Notice of certain accidents to be sent by telegraph.

43. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such railway upon giving to the said Company three months notice in writing of his intention to do so. If the amount tendered for the purchase of the property be considered inadequate by the Company, the amount shall be ascertained by assessment in terms of the "Public Lands Acquisition Act," before a Judge or jury. Power of purchase of railway by Government.

44. Nothing herein contained shall alter or repeal or otherwise affect the "Government Railways Act of 1888," and the "Public Works Act of 1888." Railways and Public Works Acts of 1888 not repealed or altered.

45. 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 "Railway" shall mean the railway by this Act authorized to be constructed. The word "Justice" shall mean any Justice of the Peace in and for the Colony of New South Wales, and where any matter shall be authorized 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 authorized or required to be done with the consent of any such owner, the word "Owner" shall mean any person or Corporation who, under the provisions of this Act would be able to sell land to the Company. Interpretation clause.

46. This Act shall be styled and cited as the "Oakey Park Coal-mining Company's Railway Act of 1889." Short title.

Oakey Park Coal-mining Company's Railway.

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one-half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

By Authority: CHARLES POTTER, Government Printer, Sydney, 1889.

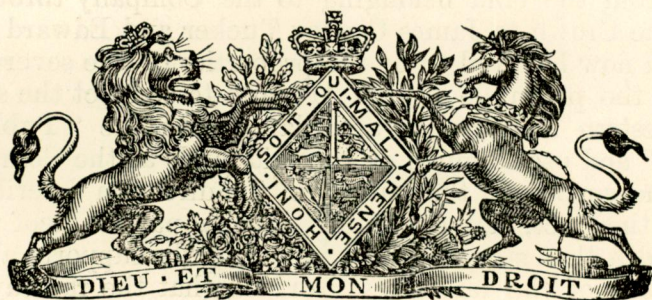
[9d.]

I Certify that this PRIVATE BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council Chamber,
Sydney, 16th September, 1889. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO TERTIO

VICTORIÆ REGINÆ.

An Act to enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Lithgow belonging to the said Company, and to connect the same with the Great Western Railway. [Assented to, 21st September, 1889.]

WHEREAS the Oakey Park Coal-mining Company, Limited, a *Preamble.* joint stock company, duly registered under and in accordance with the provisions of the "Companies Act," and hereinafter designated the Company, have opened coal-mines on land situated near Lithgow, in the parish of Lett, county of Cook, and are desirous of constructing a railway from the said coal-mines to the Great Western Railway, near to Lithgow aforesaid, but as part of such railway is intended to be made upon and pass through lands in the said county not belonging to the Company, but believed to be the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand, and others, or some of them respectively, the same cannot be made without Legislative authority. And whereas the said coal-mines are likely to prove beneficial to this Colony, and the public are concerned in promoting such an increase in the facilities for the supply of coal for local consumption, steam navigation, and export, as would result from the construction of the railway; it is therefore desirable to authorize

I Certify that I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

ARCHD. H. JACOB,
Chairman of Committees of the Legislative Council.

Oakey Park Coal-mining Company's Railway.

authorize by Legislative enactment the construction of the 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 taken and occupied thereby. 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 :—

Authority to construct railway and to connect the same with the Great Western Railway.

1. It shall be lawful for the Company to make and construct the railway from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with the Great Western Railway, in accordance with the "Public Works Act of 1888," and use so much of the said lands as the Company may require for the purpose of the railway in the direction described in the Schedule of this Act, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments, and foundations of the railway. Provided that the railway shall be constructed and brought into use within the term of two years from the passing of this Act.

Lands vested in the Company without conveyance.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this Act for the purpose of the railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands 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 occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices shall deem necessary for the purposes aforesaid, on application being made to them.

Railway open to the public.

3. The railway shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton per mile in respect of every ton of goods for every transit, the party seeking transit supplying and loading his own trucks or waggons, and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of the

Oakey Park Coal-mining Company's Railway.

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power, the Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of repairing and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners or Branch railways. occupiers of the lands traversed by the railway to lay down upon their own lands any collateral branches of railway to communicate with the railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say)—

The Company 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 bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company 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 Company under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter Power to divert or alter roads or watercourses. contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse crossing the railway, or to raise, sink, or divert any roadway or watercourse, in order the more conveniently to carry the same over, or under, or by the side of the railway.

6. If the Company do not cause another sufficient road, or new Penalty for not substituting roads or watercourses. creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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.

7. If in the course of making the railway, the Company shall Repairs of roads. use or interfere with any road they shall from time to time make good
all

Oakey Park Coal-mining Company's Railway.

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 Company, 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 the Company, and within such period as they may think reasonable, and may impose on the Company 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 Company, 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 Company on such road in the course of using thereof.

Bridges to be constructed where the railway crosses highway.

8. If the 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on the level.

Owners and occupiers crossing.

9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions in this Act 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 said 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 land have in his arrangements with the Company 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 Company shall, if ordered by two Justices so to do, 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, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross the 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 entrusted 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 Railway Commissioners of New South Wales, in any case in which they shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road

Oakey Park Coal-mining Company's Railway.

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 trucks 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.

11. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the railway it shall be lawful for the Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the Railway Commissioners of New South Wales, 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 Commissioners 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 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 in this Act provided with respect to the lands originally taken for the purpose of making the 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 main 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 feet 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

Oakey Park Coal-mining Company's Railway.

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 main 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.

The width of the bridges need not exceed the width of the road in certain cases.

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 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 Company 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 on 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 mean 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 Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mean 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 Company 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, buildings, &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; 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

Oakey Park Coal-mining Company's 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 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 as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places. Watering-places.

Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid compensation instead of the making of 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 animals under his care have passed through the same, he shall forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices. Penalty on persons omitting to fasten gates.

18. The Company shall not be entitled to any mines of coal, iron-stone, slate, or other minerals under any private 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 Company. Minerals not to pass.

19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the railway shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or any of them 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 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, the party who has himself appointed an arbitrator may appoint such Appointment of arbitrators.

Oakey Park Coal-mining Company's Railway.

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.

Vacancy in arbitration to be supplied.

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 arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Appointment of umpire.

21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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.

Attorney-General to appoint umpire on neglect.

22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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 a 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.

Power of arbitrators to call for books.

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.

Oakey Park Coal-mining Company's Railway.

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, Notary Public, or Commissioner for Affidavits, 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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.

Penalty for misconduct.

28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

29. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the Company.

Award to be delivered to the Company.

30. If the person or persons through whose lands the railway shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto.

How compensation to be paid when any of parties under any disability.

31. 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

32. 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.

33. The Company shall make 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 Company of any of the matters and things hereby required to be performed by it, or otherwise.

Compensation for temporary or recurring injuries.

34. If in any case in which, according to the provisions of this Act, the Company is authorized to enter upon and take possession of

Sheriff authorized to give possession of certain lands.

Oakey Park Coal-mining Company's Railway.

of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the Company from entering upon or taking possession of the same, it shall be lawful for the Company to issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such person refusing to give possession, or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

Lands belonging to Commissioners not to be taken.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Commissioners, or to alter or interfere with the Great Western Railway, or any other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

Commissioners may erect signals and appoint watchmen and switchmen.

36. The said Commissioners shall from time to time erect such signals and conveniences incident to the junction either upon their own lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, and other persons as may be necessary for the prevention of danger to, or interference with, the traffic at or near the junction, and in all cases at the expense of the Company.

Working of signals to be under regulations of Commissioners.

37. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the said Commissioners.

Railway Commissioners may appoint inspectors.

38. The Railway Commissioners may from time to time appoint any person to be inspector, for the purpose of inspecting the railway and of making any inquiry with respect to the condition of the works, or into the cause of any accident, provided that no person so appointed shall exercise any powers of interference in the affairs of the Company.

Powers of inspectors.

39. Every Inspector under this Act shall, for the purpose of any inspection or inquiry which he is directed by the Railway Commissioners to make or conduct, have the following powers, that is to say:—

- (I) He may enter and inspect the railway and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto.
- (II) He may, by summons under his hand, require the attendance of any person who is engaged in the management, service, or employment of the Company, and whom he thinks fit to call before him and examine for the said purpose, and may require answers or returns to such inquiries for the said purpose as he thinks fit to make.
- (III) He may require and enforce the production of all books, papers, and documents of the Company which he considers important for the said purpose.

Accidents.

40. Where, in or about the railway, or any of the works or buildings connected with such railway, or any building or place whether

Oakey Park Coal-mining Company's Railway.

whether open or enclosed in connection with such railway, any of the following accidents take place in the course of working, that is to say :—

- (I) Any accident attended with loss of life or personal injury to any person whomsoever.
- (II) Any collision where one of the trains is a passenger train.
- (III) Any passenger train, or any part of a passenger train, accidentally leaving the rails.
- (IV) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused, or to be likely to cause, loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Railway Commissioners.

The Company working such railway shall send notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby, to the Railway Commissioners.

41. Such notice shall be in such form and shall contain such particulars as the Railway Commissioners may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place. Form of notice of accident.

42. The Railway Commissioners may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. While such order is in force notice of every accident of the class to which the order relates shall be sent to the Railway Commissioners by telegraph immediately after the accident takes place. Failure to comply with the provisions of this section shall render the Company liable for each offence to a penalty not exceeding twenty pounds. Notice of certain accidents to be sent by telegraph.

43. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such railway upon giving to the said Company three months notice in writing of his intention to do so. If the amount tendered for the purchase of the property be considered inadequate by the Company, the amount shall be ascertained by assessment in terms of the "Public Lands Acquisition Act," before a Judge or jury. Power of purchase of railway by Government.

44. Nothing herein contained shall alter or repeal or otherwise affect the "Government Railways Act of 1888," and the "Public Works Act of 1888." Railways and Public Works Acts of 1888 not repealed or altered.

45. 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 "Railway" shall mean the railway by this Act authorized to be constructed. The word "Justice" shall mean any Justice of the Peace in and for the Colony of New South Wales, and where any matter shall be authorized 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 authorized or required to be done with the consent of any such owner, the word "Owner" shall mean any person or Corporation who, under the provisions of this Act would be able to sell land to the Company. Interpretation clause.

46. This Act shall be styled and cited as the "Oakey Park Coal-mining Company's Railway Act of 1889." Short title.

Oakey Park Coal-mining Company's Railway.

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one-half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

In the name and on the behalf of Her Majesty I assent to this Act.

CARRINGTON.

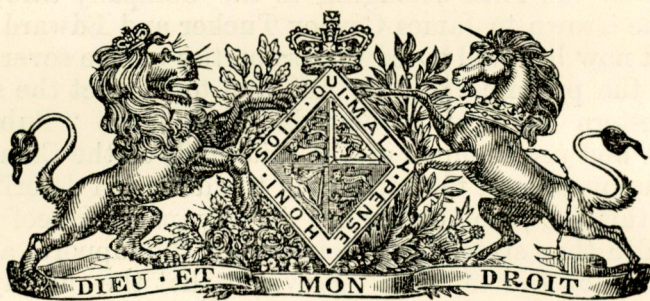
*Government House,
Sydney, 21st September, 1889.*

I Certify that this PRIVATE BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council Chamber,
Sydney, 16th September, 1889. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO TERTIO

VICTORIÆ REGINÆ.

An Act to enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Lithgow belonging to the said Company, and to connect the same with the Great Western Railway. [Assented to, 21st September, 1889.]

WHEREAS the Oakey Park Coal-mining Company, Limited, a Preamble. joint stock company, duly registered under and in accordance with the provisions of the "Companies Act," and hereinafter designated the Company, have opened coal-mines on land situated near Lithgow, in the parish of Lett, county of Cook, and are desirous of constructing a railway from the said coal-mines to the Great Western Railway, near to Lithgow aforesaid, but as part of such railway is intended to be made upon and pass through lands in the said county not belonging to the Company, but believed to be the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand, and others, or some of them respectively, the same cannot be made without Legislative authority. And whereas the said coal-mines are likely to prove beneficial to this Colony, and the public are concerned in promoting such an increase in the facilities for the supply of coal for local consumption, steam navigation, and export, as would result from the construction of the railway; it is therefore desirable to authorize

I Certify that I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

ARCHD. H. JACOB,
Chairman of Committees of the Legislative Council.

Oakey Park Coal-mining Company's Railway.

authorize by Legislative enactment the construction of the 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 taken and occupied thereby. 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:—

Authority to construct railway and to connect the same with the Great Western Railway.

1. It shall be lawful for the Company to make and construct the railway from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with the Great Western Railway, in accordance with the "Public Works Act of 1888," and use so much of the said lands as the Company may require for the purpose of the railway in the direction described in the Schedule of this Act, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments, and foundations of the railway. Provided that the railway shall be constructed and brought into use within the term of two years from the passing of this Act.

Lands vested in the Company without conveyance.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this Act for the purpose of the railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands 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 occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices shall deem necessary for the purposes aforesaid, on application being made to them.

Railway open to the public.

3. The railway shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton per mile in respect of every ton of goods for every transit, the party seeking transit supplying and loading his own trucks or waggons, and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of the

Oakey Park Coal-mining Company's Railway.

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power, the Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of repairing and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners or occupiers of the lands traversed by the railway to lay down upon their own lands any collateral branches of railway to communicate with the railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say)—

The Company 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 bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company 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 Company under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse crossing the railway, or to raise, sink, or divert any roadway or watercourse, 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 or watercourses.

6. If the Company do not cause another sufficient road, or new creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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 roads or watercourses.

7. If in the course of making the railway, the Company shall use or interfere with any road they shall from time to time make good all

Repairs of roads.

Oakey Park Coal-mining Company's Railway.

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 Company, 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 the Company, and within such period as they may think reasonable, and may impose on the Company 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 Company, 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 Company on such road in the course of using thereof.

Bridges to be constructed where the railway crosses highway.

8. If the 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on the level.

Owners and occupiers crossing.

9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions in this Act 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 said 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 land have in his arrangements with the Company 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 Company shall, if ordered by two Justices so to do, 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, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross the 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 entrusted 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 Railway Commissioners of New South Wales, in any case in which they shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road

Oakey Park Coal-mining Company's Railway.

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 trucks 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.

11. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the railway it shall be lawful for the Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the Railway Commissioners of New South Wales, 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 Commissioners 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 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 herein-after mentioned; and provided also, that no land shall be taken permanently for any such works otherwise than is in this Act provided with respect to the lands originally taken for the purpose of making the 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 main 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 feet 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

Oakey Park Coal-mining Company's Railway.

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 main 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.

The width of the bridges need not exceed the width of the road in certain cases.

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 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 Company 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 on 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 mean 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 Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mean 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 Company 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, buildings, &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; 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

Oakey Park Coal-mining Company's 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 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 as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places.

Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid compensation instead of the making of 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 animals under his care have passed through the same, he shall forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices.

Penalty on persons omitting to fasten gates.

18. The Company shall not be entitled to any mines of coal, iron-stone, slate, or other minerals under any private 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 Company.

Minerals not to pass.

19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the railway shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or any of them 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 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, the party who has himself appointed an arbitrator may appoint such

Appointment of arbitrators.

Oakey Park Coal-mining Company's Railway.

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.

Vacancy in arbitration to be supplied.

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 arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Appointment of umpire.

21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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.

Attorney-General to appoint umpire on neglect.

22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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 a 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.

Power of arbitrators to call for books.

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.

Oakey Park Coal-mining Company's Railway.

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, Notary Public, or Commissioner for Affidavits, 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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.

Penalty for misconduct.

28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

29. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the Company.

Award to be delivered to the Company.

30. If the person or persons through whose lands the railway shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto.

How compensation to be paid when any of parties under any disability.

31. 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.

32. 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.

33. The Company shall make 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 Company of any of the matters and things hereby required to be performed by it, or otherwise.

Compensation for temporary or recurring injuries.

34. If in any case in which, according to the provisions of this Act, the Company is authorized to enter upon and take possession of

Sheriff authorized to give possession of certain lands.

Oakey Park Coal-mining Company's Railway.

of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the Company from entering upon or taking possession of the same, it shall be lawful for the Company to issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such person refusing to give possession, or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

Lands belonging to Commissioners not to be taken.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Commissioners, or to alter or interfere with the Great Western Railway, or any other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

Commissioners may erect signals and appoint watchmen and switchmen.

36. The said Commissioners shall from time to time erect such signals and conveniences incident to the junction either upon their own lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, and other persons as may be necessary for the prevention of danger to, or interference with, the traffic at or near the junction, and in all cases at the expense of the Company.

Working of signals to be under regulations of Commissioners.

37. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the said Commissioners.

Railway Commissioners may appoint inspectors.

38. The Railway Commissioners may from time to time appoint any person to be inspector, for the purpose of inspecting the railway and of making any inquiry with respect to the condition of the works, or into the cause of any accident, provided that no person so appointed shall exercise any powers of interference in the affairs of the Company.

Powers of inspectors.

39. Every Inspector under this Act shall, for the purpose of any inspection or inquiry which he is directed by the Railway Commissioners to make or conduct, have the following powers, that is to say:—

- (I) He may enter and inspect the railway and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto.
- (II) He may, by summons under his hand, require the attendance of any person who is engaged in the management, service, or employment of the Company, and whom he thinks fit to call before him and examine for the said purpose, and may require answers or returns to such inquiries for the said purpose as he thinks fit to make.
- (III) He may require and enforce the production of all books, papers, and documents of the Company which he considers important for the said purpose.

Accidents.

40. Where, in or about the railway, or any of the works or buildings connected with such railway, or any building or place whether

Oakey Park Coal-mining Company's Railway.

whether open or enclosed in connection with such railway, any of the following accidents take place in the course of working, that is to say :—

- (I) Any accident attended with loss of life or personal injury to any person whomsoever.
- (II) Any collision where one of the trains is a passenger train.
- (III) Any passenger train, or any part of a passenger train, accidentally leaving the rails.
- (IV) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused, or to be likely to cause, loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Railway Commissioners.

The Company working such railway shall send notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby, to the Railway Commissioners.

41. Such notice shall be in such form and shall contain such particulars as the Railway Commissioners may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place. Form of notice of accident.

42. The Railway Commissioners may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. While such order is in force notice of every accident of the class to which the order relates shall be sent to the Railway Commissioners by telegraph immediately after the accident takes place. Failure to comply with the provisions of this section shall render the Company liable for each offence to a penalty not exceeding twenty pounds. Notice of certain accidents to be sent by telegraph.

43. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such railway upon giving to the said Company three months notice in writing of his intention to do so. If the amount tendered for the purchase of the property be considered inadequate by the Company, the amount shall be ascertained by assessment in terms of the "Public Lands Acquisition Act," before a Judge or jury. Power of purchase of railway by Government.

44. Nothing herein contained shall alter or repeal or otherwise affect the "Government Railways Act of 1888," and the "Public Works Act of 1888." Railways and Public Works Acts of 1888 not repealed or altered.

45. 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 "Railway" shall mean the railway by this Act authorized to be constructed. The word "Justice" shall mean any Justice of the Peace in and for the Colony of New South Wales, and where any matter shall be authorized 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 authorized or required to be done with the consent of any such owner, the word "Owner" shall mean any person or Corporation who, under the provisions of this Act would be able to sell land to the Company. Interpretation clause.

46. This Act shall be styled and cited as the "Oakey Park Coal-mining Company's Railway Act of 1889." Short title.

Oakey Park Coal-mining Company's Railway.

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one-half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

In the name and on the behalf of Her Majesty I assent to this Act.

CARRINGTON.

*Government House,
Sydney, 21st September, 1889.*

OAKEY PARK COAL-MINING COMPANY'S RAILWAY BILL.

SCHEDULE of Amendments referred to in Message of 3 September, 1889.

F. W. WEBB,

Clerk of Legislative Assembly.

Page 2, clause 1, line 21. *Omit "five" insert "two"*

Page 10. *After clause 37 insert new clauses 38, 39, 40, 41, 42, and 43.*

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

*Legislative Council Chamber,
Sydney, 22nd May, 1889. }*

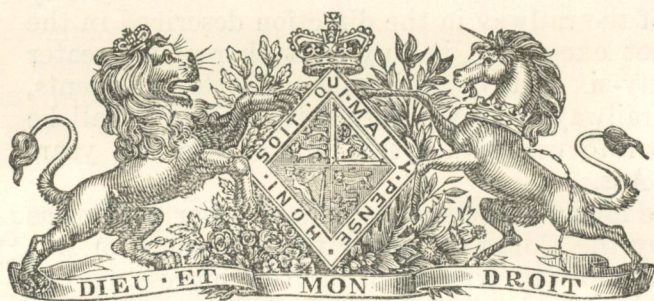
JOHN J. CALVERT,
Clerk of the Parliaments.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with Amendments.

*Legislative Assembly Chamber,
Sydney, 3 September, 1889. }*

F. W. WEBB,
Clerk of Legislative Assembly.

New South Wales.



ANNO QUINQUAGESIMO TERTIO

VICTORIÆ REGINÆ.

An Act to enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Lithgow belonging to the said Company, and to connect the same with the Great Western Railway.

WHEREAS the Oakey Park Coal-mining Company, Limited, a Preamble.
joint stock company, duly registered under and in accordance
with the provisions of the "Companies Act," and hereinafter designated
the Company, have opened coal-mines on land situated near Lithgow,
5 in the parish of Lett, county of Cook, and are desirous of constructing
a railway from the said coal-mines to the Great Western Railway, near
to Lithgow aforesaid, but as part of such railway is intended to be
made upon and pass through lands in the said county not belonging
to the Company, but believed to be the property of George Pile,
10 John Yelverton Mills, John Bennett, and the Bank of New Zealand,
and others, or some of them respectively, the same cannot be made
without Legislative authority. And whereas the said coal-mines are
likely to prove beneficial to this Colony, and the public are concerned
in promoting such an increase in the facilities for the supply of coal
15 for local consumption, steam navigation, and export, as would result
from the construction of the railway; it is therefore desirable to
c 45—A authorize

NOTE.—The word to be omitted is ruled through; those to be inserted are printed in black letter.

Oakey Park Coal-mining Company's Railway.

authorize by Legislative enactment the construction of the 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
 5 to be taken and occupied thereby. 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:—

10 1. It shall be lawful for the Company to make and construct the railway from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with
 15 the Great Western Railway, in accordance with the "Public Works Act of 1888," and use so much of the said lands as the Company may require for the purpose of the railway in the direction described in the Schedule of this Act, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments,
 20 and foundations of the railway. Provided that the railway shall be constructed and brought into use within the term of ~~five~~ two years from the passing of this Act.

Authority to construct railway and to connect the same with the Great Western Railway.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this
 25 Act for the purpose of the railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be
 30 found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any
 35 such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands for any of the purposes
 40 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
 45 cattle from or upon the lands traversed by such roads. And in case of any difference between the owners or occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices shall deem necessary for the purposes aforesaid, on application being made to
 50 them.

Lands vested in the Company without conveyance.

3. The railway shall be open to the public use upon payment
 of a toll to the Company of a sum not exceeding twopence per ton
 per mile in respect of every ton of goods for every transit, the party
 seeking transit supplying and loading his own trucks or waggons,
 55 and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of
 the

Railway open to the public.

Oakey Park Coal-mining Company's Railway.

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply
 5 the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power,
 10 the Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of repairing
 15 and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners OR Branch railways. occupiers of the lands traversed by the railway to lay down upon their own lands any collateral branches of railway to communicate with the
 20 railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 affecting such communication in places where the communication can be made with safety to the
 25 public, and without injury to the railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say)—

The Company shall not be bound to make any such openings in any place which they shall have set apart for any specific
 30 purpose with which such communication would interfere, nor upon any bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company from time to time made with respect to passing upon or crossing the rail-
 35 way 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 Company under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter Power to divert or alter roads or watercourses. contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse crossing the railway, or to raise, sink, or divert any roadway or water-
 45 course, in order the more conveniently to carry the same over, or under, or by the side of the railway.

6. If the Company do not cause another sufficient road, or new Penalty for not substituting roads or watercourses. creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit
 50 ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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
 55 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.

7. If in the course of making the railway, the Company shall Repairs of roads. use or interfere with any road they shall from time to time make good
 all

Oakey Park Coal-mining Company's Railway.

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 Company, 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
 5 be made in the state of such road in respect of damage done by the Company, and within such period as they may think reasonable, and may impose on the Company 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
 10 other person having the management of the road interfered with by the Company, 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 Company
 15 on such road in the course of using thereof.

8. If the 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
 20 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on
 25 the level.

Bridges to be constructed where the railway crosses highway.

9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions in this Act contained have been required to make between lands intersected by the railway and no longer, the owners and occupiers of such lands,
 30 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 occupy-
 35 ing the said 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 land have in his arrangements with the Company received or agreed to receive compensation for, or on account of, any such communications, instead
 40 of the same being formed, such owner or occupier or those claiming under him shall not be entitled so to cross the railway.

Owners and occupiers crossing.

10. If the railway cross any public highway or parish road on a level, the Company shall, if ordered by two Justices so to do, erect and at all times maintain good and sufficient gates across such road
 45 on each side of the railway where the same shall communicate therewith, and shall, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same
 50 shall have to cross the 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 entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts,
 55 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 Railway Commissioners of New South Wales, in any case in which they shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such
 road

Provisions in cases where roads are crossed on a level.

Oakey Park Coal-mining Company's Railway.

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 trucks 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.

11. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the railway it shall be lawful for the Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the Railway Commissioners of New South Wales, 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 Commissioners 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 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 in this Act provided with respect to the lands originally taken for the purpose of making the 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.

35 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.

40 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 main 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.

45 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 feet 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.

50 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

55 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

Oakey Park Coal-mining Company's Railway.

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.

- 5 The ascent shall not be more than one foot in thirty feet if the road be a main 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
10 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 for bridges over or under the railway, the width of
15 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
20 width of such bridge on either side thereof, the Company 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 on the maximum width herein prescribed for a bridge in the like case over or
25 under the railway.

The width of the bridges need not exceed the width of the road in certain cases.

15. Provided also that if the mean 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
30 steeper than the inclination hereinbefore required to be preserved by the Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mean inclination of the road so to be crossed, or of the road so requiring to be altered or for which
35 another road shall be substituted.

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

16. The Company 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.

- 40 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
45 passing over such lands shall have been laid out or formed or during the formation thereof.

Gates, buildings, &c.

- 50 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; all necessary stiles, and such posts, rails, and other fences shall be made forthwith after the
55 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

Drains

Oakey Park Coal-mining Company's 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 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 as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places.

Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid compensation instead of the making of 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 animals under his care have passed through the same, he shall forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices.

18. The Company shall not be entitled to any mines of coal, iron-stone, slate, or other minerals under any private 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 Company.

19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the railway shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or any of them 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 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, the party who has himself appointed an arbitrator may appoint such

Oakey Park Coal-mining Company's Railway.

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.

5

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 arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Vacancy in arbitration to be supplied.

21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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.

22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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.

Attorney-General to appoint umpire on neglect.

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.

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

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 a single arbitrator appointed by both parties.

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

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.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

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.

Power of arbitrators to call for books.

Oakey Park Coal-mining Company's Railway.

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, Notary Public, or Commissioner for Affidavits, make and subscribe the following declaration (that is to say) :—

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

5 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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

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.

Penalty for misconduct.

15 28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

29. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the Company.

Award to be delivered to the Company.

30. If the person or persons through whose lands the railway shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto.

How compensation to be paid when any of parties under any disability.

31. 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

32. 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.

33. The Company shall make 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 Company of any of the matters and things hereby required to be performed by it, or otherwise.

Compensation for temporary or recurring injuries.

34. If in any case in which, according to the provisions of this Act, the Company is authorized to enter upon and take possession of

Sheriff authorized to give possession of certain lands.

Oakey Park Coal-mining Company's Railway.

of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the Company from entering upon or taking possession of the same, it shall be lawful for the Company to
 5 issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by
 10 the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such person refusing to give possession, or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs, or the excess
 15 thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Commissioners, or to alter or interfere with the Great Western Railway, or
 20 any other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

36. The said Commissioners shall from time to time erect such signals and conveniences incident to the junction either upon their own
 25 lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, and other persons as may be necessary for the prevention of danger to, or interference with,
 30 the traffic at or near the junction, and in all cases at the expense of the Company.

37. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the said Commissioners.

38. The Railway Commissioners may from time to time appoint
 35 any person to be inspector, for the purpose of inspecting the railway and of making any inquiry with respect to the condition of the works, or into the cause of any accident, provided that no person so appointed shall exercise any powers of interference in the affairs of
 40 the Company.

39. Every Inspector under this Act shall, for the purpose of any inspection or inquiry which he is directed by the Railway Commissioners to make or conduct, have the following powers, that is to say:—

45 (i) He may enter and inspect the railway and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto.

(ii) He may, by summons under his hand, require the attendance of any person who is engaged in the management, service,
 50 or employment of the Company, and whom he thinks fit to call before him and examine for the said purpose, and may require answers or returns to such inquiries for the said purpose as he thinks fit to make.

(iii) He may require and enforce the production of all books,
 55 papers, and documents of the Company which he considers important for the said purpose.

40. Where, in or about the railway, or any of the works or buildings connected with such railway, or any building or place,
 whether

Lands belonging to Commissioners not to be taken.

Commissioners may erect signals and appoint watchmen and switchmen.

Working of signals to be under regulations of Commissioners.

Railway Commissioners may appoint inspectors.

Powers of Inspectors.

Accidents.

Oakey Park Coal-mining Company's Railway.

whether open or enclosed in connection with such railway, any of the following accidents take place in the course of working, that is to say:—

- 5 (i) Any accident attended with loss of life or personal injury to any person whomsoever.
- (ii) Any collision where one of the trains is a passenger train.
- (iii) Any passenger train, or any part of a passenger train, accidentally leaving the rails.
- 10 (iv) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused, or to be likely to cause, loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Railway Commissioners.

The Company working such railway shall send notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby, to the Railway Commissioners.

41. Such notice shall be in such form and shall contain such particulars as the Railway Commissioners may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place. Form of notice of accident

42. The Railway Commissioners may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. While such order is in force notice of every accident of the class to which the order relates shall be sent to the Railway Commissioners by telegraph immediately after the accident takes place. Failure to comply with the provisions of this section shall render the Company liable for each offence to a penalty not exceeding twenty pounds. Notice of certain accidents to be sent by telegraph.

43. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such railway upon giving to the said Company three months notice in writing of his intention to do so. If the amount tendered for the purchase of the property be considered inadequate by the Company, the amount shall be ascertained by assessment in terms of the "Public Lands Acquisition Act," before a Judge or jury. Power of purchase of railway by Government.

38. 44. Nothing herein contained shall alter or repeal or otherwise affect the "Government Railways Act of 1888," and the "Public Works Act of 1888." Railways and Public Works Acts of 1888 not repealed or altered.

39. 45. 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 "Railway" shall mean the railway by this Act authorized to be constructed. The word "Justice" shall mean any Justice of the Peace in and for the Colony of New South Wales, and where any matter shall be authorized 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 authorized or required to be done with the consent of any such owner, the word "Owner" shall mean any person or Corporation who, under the provisions of this Act would be able to sell land to the Company. Interpretation clause.

40. 46. This Act shall be styled and cited as the "Oakey Park Coal-mining Company's Railway Act of 1889." Short title.

Oakey Park Coal-mining Company's Railway.

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, 5 and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and 10 thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven 15 and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one- 20 half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four 25 and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

OAKEY PARK COAL-MINING COMPANY'S RAILWAY BILL.

SCHEDULE of Amendments referred to in Message of 3 September, 1889.

F. W. WEBB,

Clerk of Legislative Assembly.

Page 2, clause 1, line 21. *Omit "five" insert "two"*

Page 10. *After clause 37 insert new clauses 38, 39, 40, 41, 42, and 43.*

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

*Legislative Council Chamber,
Sydney, 22nd May, 1889. }*

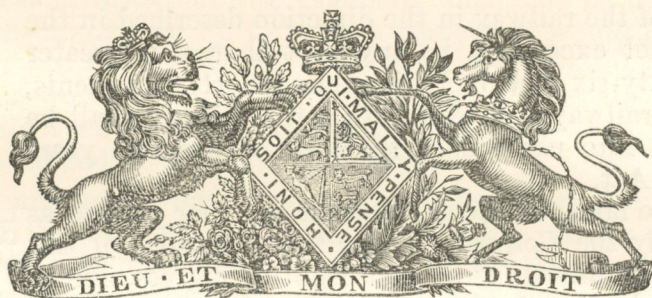
JOHN J. CALVERT,
Clerk of the Parliaments.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with Amendments.

*Legislative Assembly Chamber,
Sydney, 3 September, 1889. }*

F. W. WEBB,
Clerk of Legislative Assembly.

New South Wales.



ANNO QUINQUAGESIMO TERTIO

VICTORIÆ REGINÆ.

An Act to enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Lithgow belonging to the said Company, and to connect the same with the Great Western Railway.

WHEREAS the Oakey Park Coal-mining Company, Limited, a Preamble. joint stock company, duly registered under and in accordance with the provisions of the "Companies Act," and hereinafter designated the Company, have opened coal-mines on land situated near Lithgow, 5 in the parish of Lett, county of Cook, and are desirous of constructing a railway from the said coal-mines to the Great Western Railway, near to Lithgow aforesaid, but as part of such railway is intended to be made upon and pass through lands in the said county not belonging to the Company, but believed to be the property of George Pile, 10 John Yelverton Mills, John Bennett, and the Bank of New Zealand, and others, or some of them respectively, the same cannot be made without Legislative authority. And whereas the said coal-mines are likely to prove beneficial to this Colony, and the public are concerned in promoting such an increase in the facilities for the supply of coal 15 for local consumption, steam navigation, and export, as would result from the construction of the railway; it is therefore desirable to authorize

c 45—A

NOTE.—The word to be omitted is ruled through; those to be inserted are printed in black letter.

Oakey Park Coal-mining Company's Railway.

authorize by Legislative enactment the construction of the 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 taken and occupied thereby. 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 :—

- 10 1. It shall be lawful for the Company to make and construct the railway from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with
 15 the Great Western Railway, in accordance with the "Public Works Act of 1888," and use so much of the said lands as the Company may require for the purpose of the railway in the direction described in the Schedule of this Act, not exceeding in any part thereof a greater space in breadth than sixty-six feet; including the supports, abutments,
 20 and foundations of the railway. Provided that the railway shall be constructed and brought into use within the term of ~~five~~ two years from the passing of this Act.

Authority to construct railway and to connect the same with the Great Western Railway.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this
 25 Act for the purpose of the railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be
 30 found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any
 35 such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands for any of the purposes
 40 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
 45 cattle from or upon the lands traversed by such roads. And in case of any difference between the owners or occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices shall deem necessary for the purposes aforesaid, on application being made to
 50 them.

Lands vested in the Company without conveyance.

3. The railway shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton per mile in respect of every ton of goods for every transit, the party seeking transit supplying and loading his own trucks or waggons,
 55 and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of
 the

Railway open to the public.

Oakey Park Coal-mining Company's Railway.

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power, the Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of repairing and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners or occupiers of the lands traversed by the railway to lay down upon their own lands any collateral branches of railway to communicate with the railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 affecting such communication in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say)—

The Company 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 bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company 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 Company under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse crossing the railway, or to raise, sink, or divert any roadway or watercourse, in order the more conveniently to carry the same over, or under, or by the side of the railway.

6. If the Company do not cause another sufficient road, or new creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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.

7. If in the course of making the railway, the Company shall use or interfere with any road they shall from time to time make good all

Branch railways.

Power to divert or alter roads or watercourses.

Penalty for not substituting roads or watercourses.

Repairs of roads.

Oakey Park Coal-mining Company's Railway.

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 Company, 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
 5 be made in the state of such road in respect of damage done by the Company, and within such period as they may think reasonable, and may impose on the Company 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
 10 other person having the management of the road interfered with by the Company, 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 Company
 15 on such road in the course of using thereof.

8. If the 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
 20 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on
 25 the level.

Bridges to be constructed where the railway crosses highway.

9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions in this Act contained have been required to make between lands intersected by the railway and no longer, the owners and occupiers of such lands,
 30 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 occupy-
 35 ing the said 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 land have in his arrangements with the Company received or agreed to receive compensation for, or on account of, any such communications, instead
 40 of the same being formed, such owner or occupier or those claiming under him shall not be entitled so to cross the railway.

Owners and occupiers crossing.

10. If the railway cross any public highway or parish road on a level, the Company shall, if ordered by two Justices so to do, erect and at all times maintain good and sufficient gates across such road
 45 on each side of the railway where the same shall communicate therewith, and shall, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same
 50 shall have to cross the 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 entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts,
 55 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 Railway Commissioners of New South Wales, in any case in which they shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such
 road

Provisions in cases where roads are crossed on a level.

Oakey Park Coal-mining Company's Railway.

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 trucks passing along the railway shall have occasion
5 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.

11. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the railway it shall
10 be lawful for the Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the
15 Railway Commissioners of New South Wales, 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 Commissioners shall, after considering the said report, certify that their exercise is not necessary for the public safety. Provided also, that such
20 works shall be as little injurious to the 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
25 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 in this Act provided with respect to the lands originally taken for the purpose of making
30 the 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.

35 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.

40 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 main 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.

45 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 feet if over a private road, not being a tramroad or railroad, or if the same
50 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

55 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

Oakey Park Coal-mining Company's Railway.

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.

- 5 The ascent shall not be more than one foot in thirty feet if the road be a main 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
10 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 for bridges over or under the railway, the width of
15 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
20 width of such bridge on either side thereof, the Company 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 on the maximum width herein prescribed for a bridge in the like case over or
25 under the railway.

The width of the bridges need not exceed the width of the road in certain cases.

15. Provided also that if the mean 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
30 steeper than the inclination hereinbefore required to be preserved by the Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mean inclination of the road so to be crossed, or of the road so requiring to be altered or for which
35 another road shall be substituted.

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

16. The Company 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
40 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
45 passing over such lands shall have been laid out or formed or during the formation thereof.

Gates, buildings, &c.

- All sufficient posts, rails, hedges, ditches, mounds, or other fences
50 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; all necessary stiles, and such posts, rails, and other fences shall be made forthwith after the
55 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

Drains

Oakey Park Coal-mining Company's 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.

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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 as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places.

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Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid compensation instead of the making of them.

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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 animals under his care have passed through the same, he shall forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices.

25

18. The Company shall not be entitled to any mines of coal, iron-stone, slate, or other minerals under any private 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 Company.

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19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the railway shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or any of them 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:—

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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 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, the party who has himself appointed an arbitrator may appoint such

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Watering-places.

Penalty on persons omitting to fasten gates.

Minerals not to pass.

Compensation clause.

Appointment of arbitrators.

Oakey Park Coal-mining Company's Railway.

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.

5

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 arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Vacancy in arbitration to be supplied.

21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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.

22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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.

Attorney-General to appoint umpire on neglect.

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.

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

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 a single arbitrator appointed by both parties.

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

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.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

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.

Power of arbitrators to call for books.

27.

Oakey Park Coal-mining Company's Railway.

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, Notary Public, or Commissioner for Affidavits, make and subscribe the following declaration (that is to say) :—

5 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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

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. Penalty for misconduct.

15 28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

29. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the Company. Award to be delivered to the Company.

30. If the person or persons through whose lands the railway shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto. How compensation to be paid when any of parties under any disability.

31. 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

32. 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.

33. The Company shall make 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 Company of any of the matters and things hereby required to be performed by it, or otherwise. Compensation for temporary or recurring injuries.

34. If in any case in which, according to the provisions of this Act, the Company is authorized to enter upon and take possession of certain lands, Sheriff authorized to give possession of certain lands.

Oakey Park Coal-mining Company's Railway.

of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the Company from entering upon or taking possession of the same, it shall be lawful for the Company to
 5 issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by
 10 the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such person refusing to give possession, or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs, or the excess
 15 thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Commissioners, or to alter or interfere with the Great Western Railway, or
 20 any other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

36. The said Commissioners shall from time to time erect such signals and conveniences incident to the junction either upon their own
 25 lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, and other persons as may be necessary for the prevention of danger to, or interference with,
 30 the traffic at or near the junction, and in all cases at the expense of the Company.

37. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of
 the said Commissioners.

38. The Railway Commissioners may from time to time appoint
 35 any person to be inspector, for the purpose of inspecting the railway and of making any inquiry with respect to the condition of the works, or into the cause of any accident, provided that no person so appointed shall exercise any powers of interference in the affairs of
 40 the Company.

39. Every Inspector under this Act shall, for the purpose of
 any inspection or inquiry which he is directed by the Railway Commissioners to make or conduct, have the following powers, that is to
 say:—

- 45 (i) He may enter and inspect the railway and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto.
- (ii) He may, by summons under his hand, require the attendance
 50 of any person who is engaged in the management, service, or employment of the Company, and whom he thinks fit to call before him and examine for the said purpose, and may require answers or returns to such inquiries for the said purpose as he thinks fit to make.
- 55 (iii) He may require and enforce the production of all books, papers, and documents of the Company which he considers important for the said purpose.

40. Where, in or about the railway, or any of the works or
 buildings connected with such railway, or any building or place,
 whether

Lands belonging to Commissioners not to be taken.

Commissioners may erect signals and appoint watchmen and switchmen.

Working of signals to be under regulations of Commissioners.

Railway Commissioners may appoint inspectors.

Powers of Inspectors.

Accidents.

Oakey Park Coal-mining Company's Railway.

whether open or enclosed in connection with such railway, any of the following accidents take place in the course of working, that is to say:—

- 5 (i) Any accident attended with loss of life or personal injury to any person whomsoever.
- (ii) Any collision where one of the trains is a passenger train.
- (iii) Any passenger train, or any part of a passenger train, accidentally leaving the rails.
- 10 (iv) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused, or to be likely to cause, loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Railway Commissioners.

The Company working such railway shall send notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby, to the Railway Commissioners.

41. Such notice shall be in such form and shall contain such particulars as the Railway Commissioners may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place. Form of notice of accident

42. The Railway Commissioners may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. While such order is in force notice of every accident of the class to which the order relates shall be sent to the Railway Commissioners by telegraph immediately after the accident takes place. Failure to comply with the provisions of this section shall render the Company liable for each offence to a penalty not exceeding twenty pounds. Notice of certain accidents to be sent by telegraph.

43. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such railway upon giving to the said Company three months notice in writing of his intention to do so. If the amount tendered for the purchase of the property be considered inadequate by the Company, the amount shall be ascertained by assessment in terms of the "Public Lands Acquisition Act," before a Judge or jury. Power of purchase of railway by Government.

38. 44. Nothing herein contained shall alter or repeal or otherwise affect the "Government Railways Act of 1888," and the "Public Works Act of 1888." Railways and Public Works Acts of 1888 not repealed or altered.

39. 45. 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 "Railway" shall mean the railway by this Act authorized to be constructed. The word "Justice" shall mean any Justice of the Peace in and for the Colony of New South Wales, and where any matter shall be authorized 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 authorized or required to be done with the consent of any such owner, the word "Owner" shall mean any person or Corporation who, under the provisions of this Act would be able to sell land to the Company. Interpretation clause.

40. 46. This Act shall be styled and cited as the "Oakey Park Coal-mining Company's Railway Act of 1889." Short title.

Oakey Park Coal-mining Company's Railway.

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, 5 and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

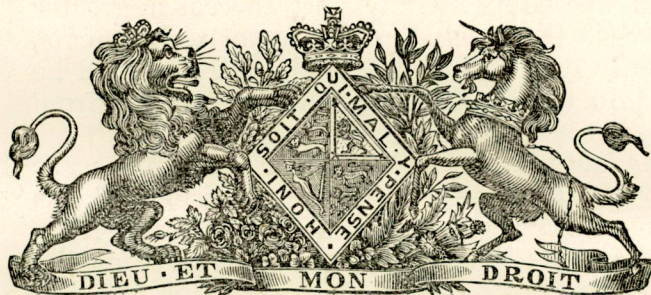
Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and 10 thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven 15 and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one- 20 half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four 25 and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

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

*Legislative Council Chamber,
Sydney, 22nd May, 1889. }*

*JOHN J. CALVERT,
Clerk of the Parliaments.*

New South Wales.



ANNO QUINQUAGESIMO SECUNDO

VICTORIÆ REGINÆ.

An Act to enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Lithgow belonging to the said Company, and to connect the same with the Great Western Railway.

WHEREAS the Oakey Park Coal-mining Company, Limited, a Preamble.
joint stock company, duly registered under and in accordance
with the provisions of the "Companies Act," and hereinafter designated
the Company, have opened coal-mines on land situated near Lithgow,
5 in the parish of Lett, county of Cook, and are desirous of constructing
a railway from the said coal-mines to the Great Western Railway, near
to Lithgow aforesaid, but as part of such railway is intended to be
made upon and pass through lands in the said county not belonging
to the Company, but believed to be the property of George Pile,
10 John Yelverton Mills, John Bennett, and the Bank of New Zealand,
and others, or some of them respectively, the same cannot be made
without Legislative authority. And whereas the said coal-mines are
likely to prove beneficial to this Colony, and the public are concerned
in promoting such an increase in the facilities for the supply of coal
15 for local consumption, steam navigation, and export, as would result
from the construction of the railway; it is therefore desirable to
c 45—A authorize

Oakey Park Coal-mining Company's Railway.

authorize by Legislative enactment the construction of the 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
 5 to be taken and occupied thereby. 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 :—

- 10 1. It shall be lawful for the Company to make and construct the railway from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with
 15 the Great Western Railway, in accordance with the "Public Works Act of 1888," and use so much of the said lands as the Company may require for the purpose of the railway in the direction described in the Schedule of this Act, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments,
 20 and foundations of the railway. Provided that the railway shall be constructed and brought into use within the term of five years from the passing of this Act.

Authority to construct railway and to connect the same with the Great Western Railway.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this
 25 Act for the purpose of the railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be
 30 found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any
 35 such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands for any of the purposes
 40 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
 45 cattle from or upon the lands traversed by such roads. And in case of any difference between the owners or occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices shall deem necessary for the purposes aforesaid, on application being made to
 50 them.

Lands vested in the Company without conveyance.

3. The railway shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton
 of a toll to the Company of a sum not exceeding twopence per ton per mile in respect of every ton of goods for every transit, the party seeking transit supplying and loading his own trucks or waggons,
 55 and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of
 the

Railway open to the public.

Oakey Park Coal-mining Company's Railway.

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply
 5 the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power,
 10 the Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of repairing
 15 and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners or Branch railways. occupiers of the lands traversed by the railway to lay down upon their own lands any collateral branches of railway to communicate with the
 20 railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 affecting such communication in places where the communication can be made with safety to the
 25 public, and without injury to the railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say) —

The Company shall not be bound to make any such openings in any place which they shall have set apart for any specific
 30 purpose with which such communication would interfere, nor upon any bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company from time to time made with respect to passing upon or crossing the rail-
 35 way 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 Company under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter Power to divert or alter roads or watercourses. contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse crossing the railway, or to raise, sink, or divert any roadway or water-
 45 course, in order the more conveniently to carry the same over, or under, or by the side of the railway.

6. If the Company do not cause another sufficient road, or new Penalty for not substituting roads or watercourses. creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit
 50 ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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
 55 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.

7. If in the course of making the railway, the Company shall Repairs of roads. use or interfere with any road they shall from time to time make good
 all

Oakey Park Coal-mining Company's Railway.

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 Company, 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
 5 be made in the state of such road in respect of damage done by the Company, and within such period as they may think reasonable, and may impose on the Company 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
 10 other person having the management of the road interfered with by the Company, 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 Company
 15 on such road in the course of using thereof.

8. If the 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
 20 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on
 25 the level.

Bridges to be constructed where the railway crosses highway.

9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions in this Act contained have been required to make between lands intersected by the railway and no longer, the owners and occupiers of such lands,
 30 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 said lands or for the exercise of such right-of-way, and so
 35 as not to obstruct the passage along the railway, or to damage the same; nevertheless, if the owner or occupier of any such land have in his arrangements with the Company received or agreed to receive compensation for, or on account of, any such communications, instead
 40 of the same being formed, such owner or occupier or those claiming under him shall not be entitled so to cross the railway.

Owners and occupiers crossing.

10. If the railway cross any public highway or parish road on a level, the Company shall, if ordered by two Justices so to do, erect and at all times maintain good and sufficient gates across such road
 45 on each side of the railway where the same shall communicate therewith, and shall, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same
 50 shall have to cross the 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 entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts,
 55 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 Railway Commissioners of New South Wales, in any case in which they shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such
 road

Provisions in cases where roads are crossed on a level.

Oakey Park Coal-mining Company's Railway.

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 trucks passing along the railway shall have occasion
5 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.

11. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the railway it shall
10 be lawful for the Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the
15 Railway Commissioners of New South Wales, 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 Commissioners shall, after considering the said report, certify that their exercise is not necessary for the public safety. Provided also, that such
20 works shall be as little injurious to the 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
25 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 in this Act provided with respect to the lands originally taken for the purpose of making
30 the 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.

35 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.

40 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 main 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.

45 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 feet if over a private road, not being a tramroad or railroad, or if the same
50 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.

55 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

Oakey Park Coal-mining Company's Railway.

- 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.
- 5 The ascent shall not be more than one foot in thirty feet if the road be a main 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
- 10 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 for bridges over or under the railway, the width of
- 15 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
- 20 width of such bridge on either side thereof, the Company 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 on the maximum width herein prescribed for a bridge in the like case over or
- 25 under the railway.
15. Provided also that if the mean 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
- 30 steeper than the inclination hereinbefore required to be preserved by the Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mean inclination of the road so to be crossed, or of the road so requiring to be altered or for which
- 35 another road shall be substituted.
16. The Company 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:—
- Such and so many convenient gates, bridges, arches, culverts, and
- 40 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
- 45 passing over such lands shall have been laid out or formed or during the formation thereof.
- All sufficient posts, rails, hedges, ditches, mounds, or other fences
- 50 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; all necessary stiles, and such posts, rails, and other fences shall be made forthwith after the
- 55 taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be.
- Also, all necessary arches, tunnels, culverts, drains, or other
- passages, either over or under, or by the sides of the railway,
- of

The width of the bridges need not exceed the width of the road in certain cases.

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

Works for benefit of owners.

Gates, buildings, &c.

Fences.

Drains.

Oakey Park Coal-mining Company's 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 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 as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places.

Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid compensation instead of the making of 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 animals under his care have passed through the same, he shall forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices.

18. The Company shall not be entitled to any mines of coal, iron-stone, slate, or other minerals under any private 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 Company.

19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the railway shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or any of them 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 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, the party who has himself appointed an arbitrator may appoint such

Oakey Park Coal-mining Company's Railway.

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.

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 arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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.

22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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.

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.

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 a single arbitrator appointed by both parties.

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.

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.

Oakey Park Coal-mining Company's Railway.

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, Notary Public, or Commissioner for Affidavits, make and subscribe the following declaration (that is to say) :—

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

5 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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

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. Penalty for misconduct.

15 28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators
20 shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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
25 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.

29. The arbitrators shall deliver their award in writing to the Company, who shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party, and
30 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, but in every such case the party claiming payment shall be bound to make out a title to the
35 said lands, or to the interest claimed by him therein, to the satisfaction of the Company. Award to be delivered to the Company.

30. If the person or persons through whose lands the railway shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not
40 entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto. How compensation to be paid when any of parties under any disability.

45 31. 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

32. 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.

50 33. The Company shall make 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
55 by the Company of any of the matters and things hereby required to be performed by it, or otherwise. Compensation for temporary or recurring injuries.

34. If in any case in which, according to the provisions of this Act, the Company is authorized to enter upon and take possession
of Sheriff authorized to give possession of certain lands.

Oakey Park Coal-mining Company's Railway.

of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the Company from entering upon or taking possession of the same, it shall be lawful for the Company to
 5 issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by
 10 the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such person refusing to give possession, or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs, or the excess
 15 thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Com-
 20 missioners, or to alter or interfere with the Great Western Railway, or any other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

25 36. The said Commissioners shall from time to time erect such signals and conveniences incident to the junction either upon their own lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, and other persons as may be necessary for the prevention of danger to, or interference with,
 30 the traffic at or near the junction, and in all cases at the expense of the Company.

37. The working and management of such signals and con-
 veniences, wherever situate, shall be under the exclusive regulation of
 the said Commissioners.

35 38. Nothing herein contained shall alter or repeal or otherwise affect the "Government Railways Act of 1888," and the "Public
 Works Act of 1888."

39. The following words and expressions in this Act shall have
 40 the meaning hereby assigned to them, unless there be something either in the subject or context repugnant to such construction. The word
 "Railway" shall mean the railway by this Act authorized to be con-
 structed. The word "Justice" shall mean any Justice of the Peace
 in and for the Colony of New South Wales, and where any matter
 shall be authorized or required to be done by two Justices, the
 45 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 authorized or required to be done with
 the consent of any such owner, the word "Owner" shall mean any
 50 person or Corporation who, under the provisions of this Act would be
 able to sell land to the Company.

40. This Act shall be styled and cited as the "Oakey Park
 Coal-mining Company's Railway Act of 1889."

Lands belonging to
Commissioners not to
be taken.

Commissioners may
erect signals and
appoint watchmen
and switchmen.

Working of signals to
be under regulations
of Commissioners.

Railways and Public
Works Acts of 1888
not repealed or
altered.

Interpretation clause.

Short title.

Oakey Park Coal-mining Company's Railway.

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, 5 and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and 10 thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven 15 and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one- 20 half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four 25 and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

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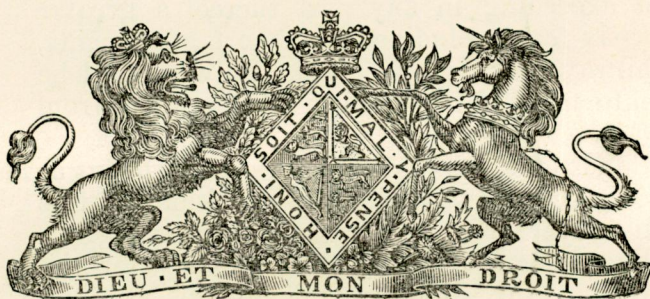
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This PRIVATE BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

*Legislative Council Chamber,
Sydney, 22nd May, 1889. }*

*JOHN J. CALVERT,
Clerk of the Parliaments.*

New South Wales.



ANNO QUINQUAGESIMO SECUNDO

VICTORIÆ REGINÆ.

An Act to enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Lithgow belonging to the said Company, and to connect the same with the Great Western Railway.

WHEREAS the Oakey Park Coal-mining Company, Limited, a Preamble.
joint stock company, duly registered under and in accordance
with the provisions of the "Companies Act," and hereinafter designated
the Company, have opened coal-mines on land situated near Lithgow,
5 in the parish of Lett, county of Cook, and are desirous of constructing
a railway from the said coal-mines to the Great Western Railway, near
to Lithgow aforesaid, but as part of such railway is intended to be
made upon and pass through lands in the said county not belonging
to the Company, but believed to be the property of George Pile,
10 John Yelverton Mills, John Bennett, and the Bank of New Zealand,
and others, or some of them respectively, the same cannot be made
without Legislative authority. And whereas the said coal-mines are
likely to prove beneficial to this Colony, and the public are concerned
in promoting such an increase in the facilities for the supply of coal
15 for local consumption, steam navigation, and export, as would result
from the construction of the railway; it is therefore desirable to

Oakey Park Coal-mining Company's Railway.

authorize by Legislative enactment the construction of the 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
 5 to be taken and occupied thereby. 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 :—

- 10 1. It shall be lawful for the Company to make and construct the railway from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with
 15 the Great Western Railway, in accordance with the "Public Works Act of 1888," and use so much of the said lands as the Company may require for the purpose of the railway in the direction described in the Schedule of this Act, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments,
 20 and foundations of the railway. Provided that the railway shall be constructed and brought into use within the term of five years from the passing of this Act.

Authority to construct railway and to connect the same with the Great Western Railway.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this
 25 Act for the purpose of the railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be
 30 found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any
 35 such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands for any of the purposes
 40 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
 45 cattle from or upon the lands traversed by such roads. And in case of any difference between the owners or occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices shall deem necessary for the purposes aforesaid, on application being made to
 50 them.

Lands vested in the Company without conveyance.

3. The railway shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton
 of a toll to the Company of a sum not exceeding twopence per ton per mile in respect of every ton of goods for every transit, the party seeking transit supplying and loading his own trucks or waggons,
 55 and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of
 the

Railway open to the public.

Oakey Park Coal-mining Company's Railway.

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply
 5 the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power,
 10 the Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of repairing
 15 and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners or Branch railways. occupiers of the lands traversed by the railway to lay down upon their own lands any collateral branches of railway to communicate with the
 20 railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 affecting such communication in places where the communication can be made with safety to the
 25 public, and without injury to the railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say)—

The Company shall not be bound to make any such openings in any place which they shall have set apart for any specific
 30 purpose with which such communication would interfere, nor upon any bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company from time to time made with respect to passing upon or crossing the rail-
 35 way 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 Company under the direction of their engineer.

5. For the purposes and subject to the provisions hereinafter Power to divert or alter roads or watercourses. contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse
 45 crossing the railway, or to raise, sink, or divert any roadway or watercourse, in order the more conveniently to carry the same over, or under, or by the side of the railway.

6. If the Company do not cause another sufficient road, or new Penalty for not substituting roads or watercourses. creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit
 50 ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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
 55 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.

7. If in the course of making the railway, the Company shall Repairs of roads. use or interfere with any road they shall from time to time make good
 all

Oakey Park Coal-mining Company's Railway.

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 Company, 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
 5 be made in the state of such road in respect of damage done by the Company, and within such period as they may think reasonable, and may impose on the Company 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
 10 other person having the management of the road interfered with by the Company, 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 Company
 15 on such road in the course of using thereof.

8. If the 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
 20 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on
 25 the level.

Bridges to be constructed where the railway crosses highway.

9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions in this Act contained have been required to make between lands intersected by the railway and no longer, the owners and occupiers of such lands,
 30 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 occupy-
 35 ing the said 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 land have in his arrangements with the Company received or agreed to receive compensation for, or on account of, any such communications, instead
 40 of the same being formed, such owner or occupier or those claiming under him shall not be entitled so to cross the railway.

Owners and occupiers crossing.

10. If the railway cross any public highway or parish road on a level, the Company shall, if ordered by two Justices so to do, erect and at all times maintain good and sufficient gates across such road
 45 on each side of the railway where the same shall communicate therewith, and shall, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same
 50 shall have to cross the 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 entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts,
 55 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 Railway Commissioners of New South Wales, in any case in which they shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such
 road

Provisions in cases where roads are crossed on a level.

Oakey Park Coal-mining Company's Railway.

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 trucks passing along the railway shall have occasion 5 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.

11. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the railway it shall 10 be lawful for the Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the 15 Railway Commissioners of New South Wales, 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 Commissioners shall, after considering the said report, certify that their exercise is not necessary for the public safety. Provided also, that such 20 works shall be as little injurious to the 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 25 works, the amount of which compensation, in case of any dispute about the same, shall be settled by arbitrators in the manner herein-after mentioned; and provided also, that no land shall be taken permanently for any such works otherwise than is in this Act provided with respect to the lands originally taken for the purpose of making 30 the 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 35 regulations, that is to say:—

Construction of bridges over roads.

- 35 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.

- 40 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 main 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.

- 45 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 feet if over a private road, not being a tramroad or railroad, or if the same 50 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 55 say:—

Construction of bridges over railroad.

- 55 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

Oakey Park Coal-mining Company's Railway.

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.

- 5 The ascent shall not be more than one foot in thirty feet if the road be a main 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.

- 10 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 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 Company 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 on the maximum width herein prescribed for a bridge in the like case over or under the railway.

The width of the bridges need not exceed the width of the road in certain cases.

- 25 15. Provided also that if the mean 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 Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mean 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.

- 35 16. The Company 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.

- 40 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, buildings, &c.

- 45 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; 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.

- 50 Also, all necessary arches, tunnels, culverts, drains, or other passages, either over or under, or by the sides of the railway, of

Drains.

Oakey Park Coal-mining Company's 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 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 as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places.

Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid compensation instead of the making of 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 animals under his care have passed through the same, he shall forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices.

18. The Company shall not be entitled to any mines of coal, iron-stone, slate, or other minerals under any private 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 Company.

19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the railway shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or any of them 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 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, the party who has himself appointed an arbitrator may appoint such

Oakey Park Coal-mining Company's Railway.

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.

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 arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Vacancy in arbitration to be supplied.

21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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.

22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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.

Attorney-General to appoint umpire on neglect.

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.

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

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 a single arbitrator appointed by both parties.

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

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.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

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.

Power of arbitrators to call for books.

Oakey Park Coal-mining Company's Railway.

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, Notary Public, or Commissioner for Affidavits, make and subscribe the following declaration (that is to say) :—

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

5 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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

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. Penalty for misconduct.

15 28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

29. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the Company. Award to be delivered to the Company.

30. If the person or persons through whose lands the railway shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto. How compensation to be paid when any of parties under any disability.

31. 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

32. 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.

33. The Company shall make 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 Company of any of the matters and things hereby required to be performed by it, or otherwise. Compensation for temporary or recurring injuries.

34. If in any case in which, according to the provisions of this Act, the Company is authorized to enter upon and take possession of Sheriff authorized to give possession of certain lands.

Oakey Park Coal-mining Company's Railway.

of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the Company from entering upon or taking possession of the same, it shall be lawful for the Company to
 5 issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by
 10 the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such person refusing to give possession, or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs, or the excess
 15 thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Com-
 20 missioners, or to alter or interfere with the Great Western Railway, or any other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

Lands belonging to Commissioners not to be taken.

25 36. The said Commissioners shall from time to time erect such signals and conveniences incident to the junction either upon their own lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, and other persons as may be necessary for the prevention of danger to, or interference with,
 30 the traffic at or near the junction, and in all cases at the expense of the Company.

Commissioners may erect signals and appoint watchmen and switchmen.

37. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of
 the said Commissioners.

Working of signals to be under regulations of Commissioners.

35 38. Nothing herein contained shall alter or repeal or otherwise affect the "Government Railways Act of 1888," and the "Public
 Works Act of 1888."

Railways and Public Works Acts of 1888 not repealed or altered.

39. The following words and expressions in this Act shall have the meaning hereby assigned to them, unless there be something either
 40 in the subject or context repugnant to such construction. The word "Railway" shall mean the railway by this Act authorized to be constructed. The word "Justice" shall mean any Justice of the Peace in and for the Colony of New South Wales, and where any matter shall be authorized or required to be done by two Justices, the
 45 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 authorized or required to be done with the consent of any such owner, the word "Owner" shall mean any
 50 person or Corporation who, under the provisions of this Act would be able to sell land to the Company.

Interpretation clause.

40. This Act shall be styled and cited as the "Oakey Park
 Coal-mining Company's Railway Act of 1889."

Short title.

Oakey Park Coal-mining Company's Railway.

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one-half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

Legislative Council.

52^o VICTORIÆ, 1889.

A BILL

To enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near ~~Eskbank~~ **Lithgow** belonging to the said Company, and to connect the same with the Great Western Railway.

(As amended and agreed to in Select Committee.)

WHEREAS the Oakey Park Coal-mining Company, Limited, a Preamble. joint stock company, duly registered under and in accordance with the provisions of the "Companies Act," and hereinafter designated the Company, have opened coal-mines on land situated 5 near Lithgow, in the parish of Lett, county of Cook, and are desirous of constructing a railway from the said coal-mines to the Great Western Railway, near to Lithgow aforesaid, but as part of such ~~proposed railways~~ **is** intended to be made upon and pass through lands in the said county not belonging to the said 10 Company, but believed to be the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand, and others, or some of them respectively, the same cannot be made without Legislative authority. And whereas the said coal-mines are likely to prove beneficial to ~~the~~ **this** Colony, and the public are concerned in 15 moting such an increase in the facilities for the supply of coal for local consumption, steam navigation, and export, as would result from the construction of the said ~~proposed~~ railway; it is therefore desirable to

c 45—A

authorize

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

authorize 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 ~~used or~~ **taken** and occupied thereby. 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 :—

Authority to construct railway and to connect the same with the Great Western Railway.

1. It shall be lawful for the Company to make and construct **the railways**— from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with the Great Western Railway, **in accordance with the "Public Works Act of 1888,"** and use so much of the said lands as the said Company may require for the purpose of ~~such the railway in the lines direction~~ described in the Schedule ~~hereto, or either of them,~~ **of this Act,** not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments, and foundations of the said railway. Provided that the said railway shall be constructed and brought into use within the term of five years from the passing of this Act.

Lands vested in the Company without conveyance.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this Act for the purpose of the said railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the said railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands 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 occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices of the Peace shall deem necessary for the purposes aforesaid, on application being made to them.

Railway open to the public.

3. The railway shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton per mile in respect of every ton of goods for every transit, the party seeking transit supplying and loading his own trucks or waggons, and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of the

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply
 5 the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power, the
 10 Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of
 15 repairing and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners or occupiers of the lands traversed by the railway to lay down upon
 20 their own lands any collateral branches of railway to communicate with the railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 affecting such communication in places where the communication can be made with safety to
 25 the public, and without injury to the railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say)—

The Company shall not be bound to make any such openings in any place which they shall have set apart for any specific
 30 purpose with which such communication would interfere, nor upon any bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company from time to time made with respect to passing upon or crossing the railway and otherwise, and the persons making or using such
 35 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 Company under the direction of their engineer.

3. 5. For the purposes and subject to the provisions hereinafter contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse
 40 crossing the railway, ~~or either of them~~, or to raise, sink, or divert any roadway or watercourse, in order the more conveniently to carry the same over, or under, or by the side of the railway, ~~or either of them~~.

Power to divert or alter roads or watercourses.

4. 6. If the Company do not cause another sufficient road, or new creek, or watercourse to be so made before they interfere with any
 50 such existing road, creek, or watercourse as aforesaid, they shall forfeit ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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
 55 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 roads or watercourses.

5. 7. If in the course of making the said railway, ~~or either of them~~, the Company shall use or interfere with any road they shall from
 time

Repairs of roads.

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 Company, 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 the Company, and within such period as they may think reasonable, and may impose on the Company 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 Company, 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 Company on such road in the course of using thereof. 15

Bridges to be constructed where the railway crosses highway.

6. 8. If the 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on the level. 25

Owners and occupiers crossing.

7. 9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions herein in this Act 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 said lands or for the exercise of such right-of-way, and so as not to obstruct the passage along the railways, or to damage the same; nevertheless, if the owner or occupier of any such land have in his arrangements with the Company 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 railways. 40

Provisions in cases where roads or tramways are crossed on a level.

8. 10. If the railways cross any public highway or parish road on a level, the Company shall, if ordered by two Justices so to do, erect and at all times maintain good and sufficient gates across such road on each side of the railways where the same shall communicate therewith, and shall, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road 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 the 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 railways, and the person entrusted 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 Railway Commissioners of New South Wales, in any case in which he they shall be satisfied that it will be more conducive to the public safety that the gates on any

any level crossing over any such road shall be kept closed across the railways, 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 trucks passing
5 along the railways 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.

9. 11. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the said railway it
10 shall be lawful for the Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the
15 Secretary for Public Works **Railway Commissioners of New South Wales**, 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 Commissioners** shall, after considering the said report, certify that their exercise is not necessary for the public
20 safety. Provided also, that such works shall be as little injurious to the 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
25 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 in this Act provided with respect to the lands originally
30 taken for the purpose of making the said railway.

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

10. 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.

35 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.

40 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 main 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
45 private road.

50 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 feet 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.

11. 13. Every bridge erected for carrying any road over the railways shall be built in conformity with the following regulations, that is to
55 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

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~~ main 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.

The width of the bridges need not exceed the width of the road in certain cases.

12- 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 for bridges over or under the railways, 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 railways, the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the Company 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 on the maximum width herein prescribed for a bridge in the like case over or under the railways.

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

13- 15. Provided also that if the mean 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 Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said ~~mesne~~ mean inclinations 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.

Gates, buildings, &c.

16. The Company 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:—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; 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

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.

5 Also, proper watering places for cattle, or compensation in lieu Watering-places. 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
10 sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places.

15 Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid
20 compensation instead of the making of 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 animals under his care have passed through the same, he shall
25 forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices of the Peace. Penalty on persons omitting to fasten gates.

18. The Company shall not be entitled to any mines of coal, iron- stone, slate, or other minerals under any private land whereof the surface is vested in them by virtue of this Act, except only such parts
30 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 Company. Minerals not to pass.

14- 19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the said railways, or either of them,
35 shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company 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~~ any of them by reason of the execution of the works, or if any other question as to compensation
40 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
45 nominate and appoint an arbitrator, to whom such dispute or other matter shall be referred, and every 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
50 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
55 fail to appoint such arbitrator, then, upon such failure, the party who has himself appointed an arbitrator may appoint such Appointment of arbitrators.

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.

5

Vacancy in arbitration to be supplied.

15. 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 10 seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as 15 aforesaid.

Appointment of umpire.

16. 21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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 20 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 25 final.

Attorney-General to appoint umpire on neglect.

17. 22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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 30 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*.

18. 23. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable, or shall refuse, or for fourteen 35 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*.

19. 24. If where more than one arbitrator shall have been appointed 40 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 a single arbitrator appointed by both parties.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

20. 25. If where more than one arbitrator shall have been appointed, 45 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 50 hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Power of arbitrators to call for books.

21. 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 55 dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

22- 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, Notary Public, or Commissioner for Affidavits, make and subscribe the following declaration (that is to say) :—

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

5 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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

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.

Penalty for misconduct.

15 23- 28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

24- 29. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the said Company.

Award to be delivered to the Company.

25- 30. If the person or persons through whose lands the said railway or either of them shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from the this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid and applied in the same manner in all respects as the amount of compensation to be paid by the Commissioner for Railways in like cases, under the provisions of the Act made and passed in the twenty-second year of the reign of Her present Majesty, number nineteen, is to be ascertained, paid, and applied into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto.

How compensation to be paid when any of parties under any disability.

50 26- 31. 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.

27- 32. 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.

55 28- 33. The Company shall make 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

Compensation for temporary or recurring injuries.

be occasioned to the said owners or occupiers by the non-performance by the said Company of any of the matters and things hereby required to be performed by them it, or otherwise.

Sheriff authorized to give possession of certain lands.

29. 34. If in any case in which, according to the provisions of this Act, the said Company is authorized to enter upon and take possession 5 of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the said Company from entering upon or taking possession of the same, it shall be lawful for the said Company to issue its warrant to the Sheriff to deliver possession of the same to 10 the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs 15 shall be deducted and retained by the Company from the compensation, if any, then payable to such party person refusing to give possession, or if no such compensation shall be payable to such party person, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, 20 shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

Lands belonging to Commissioners not to be taken.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Commissioners, or to alter or interfere with the Great Western Railway, or any 25 other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

Commissioners may erect signals and appoint watchmen and switchmen.

36. The said Commissioners shall from time to time erect such 30 signals and conveniences incident to the junction either upon their own lands or on the lands of the Company, and may from time to time appoint and remove such watchman, switchman, and other persons as may be necessary for the prevention of danger to, or interference with, the traffic at or near the junction, and in all cases at the expense of the 35 Company.

Working of signals to be under regulations of Commissioners.

37. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the said Commissioners.

Railways and Public Works Acts of 1888 not repealed or altered.

38. Nothing herein contained shall alter or repeal or otherwise 40 affect the "Government Railways Act of 1888," and the "Public Works Act of 1888."

Interpretation clause.

39. 39. 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 45 "Railway" shall mean the railway hereby by this Act authorized to be constructed. The word "Justice" shall mean any Justice of the Peace in and for the territory Colony of New South Wales, and where any matter shall be authorized or required to be done by two Justices, the expression "two Justices" shall mean two Justices assembled and acting 50 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 authorized 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 55 would be able to sell land to the Company.

Short title.

40. This Act shall be styled and cited as the "Oakey Park Coal-mining Company's Railway Act of 1889."

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, 5 and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and 10 thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven 15 and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one- 20 half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four 25 and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

Legislative Council.

52^o VICTORIÆ, 1889.

A BILL

To enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near ~~Eskbank~~ **Lithgow** belonging to the said Company, and to connect the same with the Great Western Railway.

(As amended and agreed to in Select Committee.)

WHEREAS the Oakey Park Coal-mining Company, Limited, a ^{Preamble.} joint stock company, duly registered under and in accordance with the provisions of the "Companies Act," and hereinafter designated the Company, have opened coal-mines on land situated near Lithgow, in the parish of Lett, county of Cook, and are desirous of constructing a railway from the said coal-mines to the Great Western Railway, near to Lithgow aforesaid, but as part of such ~~proposed~~ railways ~~are~~ **is** intended to be made upon and pass through lands in the said county not belonging to the said Company, but believed to be the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand, and others, or some of them respectively, the same cannot be made without Legislative authority. And whereas the said coal-mines are likely to prove beneficial to ~~the~~ **this** Colony, and the public are concerned in promoting such an increase in the facilities for the supply of coal for local consumption, steam navigation, and export, as would result from the construction of the said ~~proposed~~ railway; it is therefore desirable to authorize

c 45—A

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

authorize 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 ~~used or~~ taken and occupied thereby. 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 :—

Authority to construct railway and to connect the same with the Great Western Railway.

1. It shall be lawful for the Company to make and construct the railways— from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with the Great Western Railway, in accordance with the “Public Works Act of 1888,” and use so much of the said lands as the said Company may require for the purpose of such the railway in the ~~lines~~ direction described in the Schedule hereto, ~~or either of them,~~ of this Act, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments, and foundations of the said railway. Provided that the said railway shall be constructed and brought into use within the term of five years from the passing of this Act.

Lands vested in the Company without conveyance.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this Act for the purpose of the said railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the said railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands 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 occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices of the Peace shall deem necessary for the purposes aforesaid, on application being made to them.

Railway open to the public.

3. The railway shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton per mile in respect of every ton of goods for every transit, the party seeking transit supplying and loading his own trucks or waggons, and the Company supplying locomotive power; and all trucks when emptied, shall be conveyed on their return free of charge. Provided always that it shall not be compulsory on the Company to supply locomotive power, unless the party seeking transit guarantee and bring fifty tons at least during the twelve working hours, and give notice of the

the same at least twenty-four hours previously. The railway shall, at all times, be open to the public upon payment of a toll to the Company of a sum not exceeding one penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply the locomotive power, as well as the trucks and waggons. Provided that so long as the Company shall be willing to supply locomotive power, no other person shall use locomotive power on the line. Provided that if the railway shall be damaged by parties who shall, themselves, use the railway for transit, and supply locomotive power, the Company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or if such damage do not exceed the sum of twenty pounds, summarily before two Justices; and in estimating such damage, the Company shall be entitled, not only to compensation for the cost of repairing and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

4. And be it enacted that it shall be lawful for the owners or occupiers of the lands traversed by the railway to lay down upon their own lands any collateral branches of railway to communicate with the railway for the purpose of bringing carriages to or from or upon the railway, and the Company 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 affecting such communication in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereupon, but this enactment shall be subject to the following restrictions and conditions (that is to say) —

The Company 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 bridge, nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company 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 Company under the direction of their engineer.

3. 5. For the purposes and subject to the provisions hereinafter contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse crossing the railway, ~~or either of them~~, or to raise, sink, or divert any roadway or watercourse, in order the more conveniently to carry the same over, or under, or by the side of the railway, ~~or either of them~~.

Power to divert or alter roads or watercourses.

4. 6. If the Company do not cause another sufficient road, or new creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit ten pounds for every day during which such substituted road, creek, or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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 roads or watercourses.

5. 7. If in the course of making the said railway, ~~or either of them~~, the Company shall use or interfere with any road they shall from time

Repairs of roads.

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 Company, 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 the Company, and within such period as they may think reasonable, and may impose on the Company 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 Company, 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 Company on such road in the course of using thereof.

Bridges to be constructed where the railway crosses highway.

6. 8. If the 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on the level.

Owners and occupiers crossing.

7. 9. Until the Company shall have made the bridges or other proper communications which they shall under the provisions ~~herein~~ in **this Act** 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~~ said lands or for the exercise of such right-of-way, and so as not to obstruct the passage along the railways, or to damage the same; nevertheless, if the owner or occupier of any such land have in his arrangements with the Company 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 railways.

Provisions in cases where roads or tramways are crossed on a level.

8. 10. If the railways cross any public highway or parish road on a level, the Company shall, if ordered by two Justices so to do, erect and at all times maintain good and sufficient gates across such road on each side of the railways- where the same shall communicate therewith, and shall, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road 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~~ the 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 railways, and the person entrusted 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 **Railway Commissioners of New South Wales**, in any case in which ~~he~~ they shall be satisfied that it will be more conducive to the public safety that the gates on any

any level crossing over any such road shall be kept closed across the railways, 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 trucks passing
5 along the railways 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.

9. 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 Company 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 case the Company shall, within forty-eight hours after such entry, make a report to the
15 Secretary for Public Works **Railway Commissioners of New South Wales**, 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 Commissioners** shall, after considering the said report, certify that their exercise is not necessary for the public
20 safety. Provided also, that such works shall be as little injurious to the 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
25 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 in this Act provided with respect to the lands originally
30 taken for the purpose of making the said railway.

10. 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:—

35 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.

40 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 main 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
45 private road.

50 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 feet 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.

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

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.

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

Construction of bridges over roads.

Construction of bridges over railroad.

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 main 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.

The width of the bridges need not exceed the width of the road in certain cases.

12. 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 for bridges over or under the railways, 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 railways, the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the Company 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 on the maximum width herein prescribed for a bridge in the like case over or under the railways.

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

13. 15. Provided also that if the mean 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 Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said ~~mesae~~ mean inclinations 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.

Gates, buildings, &c.

16. The Company 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:—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; 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

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.

5 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 10 sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly as may be. And the Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places.

15 Provided always that the Company shall not be required to make such accommodation works in such 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 land shall have agreed to receive and shall have been paid 20 compensation instead of the making of 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 animals under his care have passed through the same, he shall 25 forfeit for any such offence any sum not exceeding ten pounds, recoverable in a summary way before any two Justices of the Peace. Penalty on persons omitting to fasten gates.

18. The Company shall not be entitled to any mines of coal, iron- stone, slate, or other minerals under any private land whereof the surface is vested in them by virtue of this Act, except only such parts 30 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 Company. Minerals not to pass.

14. 19. If, within twenty-eight days after the passing of this Act, the persons through whose lands the said railways, or either of them, 35 shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company 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 any of them by reason of the execution of the works, or if any other question as to compensation 40 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 45 nominate and appoint an arbitrator, to whom such dispute or other matter shall be referred, and every 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 50 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 55 fail to appoint such arbitrator, then, upon such failure, the party who has himself appointed an arbitrator may appoint such

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.

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Vacancy in arbitration to be supplied.

15. 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 10 seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as 15 aforesaid.

Appointment of umpire.

16. 21. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into 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 20 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 25 final.

Attorney-General to appoint umpire on neglect.

17. 22. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the 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 30 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*.

18. 23. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable, or shall refuse, or for fourteen 35 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*.

19. 24. If where more than one arbitrator shall have been appointed 40 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 a single arbitrator appointed by both parties.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

20. 25. If where more than one arbitrator shall have been appointed, 45 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 50 hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Power of arbitrators to call for books.

21. 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 55 dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

22. 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, Notary Public, or Commissioner for Affidavits, make and subscribe the following declaration (that is to say) :—

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

5 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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

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. Penalty for misconduct.

15 23. 28. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

24. 29. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the said Company. Award to be delivered to the Company.

25. 30. If the person or persons through whose lands the said railway or either of them shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from the this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid and applied in the same manner in all respects as the amount of compensation to be paid by the Commissioner for Railways in like cases, under the provisions of the Act made and passed in the twenty-second year of the reign of Her present Majesty, number nineteen, is to be ascertained, paid, and applied into the Supreme Court of New South Wales to be applied for and obtained by the parties legally entitled thereto. How compensation to be paid when any of parties under any disability.

50 26. 31. 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

27. 32. 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.

55 28. 33. The Company shall make 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

Compensation for temporary or recurring injuries.

be occasioned to the said owners or occupiers by the non-performance by the said Company of any of the matters and things hereby required to be performed by them it, or otherwise.

Sheriff authorized to give possession of certain lands.

29. 34. If in any case in which, according to the provisions of this Act, the said Company is authorized to enter upon and take possession of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the said Company from entering upon or taking possession of the same, it shall be lawful for the said Company to issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such party person refusing to give possession, or if no such compensation shall be payable to such party person, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

Lands belonging to Commissioners not to be taken.

35. Nothing in this Act shall be deemed to authorize the Company to take or enter upon any lands belonging to the said Commissioners, or to alter or interfere with the Great Western Railway, or any other of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, without the previous consent in writing in every instance of the said Commissioners.

Commissioners may erect signals and appoint watchmen and switchmen.

36. The said Commissioners shall from time to time erect such signals and conveniences incident to the junction either upon their own lands or on the lands of the Company, and may from time to time appoint and remove such watchman, switchman, and other persons as may be necessary for the prevention of danger to, or interference with, the traffic at or near the junction, and in all cases at the expense of the Company.

Working of signals to be under regulations of Commissioners.

37. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the said Commissioners.

Railways and Public Works Acts of 1888 not repealed or altered.

38. Nothing herein contained shall alter or repeal or otherwise affect the "Government Railways Act of 1888," and the "Public Works Act of 1888."

Interpretation clause.

39. 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 "Railway" shall mean the railway hereby by this Act authorized to be constructed. The word "Justice" shall mean any Justice of the Peace in and for the territory Colony of New South Wales, and where any matter shall be authorized 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 authorized 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 Company.

Short title.

40. This Act shall be styled and cited as the "Oakey Park Coal-mining Company's Railway Act of 1889."

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, 5 and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and 10 thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven 15 and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes east, four chains and eighty-three links; thence by a line bearing north thirty-one degrees east, ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes east, two chains ninety-seven and one- 20 half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes west, eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes west, two chains and forty-nine links; thence by a line bearing south thirty-one degrees west, ninety-four 25 and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes west, seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes east, three chains to the point of commencement aforesaid.

52^o VICTORIÆ, 1889.

A BILL

To enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Eskbank belonging to the said Company, and to connect the same with the Great Western Railway.

WHEREAS the Oakey Park Coal-mining Company, Limited, a joint stock company, duly registered under and in accordance with the provisions of the "Companies Act," and hereinafter designated the Company, have opened coal-mines on land situated near Lithgow, in the parish of Lett, county of Cook, and are desirous of constructing a railway from the said coal-mines to the Great Western Railway, near to Lithgow aforesaid, but as part of such proposed railways are intended to be made upon and pass through lands in the said county not belonging to the said Company, but believed to be the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand, and others, or some of them respectively, the same cannot be made without Legislative authority. And whereas the said coal-mines are likely to prove beneficial to the Colony, and the public are concerned in promoting such an increase in the facilities for the supply of coal for local consumption, steam navigation, and export, as would result from the construction of the said proposed railway; it is therefore desirable to

40—A authorize

authorize 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 used or occupied thereby. 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:—

Authority to construct railways and to connect the same with the Great Western Railway.

1. It shall be lawful for the Company to make and construct railways from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with the Great Western Railway, and use so much of the said lands as the said Company may require for the purpose of such railway in the lines described in the Schedule hereto or either of them, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments, and foundations of the said railway. Provided that the said railway shall be constructed and brought into use within the term of five years from the passing of this Act.

Lands vested in the Company without conveyance.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this Act for the purpose of the said railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the said railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands 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 occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices of the Peace shall deem necessary for the purposes aforesaid, on application being made to them.

Power to divert or alter roads or watercourses.

3. For the purposes and subject to the provisions hereinafter contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse crossing the railway, or either of them, or to raise, sink, or divert any roadway or watercourse, in order the more conveniently to carry the same over, or under, or by the side of the railway, or either of them.

Penalty for not substituting roads or watercourses.

4. If the Company do not cause another sufficient road, or new creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit ten pounds for every day during which such substituted road, creek,

or

or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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.

5. If in the course of making the said railway, or either of them, the Company 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 Company, 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 the Company, and within such period as they may think reasonable, and may impose on the Company 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 Company, 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 Company on such road in the course of using thereof.

Repairs of roads.

6. If the 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 Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on the level.

Bridges to be constructed where the railway crosses highway.

7. Until the Company 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 railways, or to damage the same; nevertheless, if the owner or occupier of any such land have in his arrangements with the Company 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 railways.

Owners and occupiers crossing.

8. If the railways cross any public highway or parish road on a level, the Company shall, if ordered by two Justices so to do, erect and at all times maintain good and sufficient gates across such road on each side of the railways where the same shall communicate therewith, and shall, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road 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

Provisions in cases where roads or tramways are crossed on a level.

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 railways, and the person entrusted 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 railways, 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 trucks passing along the railways 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.

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

9. 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 Company 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 case the Company 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 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.

Construction of bridges over roads.

10. 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:—

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 feet 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.

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

Construction of bridges over railroad.

5 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.

10 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.

15 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.

12. 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 for bridges over or under the railways, 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 railways, the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the Company 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 on the maximum width herein prescribed for a bridge in the like case over or under the railways.

The width of the bridges need not exceed the width of the road in certain cases.

13. Provided also that if the mean 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 Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mesne inclinations 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.

14. If, within twenty-eight days after the passing of this Act, the person through whose lands the said railways, or either of them, shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company 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.

55 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 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

Appointment of arbitrators.

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 5 party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party who has 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 10 which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final and conclusive.

Vacancy in arbitration to be supplied.

15. If before the matter so referred shall be determined, any arbitrator appointed by either party shall die, or become incapable, or 15 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 arbitrator may proceed alone, 20 and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Appointment of umpire.

16. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into the matters referred to 25 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, 30 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.

Attorney-General to appoint umpire on neglect.

17. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the 35 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*.

18. If when a single arbitrator shall have been appointed such 40 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. 45

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

19. 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 a single arbitrator appointed by both parties. 50

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

20. 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 55 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.

21. 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
5 administer the oaths necessary for that purpose.

Power of arbitrators to call for books.

22. 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, Notary Public, or Commissioner for Affidavits, make and subscribe the following declaration (that is to say) :—

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

10 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

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

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.

Penalty for misconduct.

20 23. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators
25 shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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
30 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.

24. The arbitrators shall deliver their award in writing to the Company, who shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party, and
35 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, but in every such case the party claiming payment shall be bound to make out a title to the
40 said lands, or to the interest claimed by him therein, to the satisfaction of the said Company.

Award to be delivered to the Company.

25. If the person or persons through whose lands the said railway or either of them shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in
45 the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from the Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid and applied in the same manner in all respects as the amount of compensation to be paid
50 by the Commissioner for Railways in like cases, under the provisions of the Act made and passed in the twenty-second year of the reign of Her present Majesty, number nineteen, is to be ascertained, paid, and applied.

How compensation to be paid when any of parties under any disability.

26. 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

27. 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.

Compensation for temporary or recurring injuries.

28. The Company shall make 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 5 by the said Company of any of the matters and things hereby required to be performed by them, or otherwise.

Sheriff authorized to give possession of certain lands.

29. If in any case in which, according to the provisions of this Act, the said Company is authorized to enter upon and take possession of any lands required for the purpose of the undertaking, the owner 10 or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the said Company from entering upon or taking possession of the same, it shall be lawful for the said Company to issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the 15 receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, 20 if any, then payable to such party, or if no such compensation shall be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant 25 accordingly.

Interpretation clause.

30. 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 "Railway" shall mean the railway hereby authorized to be constructed. 30 The word "Justice" shall mean Justice of the Peace in and for the territory of New South Wales, and where any matter shall be authorized 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 35 to be given to the owner of any land, or where any Act shall be authorized 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 Company. 40

Short title.

31. This Act shall be styled and cited as the "Oakey Park Company's Railway Act of 1889."

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, 5 and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and 10 thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven 15 and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes, east four chains and eighty-three links; thence by a line bearing north thirty-one degrees, east ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes, east two chains ninety-seven and one- 20 half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes, west eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes, west two chains and forty-nine links; thence by a line bearing south thirty-one degrees, west ninety-four 25 and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes, west seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes, east three chains to the point of commencement aforesaid.

52^o VICTORIA, 1889.

A BILL

To enable the Oakey Park Coal-mining Company, Limited, to construct a line of Railway from land near Eskbank belonging to the said Company, and to connect the same with the Great Western Railway.

WHEREAS the Oakey Park Coal-mining Company, Limited, a Preamble.
joint stock company, duly registered under and in accordance
with the provisions of the "Companies Act," and hereinafter
designated the Company, have opened coal-mines on land situated
5 near Lithgow, in the parish of Lett, county of Cook, and are
desirous of constructing a railway from the said coal-mines to the
Great Western Railway, near to Lithgow aforesaid, but as part
of such proposed railways are intended to be made upon and
pass through lands in the said county not belonging to the said
10 Company, but believed to be the property of George Pile, John
Yelverton Mills, John Bennett, and the Bank of New Zealand, and
others, or some of them respectively, the same cannot be made without
Legislative authority. And whereas the said coal-mines are likely to
15 prove beneficial to the Colony, and the public are concerned in pro-
moting such an increase in the facilities for the supply of coal for local
consumption, steam navigation, and export, as would result from the
construction of the said proposed railway; it is therefore desirable to
40—A authorize

authorize 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 used or occupied thereby. 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:—

Authority to construct railways and to connect the same with the Great Western Railway.

1. It shall be lawful for the Company to make and construct railways from the land belonging to the Company through lands granted by the Crown to James Cawley Tucker and Edward Biddulph Henning, and now believed to be the properties of the several persons mentioned in the preamble of this Act, and to connect the same with the Great Western Railway, and use so much of the said lands as the said Company may require for the purpose of such railway in the lines described in the Schedule hereto or either of them, not exceeding in any part thereof a greater space in breadth than sixty-six feet, including the supports, abutments, and foundations of the said railway. Provided that the said railway shall be constructed and brought into use within the term of five years from the passing of this Act.

Lands vested in the Company without conveyance.

2. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this Act for the purpose of the said railway, with such right of ingress, egress, and regress upon the adjacent lands as may be necessary for the making and repairing of the said railway, shall, by virtue of this Act, and without the necessity of any conveyance, be vested in the Company. Provided that if in the exercise of the powers hereby granted it be found necessary to cross, cut through, raise, sink, shut, 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, or to divert the course or direction of any creek or watercourse, the Company shall, before the commencement of any such operations, cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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 Company, before they use the said lands 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 occupiers of such roads and lands and the Company as to the necessity for such fences and gates, such fences and gates shall be put up by the Company as two Justices of the Peace shall deem necessary for the purposes aforesaid, on application being made to them.

Power to divert or alter roads or watercourses.

3. For the purposes and subject to the provisions hereinafter contained, it shall be lawful for the Company, their deputies, agents, servants, and workmen, and all other persons by them authorized and empowered to divert or alter the course of any roadway or watercourse crossing the railway, or either of them, or to raise, sink, or divert any roadway or watercourse, in order the more conveniently to carry the same over, or under, or by the side of the railway, or either of them.

Penalty for not substituting roads or watercourses.

4. If the Company do not cause another sufficient road, or new creek, or watercourse to be so made before they interfere with any such existing road, creek, or watercourse as aforesaid, they shall forfeit ten pounds for every day during which such substituted road, creek, or

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or watercourse shall not be made after the existing road, creek, or watercourse shall have been interrupted, and such penalties 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 5 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.

5. If in the course of making the said railway, or either of them, the Company shall use or interfere with any road they shall from 10 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 Company, 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 15 damage done by the Company, and within such period as they may think reasonable, and may impose on the Company 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 20 interfered with by the Company, 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 Company on such road in the course of using thereof.

25 6. If the 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 30 and all other necessary works connected therewith shall be executed by and be at all times thereafter maintained at the expense of the Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railway across any highway on the level.

35 7. Until the Company 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 40 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 45 so as not to obstruct the passage along the railways, or to damage the same; nevertheless, if the owner or occupier of any such land have in his arrangements with the Company 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 50 under him shall not be entitled so to cross the railways.

8. If the railways cross any public highway or parish road on a level, the Company shall, if ordered by two Justices so to do, erect and at all times maintain good and sufficient gates across such road 55 on each side of the railways where the same shall communicate therewith, and shall, if so ordered as aforesaid, employ proper persons to open and shut such gates, and such gates shall be constantly kept closed across such road 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

Repairs of roads.

Bridges to be constructed where the railway crosses highway.

Owners and occupiers crossing.

Provisions in cases where roads or tramways are crossed on a level.

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 railways, and the person entrusted 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 railways, 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 trucks passing along the railways 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.

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

9. 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 Company 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 case the Company 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 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.

Construction of bridges over roads.

10. 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:—

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 feet 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.

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

Construction of bridges over railroad.

5 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.

10 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.

15 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.

12. 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 for bridges over or under the railways, 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 railways, the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the Company 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 on the maximum width herein prescribed for a bridge in the like case over or under the railways.

The width of the bridges need not exceed the width of the road in certain cases.

13. Provided also that if the mean 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 Company, then the Company may carry any such road over or under the railway, or may construct such altered or substituted road at any inclination not steeper than the said mesne inclinations 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.

14. If, within twenty-eight days after the passing of this Act, the person through whose lands the said railways, or either of them, shall pass, or any of them, and the Company shall not agree as to the amount of compensation to be paid by the Company 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.

55 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 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

Appointment of arbitrators.

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 5 party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party who has 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 10 which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final and conclusive.

Vacancy in arbitration to be supplied.

15. If before the matter so referred shall be determined, any arbitrator appointed by either party shall die, or become incapable, or 15 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 arbitrator may proceed alone, 20 and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Appointment of umpire.

16. When more than one arbitrator shall have been appointed, such arbitrators shall before they enter into the matters referred to 25 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, 30 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.

Attorney-General to appoint umpire on neglect.

17. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after the request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the 35 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*.

18. If when a single arbitrator shall have been appointed such 40 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. 45

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

19. 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 a single arbitrator appointed by both parties. 50

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

20. 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 55 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.

21. The said arbitrators, or their umpire, may call for the pro-duction 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.

Power of arbitrators to call for books.

22. 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, Notary Public, or Commissioner for Affidavits, make and subscribe the following declaration (that is to say) :—

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

10 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 "Oakey Park Coal-mining Company's Railway Act of 1889."

15 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.

Penalty for misconduct.

20 23. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same, or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, 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.

24. The arbitrators shall deliver their award in writing to the Company, 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, but in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein, to the satisfaction of the said Company.

Award to be delivered to the Company.

25. If the person or persons through whose lands the said railway or either of them shall pass, shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands, or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from the Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid and applied in the same manner in all respects as the amount of compensation to be paid by the Commissioner for Railways in like cases, under the provisions of the Act made and passed in the twenty-second year of the reign of Her present Majesty, number nineteen, is to be ascertained, paid, and applied.

How compensation to be paid when any of parties under any disability.

26. 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

27. 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.

Compensation for
temporary or
recurring injuries.

28. The Company shall make 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 Company of any of the matters and things hereby required to be performed by them, or otherwise. 5

Sheriff authorized to
give possession of
certain lands.

29. If in any case in which, according to the provisions of this Act, the said Company is authorized to enter upon and take possession of any lands required for the purpose of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the said Company from entering upon or taking possession of the same, it shall be lawful for the said Company to issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the Company from the compensation, if any, then payable to such party, or if no such compensation shall be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly. 10 15 20 25

Interpretation clause.

30. 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 "Railway" shall mean the railway hereby authorized to be constructed. The word "Justice" shall mean Justice of the Peace in and for the territory of New South Wales, and where any matter shall be authorized 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 authorized 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 Company. 30 35 40

Short title.

31. This Act shall be styled and cited as the "Oakey Park Company's Railway Act of 1889."

SCHEDULE.

Description of a portion of land required to be taken by the Oakey Park Coal-mining Company, Limited, for their proposed railway, out of portion seventy-nine, parish of Lett, county of Cook, formerly George Lee and William Glover's forty acres, 5 and out of portion eighty, parish of Lett, county of Cook, formerly James Caley Tucker and Edward Biddulph Hennings' forty acres, both portions now the property of George Pile, John Yelverton Mills, John Bennett, and the Bank of New Zealand.

Comprising all that piece or parcel of land in the parish of Lett, county of Cook, and Colony of New South Wales, containing by admeasurement one rood and 10 thirty-five and three-quarter perches, be the same a little more or less: Commencing at a point on the northern boundary fence of the Great Western Railway, which point bears north seventy-three degrees and twenty minutes east, and is distant one chain and forty links from the intersection of said fence to the eastern boundary of portion seventy-nine, parish of Lett; and bounded thence by the convex side of an arc of a circle of eleven 15 and one quarter chains radius, the chord of which arc bears north forty-three degrees and thirty-three minutes, east four chains and eighty-three links; thence by a line bearing north thirty-one degrees, east ninety-four and one-half links; thence by the concave side of an arc of a circle of seven and three-quarter chains radius, the chord of which arc bears north forty-two degrees and three minutes, east two chains ninety-seven and one- 20 half links to Farmer's Creek; thence by Farmer's Creek downwards bearing south eighty-nine degrees eight minutes, west eighty-five and one-half links; thence by the convex side of an arc of a circle of eight and one-quarter chains radius, the chord of which arc bears south thirty-eight degrees and fifty-seven minutes, west two chains and forty-nine links; thence by a line bearing south thirty-one degrees, west ninety-four 25 and one-half links; thence by the concave side of an arc of a circle of ten and three-quarter chains radius, the chord of which arc bears south fifty-one degrees and twenty minutes, west seven chains and thirty-nine links to the railway fence; and thence by the railway fence bearing north seventy-three degrees and twenty minutes, east three chains to the point of commencement aforesaid.

