

Legislative Council.

55^o VICTORIÆ, 1891.

A BILL

To authorise the construction and maintenance of a Tramway from the mines and quarries on Mineral Lease, portion two, parish Sebastopol, in the Colony of New South Wales, to a point to be determined on Mineral Lease, portion ten, parish Picton, in the said Colony, connecting with the tramway system of the Broken Hill Mines.

(As amended and agreed to in Select Committee.)

WHEREAS large quantities of mineral ores exist and are being quarried and mined at the quarries and mines on the lands situate in the parish of Sebastopol, county of Yancowinna, in the Colony of New South Wales, now held under lease from the Crown by Wyman Brown, of Sydney, in the said Colony, gentleman: And whereas large quantities of timber suitable for fuel exist upon the said lands: And whereas, for the purpose of facilitating the carriage of the said mineral ores, fuel, and timber from the said quarries, mines, and lands, the said Wyman Brown is desirous of constructing a single or double tramway for horse, steam, or other traction, over, across, and along the lands described in the Schedule hereto, from the said quarries, mines, and lands, in the said parish of Sebastopol, to a point to be determined on mineral lease, portion ten, parish of Picton, county Yancowinna, aforesaid: And whereas such tramway cannot be made without Legislative authority: And whereas the construction of the said proposed tramway would be largely for the benefit of the mining

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

mining public by materially decreasing the cost of carriage, thereby enabling the poorer class of ores to be profitably worked, and would be also the means of supplying the district of Broken Hill with cheap fuel, and it is therefore advisable to authorise, by Legislative enactment, the construction and maintenance of the said proposed tramway, 5 subject to the provisions hereinafter contained: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:— 10

Authority to
construct tramway.

1. It shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, upon the terms and conditions and subject to the provisions hereinafter contained, to make and construct a tramway for the carrying of the said mineral ores, fuel, timber, and of all persons engaged, and all materials, goods, and plant 15 necessary in and about the working thereof, from and to the said quarries, mines, and lands in the parish of Sebastopol aforesaid, by the route, and along and over the roads, streets, lands, and reserves, both public and private, described in the Schedule hereto, and to take and use so much of the said roads, streets, lands, and reserves, both public 20 and private, as may be required for the purposes of such tramway, but so that the same shall not occupy in part thereof on private lands a greater space in breadth than thirty-three feet, and on public lands in breadth sixty-six feet, including the support and foundations thereof, and to ~~take and use lease~~, in accordance with section eight of this Act, 25 so much public lands adjoining the said tramway not exceeding in the aggregate eighty acres, as may be required for the purpose of constructing tanks, sidings, or other necessary works in connection with such tramway.

Levels of line.

2. The gauge of the said tramway shall be three feet six inches, 30 and where it traverses public thoroughfares shall be laid at about the general level of such thoroughfares and so that the rails shall not project above the surface thereof; and the said Wyman Brown, his heirs, executors, administrators, or assigns, shall maintain in perfect order and repair the said tramway, and where the said tramway 35 traverses public thoroughfares, shall maintain, perfect, and keep in order and repair the pavements of the same between the rails of the said tramway, and for the space of one foot six inches on each side of the said rails, and furthermore shall erect and maintain all necessary causeways in connection with the said tramway. 40

Tramway to remain
property of Wyman
Brown, his heirs,
executors, adminis-
trators, and assigns.

3. The tramway and the material thereof shall not cease to be the property of the said Wyman Brown, his heirs, executors, administrators, and assigns, by reason of the same being laid as aforesaid.

Authorised persons
to have rights over
streets.

4. The said Wyman Brown, his heirs, executors, administrators, and assigns, and all other person or persons duly authorised, shall 45 have all necessary rights over the roads, streets, and lands described in the Schedule to this Act as are required for the construction, repair, completion, and use of the said tramway: Provided that there shall be no interference with ordinary traffic beyond what is reasonable and necessary for such purpose. 50

Carriage.

5. The tramway shall be for the use of the said Wyman Brown, his heirs, executors, administrators, and assigns, and of all persons engaged by him or them in and about the carriage, winning, and obtaining of fuel and timber and the said mineral ores, and for the carriage of the said fuel, timber, and mineral ores, and of all plant, 55 goods, and things necessary in and about the winning and obtaining the same, and shall be confined to the conveyance of such mineral ores and fuel, timber, and plant as aforesaid, and of all goods and things

things necessary in and about the same, and of all persons engaged in and about the same as aforesaid, to and from the said quarries, mines, and lands of the said Wyman Brown.

6. It shall be lawful for the persons using the said tramway to employ horses, steam, or other motive power, and carriages, waggons, or trucks to be drawn thereby.

To employ horse, steam, or other motive power.

7. The said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any mines of coal, iron, slate, or other minerals under any land whereof the surface is vested in him or 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 authorised, and such mines shall not be deemed to vest in the said Wyman Brown, his heirs, executors, administrators, and assigns.

Wyman Brown, his heirs, executors, administrators, and assigns not entitled to minerals.

8. Upon the completion of the tramway and works authorised by this Act, it shall be lawful for the Governor, with the advice of the Executive Council, in consideration of such completion, to grant to the said Wyman Brown, his heirs, executors, administrators, or assigns, a lease, or leases, for a term not exceeding twenty-one years of such Crown lands as shall have been necessarily used or taken for the said tramway at an annual rental not exceeding two shillings per acre.

Power to grant leases of land for tramway.

9. Before commencing the said tramway by this Act authorised to be made, the said Wyman Brown, his heirs, executors, administrators, or assigns shall, by some qualified engineer by them to be appointed, cause to be made and taken levels and surveys of the private lands through which such tramway is to be carried, together with a map or plan of the line of the said tramway, and of the lands through which it is to pass: Provided that it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, or assigns, ~~in making the said map or plan of the said line~~ to deviate in the route of the said tramway to the extent of not more than one and a-half miles on either side of the line described in the Schedule hereto annexed. And the said map or plan shall be kept at some convenient office at Broken Hill, and true copies thereof, signed by the said Wyman Brown, his heirs, executors, administrators, and assigns, shall be deposited with the clerk of Petty Sessions, at Broken Hill aforesaid, and such map or plan and copies thereof respectively shall be opened at all convenient times for public examination from the day of the date on which such notice as in the next succeeding section is provided shall be first published, and all persons shall be at liberty at all proper and convenient times to inspect the said map or plan or copies as aforesaid.

Before commencing tramway, survey to be made.

To be open to public inspection.

10. The said Wyman Brown, his heirs, executors, administrators, or assigns shall by advertisement in the *Government Gazette* and in one or more Sydney newspapers, and in one or more newspapers published or circulating in Broken Hill respectively, at least thirty days before the commencement of the formation of the tramway, give notice that they intend to construct the said tramway between the places thereof specified, according to a map or plan to be seen at an office (in the said notice specified) in Broken Hill aforesaid, and at the office of the said Clerk of Petty Sessions.

Notice to be given of intention to make tramway.

11. No advantage shall be taken of or against the said Wyman Brown, his heirs, executors, administrators, or assigns, or any interruption be given to the making of such tramway or other works on account of any omission or error in the said map or plan, but it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, or assigns, by themselves, their agents, officers, surveyors, servants, and workmen, to enter into and upon, and to take and use for the purpose of this Act any lands or grounds set out and described

Omission in map or plan not to impede making the tramway, &c.

described in the said map or plan, notwithstanding any such omission or error, in case it shall appear to any two Justices acting for the district or place in which such lands or ground shall be situated and be certified by writing under their hands, that such omission or error proceeds from mistake and not from fraud.

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Notice of lands
required for tramway.

12. 11. When the said Wyman Brown, his heirs, executors, administrators, or assigns shall have made and completed the map or plan hereinbefore required to be made, he or they shall give notice in writing of the lands taken and required for the said tramway, to all the parties interested in such lands, or to such of the said parties as shall be known to the said Wyman Brown, his heirs, executors, administrators, or assigns. And every such notice shall state the particulars of the lands so taken or required as aforesaid, and that the said Wyman Brown, his heirs, executors, administrators, or assigns, is or are willing to treat as to the compensation to be made to all parties for the lands taken or to be taken, and the damage sustained or to be sustained by them by reason of the exercise of the powers conferred by this Act, and shall demand in the said notice from such parties, and the said parties are hereby required to deliver forthwith to the said Wyman Brown, his heirs, executors, administrators, or assigns, at the cost of the said Wyman Brown, his heirs, executors, administrators, or assigns, the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof, together with an abstract of their title to such land, and if they claim in respect of damage the nature of the damage which they have sustained or will sustain by reason of the taking of such lands.

Service of notice on
owners and occupiers
of land.

13. 12. All notices required to be served by the said Wyman Brown, his heirs, executors, administrators, or assigns, upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found), and in case any such parties shall be absent from the Colony or cannot be found after diligent inquiry, shall be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

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

14. 13. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the said tramway, it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, and his or their workmen and servants, to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose; but in every such case the said Wyman Brown, his heirs, executors, administrators, or assigns, shall, within fourteen days after such entry, make a report to the Secretary for Public Works, specifying the nature of such accident or apprehended accident and of the works necessary to be done, and such powers shall cease and determine if the said Secretary shall, after considering the said report, certify that their exercise is not necessary for the public safety. Provided also that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible despatch, 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 tramway.

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15. 14. If within twenty-eight days of the service of such notice as aforesaid the said persons through whose lands the tramway shall pass, or any of them, and the said Wyman Brown, his heirs, executors, administrators, and assigns, shall not agree as to the amount of
 5 compensation to be paid by him or them for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or him, by reason of the execution of the works, or if any other question as to compensation shall arise under this Act, the amount of such compensation shall be settled by arbitrators in
 10 manner hereinafter mentioned (that is to say), unless both parties concur in the appointment of a single arbitrator, each party on the request of the other shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred; and every appointment of an arbitrator shall be under the hand and seal of such person or
 15 persons respectively; and such appointment shall be delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the
 20 death of either party operate as a revocation; and if for the space of fourteen days after 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 shall fail to appoint such arbitrator, then upon such failure it shall be
 25 lawful for the Attorney-General for the time being of the said Colony, on the application of the party who has himself appointed an arbitrator to appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matter which shall be in dispute, and in such case, the award or determination of such
 30 single arbitrator shall be final and conclusive.

16. 15. 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
 35 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 powers and authorities as were vested in the former arbitrator at
 40 the time of such his death, refusal, neglect, or disability as aforesaid.

17. 16. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint in writing under their hands an umpire, to decide any matters on which they shall differ, or which shall be
 45 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 so to do by the arbitrators or either of them, they shall forthwith after such death, refusal, or neglect, appoint another umpire in his place, and the decision of every such umpire upon the matters so
 50 referred to him shall be final.

18. 17. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after, request of either party to such arbitration neglect to appoint an umpire, it shall be lawful for the Attorney-General for the time being, on the application of either party to such
 55 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.

19. 18. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable, or shall refuse, or for
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Compensation to be settled by arbitration.

Proceedings in case of disability of arbitrator.

Appointment of umpire.

Neglect to appoint umpire.

In case of disability of single arbitrator.

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.

Arbitrators failing to make their award, matters referred to umpire.

20. 19. If when more than one arbitrator shall have been appointed, 5 and when neither of them shall die, become incapable, refuse, or neglect to act as aforesaid, such arbitrators shall fail to make their award within fourteen 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 10 arbitrators, under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Arbitrators may order production of documents, &c.

21. 20. The said arbitrator or arbitrators, or his 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 15 determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Declaration by arbitrators or umpire.

22. 21. Before any arbitrator or umpire shall enter upon the consideration of any matter referred to him, he shall, in the presence of 20 a Justice of the Peace, Notary Public, or Commissioner for Affidavits for the said Colony, make and subscribe the following declaration, that is to say—

I, A.B., do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear 25 and determine the matters referred to me under the provisions of the "Balaclava Tramway Act."

Made and subscribed at
in the presence of

A.B.

And such declaration shall be annexed to the award when made, and 30 if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanour.

Cost of arbitration, how to be borne.

23. 22. All the costs of any such arbitration and incident thereto shall be in the discretion of the arbitrator or arbitrators or umpire, and the costs of the arbitrator or arbitrators or umpire shall be borne 35 by the parties in equal proportions, unless the amount awarded shall be one-fourth, or more, less than the amount which shall have been offered by the said Wyman Brown, his heirs, executors, administrators, and assigns, in which case the whole costs of the arbitration, and also the costs of and incident to the said arbitration, shall be paid 40 by the claimant. Provided that, if either party shall be dissatisfied with the costs allowed by the said arbitrator or arbitrators or umpire 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. 45

Costs may be taxed

Arbitrators or umpire to deliver award to Wyman Brown, his heirs, executors, administrators and assigns.

24. 23. The arbitrator, arbitrators, or umpire shall deliver their or his award in writing to the said Wyman Brown, his heirs, executors, administrators, and assigns, who shall retain the same, and shall forthwith, on demand, at his or their own expense, furnish a copy thereof to the other party, and shall at all times, on demand, produce 50 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 the award.

Compensation to be paid within sixty days after publication of award.

Submission may be made a rule of Supreme Court.

25. 24. The submission to any such arbitration may be made a 55 rule of the Supreme Court on the application of either of the parties.

Award not to be set aside for irregularity.

26. 25. 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.

27- 26. The said Wyman Brown, his heirs, executors, adminis-
trators, and assigns 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
5 damage, loss, costs, charges, and inconvenience which may in anywise
be occasioned to the owners and occupiers of the lands through which
the said tramway shall pass, by the non-performance or negligent per-
formance by the said Wyman Brown, his heirs, executors, adminis-
trators, and assigns, of any of the matters or things hereby required
10 or authorised to be performed by them.

Compensation in
cases of negligence.

28- 27. In every case where the said Wyman Brown, his heirs,
executors, administrators, and assigns shall take temporary possession
of lands by virtue of the powers hereby granted, it shall be incumbent
on him or them, within three months after entry upon such land,
15 upon being required so to do, to pay to the occupier of the said lands
the value of any crop or dressing that may be thereon, and damaged
or injured by such entry, as well as full compensation for any other
damage of a temporary nature which he may sustain by reason of such
entry, and shall also from time to time during their occupation of the
20 said lands pay half-yearly to such occupier, or to the owner of the
lands, as the case may require, a rent, to be fixed by two Justices in
case the parties differ; and shall also, within twelve months after
such entry, pay to such owners and occupiers, or deposit in the bank
for the benefit of all parties interested, as the case may require, com-
25 pensation for all permanent or other loss, damage, or injury that may
have been sustained by them by reason of the exercise, as regards the
said lands, of the powers hereby granted, including the full value of
all clay, stone, gravel, sand, and other things taken from such lands.

Compensation in
cases of temporary
possession.

29- 28. If the owner of any lands required to be taken for the
30 construction of the said tramway is absent from the Colony, or cannot
upon diligent inquiry be found, or is under disability, or if any such
lands are vested in persons who have respectively only limited or
qualified interests therein, and who cannot enter into binding agree-
ments with the said Wyman Brown, his heirs, executors, adminis-
35 trators, and assigns for the purchase of such lands, or join in submitting
their claims for compensation to arbitration as hereinbefore provided,
the purchase money or compensation payable by the said Wyman
Brown, his heirs, executors, administrators, and assigns, in respect of
such lands, shall be determined by the valuation of a surveyor, to be
40 nominated as hereinafter mentioned.

Proceedings in
absence of owner.

30- 29. Upon application by the said Wyman Brown, his heirs,
executors, administrators, and assigns to two Justices, and upon such
proof as may be satisfactory to them that there is no person in the
Colony or to be found who can enter into a binding contract with the
45 said Wyman Brown, his heirs, executors, administrators, and assigns,
or join with the said Wyman Brown, his heirs, executors, adminis-
trators, and assigns in submitting his claims for compensation to
arbitration in respect of any lands required to be taken for the
construction of the said tramway, such Justices shall by writing under
50 their hands nominate a licensed surveyor for determining such com-
pensation as aforesaid, and such surveyor shall determine the same
accordingly, and shall annex to his valuation a declaration in writing
subscribed by him of the correctness thereof.

Justices to appoint
surveyor in certain
cases.

31- 30. Before such surveyor shall enter upon the duty of making
55 such valuation as aforesaid he shall in the presence of such Justices or
one of them make and subscribe the following declaration at the foot
of such nomination, that is to say :—

Declaration by
surveyor.

I, A.B., do solemnly and sincerely declare that I will faithfully,
impartially, and honestly, according to the best of my skill
and ability, execute the duty of making the valuation
60 hereby referred to me.

Made and subscribed at
in the presence of

A.B.
And

And if any such surveyor shall corruptly make such declaration or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Production of
valuation, &c.

32. 31. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved 5 together therewith by the said Wyman Brown, his heirs, executors, administrators, and assigns; and they shall at all times produce the said valuation and documents on demand to all parties interested in the lands comprised in such valuation.

Cost of valuation,
how borne.

33. 32. All the expenses of and incident to any such valuation 10 shall be borne by the said Wyman Brown, his heirs, executors, administrators, and assigns.

Compensation not
exceeding £50 how
to be dealt with.

34. 33. If the amount of compensation determined by any such surveyor does not exceed the sum of fifty pounds, it shall, except in the cases where the owner is absent from the Colony, or cannot be 15 found, be paid by the said Wyman Brown, his heirs, executors, administrators, and assigns to the person or persons for the time being entitled to the rents and profits of the lands in respect whereof the same shall be payable for their own use and benefit, or in the case of the coverture, infancy, idiocy, lunacy, or other incapacity of any 20 such persons, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

Compensation how
dealt with in
absence of owner.

35. 34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 25 where the owner is absent from the Colony, or cannot be found, whether it exceeds the sum of fifty pounds or not, it shall be paid by the said Wyman Brown, his heirs, executors, administrators, and assigns into the hands of the Master in Equity of the Supreme Court in the matter of this Act, in trust for the parties interested in the 30 lands in respect of which it is paid in; and a certificate from the said Master in Equity of the fact of the money being so paid in shall be a sufficient discharge to the said Wyman Brown, his heirs, executors, administrators, and assigns, for the money so paid. Provided that all moneys so paid in shall be dealt with by the Supreme Court in the 35 same manner in all respects as moneys paid in under an Act passed in the twenty-first year of Her present Majesty, and entitled "*An Act for better securing Trust Funds, and for the relief of Trustees.*" And shall be subject, in all respects, to the provisions of the said Act, and all rules of the said Court made thereunder. 40

Cases of dispute
Sheriff may issue
warrant.

36. 35. If in any case in which, according to the provisions of this Act, the said Wyman Brown, his heirs, executors, administrators, and assigns, is authorised to enter upon and take possession of any lands required for the purposes of the said tramway, the owner or occupier of any such lands, or any other person, shall refuse to give up 45 possession thereof, or hinder the said Wyman Brown, his heirs, executors, administrators, and assigns, from entering upon or taking possession of the same, it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, to issue his or their warrant to the sheriff to deliver possession of the same to the persons 50 appointed by the said Wyman Brown, his heirs, executors, administrators, and assigns in such warrant, to receive the same, and upon receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by 55 the party so refusing to give possession, and the amount of such costs shall be deducted and retained by the said Wyman Brown, his heirs, executors, administrators, and assigns, from the compensation (if any) then payable to such person refusing to give possession; or if no such compensation

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 the amount of such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice of the Peace for that purpose he ~~shall~~ **may** issue his warrant accordingly.

37. **36.** At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such tramway, upon giving to the said Wyman Brown, his heirs, executors, administrators, and assigns, three months' notice in writing of his intention to do so. Power of purchase of railway by Government.

10 If the amount tendered for the purchase of the property be considered inadequate by the said Wyman Brown, his heirs, executors, administrators, and assigns, the amounts shall be ascertained by assessment, in terms of the "Public Lands Acquisition Act."

38. **37.** It shall be lawful for the said Wyman Brown, his heirs, Power to assign. 15 executors, administrators, and assigns, at any time, by any deed or instrument in writing, to assign and transfer all the rights, powers, privileges, benefits, and advantages conferred upon him or them by this Act, to any person or persons, or to any duly incorporated company, and upon any such transfer or assignment being signed or 20 executed, the person or persons, or duly incorporated company in whose favour such transfer or assignment is made, shall then stand in the place of the said Wyman Brown, his heirs, executors, administrators, and assigns, and shall have all the rights, powers, benefits, privileges, and advantages conferred upon the said Wyman Brown, 25 his heirs, executors, administrators, and assigns, by this Act.

39. **38.** The work in connection with the construction of the said tramway hereby authorised must be commenced within six months Commencement and completion of work. from the passing of this Act, and the said tramway must be completed within two years from the date of the passing of this Act.

30 40. **39.** In this Act the said words Justices or Justice shall mean Interpretation clause. Justices or a Justice of the Peace in and for the territory of New South Wales, and where any matter shall be authorised or required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions, and the 35 word "owner" shall mean any person or corporation who, under the provisions of this Act, would be able to sell land to the said Wyman Brown, his heirs, executors, administrators, or assigns.

41. **40.** This Act may for all purposes be cited as the "Balaclava Short title. Tramway Act of 1891."

SCHEDULE.

40 Commencing at a point on the Broken Hill Proprietary tram line, to be determined on mineral lease (10) ten, in the parish of Picton, county of Yancowinna; thence in a south-westerly direction through mineral leases numbers thirty-eight, fifty-one, ninety-two, six, and five, about sixty chains; thence south-easterly through mineral 45 leases numbers eighty-eight, eighty-nine, one hundred and sixty-seven (167), one hundred and eleven (111), and one hundred and twelve (112), entering parish of Soudan; thence south-easterly through homestead lease 87-5; thence south-easterly through mineral leases numbers one hundred and seventy-two, and one hundred and seventy-three, entering parish of Sebastopol; thence south-easterly to mineral lease number two, 50 parish of Sebastopol, county of Yancowinna, making a total distance from Broken Hill to the Balaclava mines and quarries of about twelve miles; the limit of deviation allowed by this Act shall be one and a half miles on each side of the above described line.

...shall be payable to such person or at the same place
than the amount of such cash, when such cash or the excess thereof
beyond the amount of such cash, shall be paid on demand, shall
be paid by cheque, and upon application to the Director of the Peace

...the said person or at the same place, with the advice of the
Director of the Peace, shall be paid on demand, shall be paid by cheque,
and upon application to the Director of the Peace, shall be paid by cheque,

...the said person or at the same place, with the advice of the
Director of the Peace, shall be paid on demand, shall be paid by cheque,
and upon application to the Director of the Peace, shall be paid by cheque,

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Legislative Council.

55^o VICTORIÆ, 1891.

A BILL

To authorise the construction and maintenance of a Tramway from the mines and quarries on Mineral Lease, portion two, parish Sebastopol, in the Colony of New South Wales, to a point to be determined on Mineral Lease, portion ten, parish Picton, in the said Colony, connecting with the tramway system of the Broken Hill Mines.

(As amended and agreed to in Select Committee.)

WHEREAS large quantities of mineral ores exist and are being quarried and mined at the quarries and mines on the lands situate in the parish of Sebastopol, county of Yancowinna, in the Colony of New South Wales, now held under lease from the Crown by Wyman Brown, of Sydney, in the said Colony, gentleman: And whereas large quantities of timber suitable for fuel exist upon the said lands: And whereas, for the purpose of facilitating the carriage of the said mineral ores, fuel, and timber from the said quarries, mines, and lands, the said Wyman Brown is desirous of constructing a single or double tramway for horse, steam, or other traction, over, across, and along the lands described in the Schedule hereto, from the said quarries, mines, and lands, in the said parish of Sebastopol, to a point to be determined on mineral lease, portion ten, parish of Picton, county Yancowinna, aforesaid: And whereas such tramway cannot be made without Legislative authority: And whereas the construction of the said proposed tramway would be largely for the benefit of the mining

c 108—A

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

mining public by materially decreasing the cost of carriage, thereby enabling the poorer class of ores to be profitably worked, and would be also the means of supplying the district of Broken Hill with cheap fuel, and it is therefore advisable to authorise, by Legislative enactment, the construction and maintenance of the said proposed tramway, 5 subject to the provisions hereinafter contained: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:— 10

Authority to
construct tramway.

1. It shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, upon the terms and conditions and subject to the provisions hereinafter contained, to make and construct a tramway for the carrying of the said mineral ores, fuel, timber, and of all persons engaged, and all materials, goods, and plant 15 necessary in and about the working thereof, from and to the said quarries, mines, and lands in the parish of Sebastopol aforesaid, by the route, and along and over the roads, streets, lands, and reserves, both public and private, described in the Schedule hereto, and to take and use so much of the said roads, streets, lands, and reserves, both public 20 and private, as may be required for the purposes of such tramway, but so that the same shall not occupy in part thereof on private lands a greater space in breadth than thirty-three feet, and on public lands in breadth sixty-six feet, including the support and foundations thereof, and to ~~take and use~~ **lease, in accordance with section eight of this Act,** 25 so much public lands adjoining the said tramway not exceeding in the aggregate eighty acres, as may be required for the purpose of constructing tanks, sidings, or other necessary works in connection with such tramway.

Levels of line.

2. The gauge of the said tramway shall be three feet six inches, 30 and where it traverses public thoroughfares shall be laid at about the general level of such thoroughfares and so that the rails shall not project above the surface thereof; and the said Wyman Brown, his heirs, executors, administrators, or assigns, shall maintain in perfect order and repair the said tramway, and where the said tramway 35 traverses public thoroughfares, shall maintain, perfect, and keep in order and repair the pavements of the same between the rails of the said tramway, and for the space of one foot six inches on each side of the said rails, and furthermore shall erect and maintain all necessary causeways in connection with the said tramway. 40

Tramway to remain
property of Wyman
Brown, his heirs,
executors, adminis-
trators, and assigns.
Authorised persons
to have rights over
streets.

3. The tramway and the material thereof shall not cease to be the property of the said Wyman Brown, his heirs, executors, administrators, and assigns, by reason of the same being laid as aforesaid.

4. The said Wyman Brown, his heirs, executors, administrators, and assigns, and all other person or persons duly authorised, shall 45 have all necessary rights over the roads, streets, and lands described in the Schedule to this Act as are required for the construction, repair, completion, and use of the said tramway: Provided that there shall be no interference with ordinary traffic beyond what is reasonable and necessary for such purpose. 50

Carriage.

5. The tramway shall be for the use of the said Wyman Brown, his heirs, executors, administrators, and assigns, and of all persons engaged by him or them in and about the carriage, winning, and obtaining of fuel and timber and the said mineral ores, and for the carriage of the said fuel, timber, and mineral ores, and of all plant, 55 goods, and things necessary in and about the winning and obtaining the same, and shall be confined to the conveyance of such mineral ores and fuel, timber, and plant as aforesaid, and of all goods and things

things necessary in and about the same, and of all persons engaged in and about the same as aforesaid, to and from the said quarries, mines, and lands of the said Wyman Brown.

6. It shall be lawful for the persons using the said tramway to
5 employ horses, steam, or other motive power, and carriages, waggons, or trucks to be drawn thereby.

To employ horse, steam, or other motive power.

7. The said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any mines of coal, iron, slate, or other minerals under any land whereof the surface is vested in him or
10 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 authorised, and such mines shall not be deemed to vest in the said Wyman Brown, his heirs, executors, administrators, and assigns.

Wyman Brown, his heirs, executors, administrators, and assigns not entitled to minerals.

8. Upon the completion of the tramway and works authorised
15 by this Act, it shall be lawful for the Governor, with the advice of the Executive Council, in consideration of such completion, to grant to the said Wyman Brown, his heirs, executors, administrators, or assigns, a lease, or leases, for a term not exceeding twenty-one years of such Crown lands as shall have been necessarily used or taken for
20 the said tramway at an annual rental not exceeding two shillings per acre.

Power to grant leases of land for tramway.

9. Before commencing the said tramway by this Act authorised to be made, the said Wyman Brown, his heirs, executors, administrators, or assigns shall, by some qualified engineer by them to be
25 appointed, cause to be made and taken levels and surveys of the private lands through which such tramway is to be carried, together with a map or plan of the line of the said tramway, and of the lands through which it is to pass: Provided that it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, or assigns,
30 ~~in making the said map or plan of the said line~~ to deviate in the route of the said tramway to the extent of not more than one and a-half miles on either side of the line described in the Schedule hereto annexed. And the said map or plan shall be kept at some convenient office at Broken Hill, and true copies thereof, signed by the said Wyman
35 Brown, his heirs, executors, administrators, and assigns, shall be deposited with the clerk of Petty Sessions, at Broken Hill aforesaid, and such map or plan and copies thereof respectively shall be opened at all convenient times for public examination from the day of the date on which such notice as in the next succeeding section is provided
40 shall be first published, and all persons shall be at liberty at all proper and convenient times to inspect the said map or plan or copies as aforesaid.

Before commencing tramway, survey to be made.

To be open to public inspection.

10. The said Wyman Brown, his heirs, executors, administrators, or assigns shall by advertisement in the *Government Gazette*
45 and in one or more Sydney newspapers, and in one or more newspapers published or circulating in Broken Hill respectively, at least thirty days before the commencement of the formation of the tramway, give notice that they intend to construct the said tramway between the places thereof specified, according to a map or plan to be seen at an
50 office (in the said notice specified) in Broken Hill aforesaid, and at the office of the said Clerk of Petty Sessions.

Notice to be given of intention to make tramway.

11. No advantage shall be taken of or against the said Wyman Brown, his heirs, executors, administrators, or assigns, or any
55 interruption be given to the making of such tramway or other works on account of any omission or error in the said map or plan, but it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, or assigns, by themselves, their agents, officers, surveyors, servants, and workmen, to enter into and upon, and to take and use for the purpose of this Act any lands or grounds set out and described

Omission in map or plan not to impede making the tramway, &c.

described in the said map or plan, notwithstanding any such omission or error, in case it shall appear to any two Justices acting for the district or place in which such lands or ground shall be situated and be certified by writing under their hands, that such omission or error proceeds from mistake and not from fraud.

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Notice of lands
required for tramway.

12. 11. When the said Wyman Brown, his heirs, executors, administrators, or assigns shall have made and completed the map or plan hereinbefore required to be made, he or they shall give notice in writing of the lands taken and required for the said tramway, to all the parties interested in such lands, or to such of the said parties as shall be known to the said Wyman Brown, his heirs, executors, administrators, or assigns. And every such notice shall state the particulars of the lands so taken or required as aforesaid, and that the said Wyman Brown, his heirs, executors, administrators, or assigns, is or are willing to treat as to the compensation to be made to all parties for the lands taken or to be taken, and the damage sustained or to be sustained by them by reason of the exercise of the powers conferred by this Act, and shall demand in the said notice from such parties, and the said parties are hereby required to deliver forthwith to the said Wyman Brown, his heirs, executors, administrators, or assigns, at the cost of the said Wyman Brown, his heirs, executors, administrators, or assigns, the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof, together with an abstract of their title to such land, and if they claim in respect of damage the nature of the damage which they have sustained or will sustain by reason of the taking of such lands.

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Service of notice on
owners and occupiers
of land.

13. 12. All notices required to be served by the said Wyman Brown, his heirs, executors, administrators, or assigns, upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found), and in case any such parties shall be absent from the Colony or cannot be found after diligent inquiry, shall be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

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

14. 13. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the said tramway, it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, and his or their workmen and servants, to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose; but in every such case the said Wyman Brown, his heirs, executors, administrators, or assigns, shall, within fourteen days after such entry, make a report to the Secretary for Public Works, specifying the nature of such accident or apprehended accident and of the works necessary to be done, and such powers shall cease and determine if the said Secretary shall, after considering the said report, certify that their exercise is not necessary for the public safety. Provided also that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible despatch, 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 tramway.

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15- 14. If within twenty-eight days of the service of such notice as
 aforesaid the said persons through whose lands the tramway shall pass,
 or any of them, and the said Wyman Brown, his heirs, executors,
 administrators, and assigns, shall not agree as to the amount of
 5 compensation to be paid by him or them for the said lands belonging
 to the said parties, or any of them, or for any damage that may be
 sustained by them or him, by reason of the execution of the works, or
 if any other question as to compensation shall arise under this Act,
 the amount of such compensation shall be settled by arbitrators in
 10 manner hereinafter mentioned (that is to say), unless both parties
 concur in the appointment of a single arbitrator, each party on the
 request of the other shall nominate and appoint an arbitrator to whom
 such dispute or other matter shall be referred; and every appointment
 of an arbitrator shall be under the hand and seal of such person or
 15 persons respectively; and such appointment shall be delivered to the
 arbitrator or arbitrators, and shall be deemed a submission to arbitration
 on the part of the party by whom the same shall be made; and after
 any such appointment shall have been made, neither party shall have
 power to revoke the same without the consent of the other, nor shall the
 20 death of either party operate as a revocation; and if for the space of
 fourteen days after 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
 shall fail to appoint such arbitrator, then upon such failure it shall be
 25 lawful for the Attorney-General for the time being of the said Colony,
 on the application of the party who has himself appointed an arbitrator
 to appoint such arbitrator to act on behalf of both parties, and such
 arbitrator may proceed to hear and determine the matter which shall
 be in dispute, and in such case, the award or determination of such
 30 single arbitrator shall be final and conclusive.

16- 15. 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
 35 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 powers and authorities as were vested in the former arbitrator at
 40 the time of such his death, refusal, neglect, or disability as aforesaid.

17- 16. Where more than one arbitrator shall have been appointed,
 such arbitrators shall, before they enter upon the matters referred to
 them, nominate and appoint in writing under their hands an umpire,
 to decide any matters on which they shall differ, or which shall be
 45 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 so to do by the arbitrators or either of them, they shall forthwith
 after such death, refusal, or neglect, appoint another umpire in his
 place, and the decision of every such umpire upon the matters so
 50 referred to him shall be final.

18- 17. If in either of the cases aforesaid the arbitrators shall
 refuse, or for seven days after, request of either party to such arbitra-
 tion 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
 55 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.

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

Compensation to be
settled by arbitration.

Proceedings in case
of disability of
arbitrator.

Appointment of
umpire.

Neglect to appoint
umpire.

In case of disability
of single arbitrator.

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.

Arbitrators failing to make their award, matters referred to umpire.

20. 19. If when more than one arbitrator shall have been appointed, 5 and when neither of them shall die, become incapable, refuse, or neglect to act as aforesaid, such arbitrators shall fail to make their award within fourteen 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 10 arbitrators, under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Arbitrators may order production of documents, &c.

21. 20. The said arbitrator or arbitrators, or his 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 15 determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Declaration by arbitrators or umpire.

22. 21. Before any arbitrator or umpire shall enter upon the consideration of any matter referred to him, he shall, in the presence of 20 a Justice of the Peace, Notary Public, or Commissioner for Affidavits for the said Colony, make and subscribe the following declaration, that is to say—

I, A.B., do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear 25 and determine the matters referred to me under the provisions of the "Balaclava Tramway Act."

Made and subscribed at
in the presence of

A.B.

And such declaration shall be annexed to the award when made, and 30 if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanour.

Cost of arbitration, how to be borne.

23. 22. All the costs of any such arbitration and incident thereto shall be in the discretion of the arbitrator or arbitrators or umpire, and the costs of the arbitrator or arbitrators or umpire shall be borne 35 by the parties in equal proportions, unless the amount awarded shall be one-fourth, or more, less than the amount which shall have been offered by the said Wyman Brown, his heirs, executors, administrators, and assigns, in which case the whole costs of the arbitration, and also the costs of and incident to the said arbitration, shall be paid 40 by the claimant. Provided that, if either party shall be dissatisfied with the costs allowed by the said arbitrator or arbitrators or umpire 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. 45

Costs may be taxed

Arbitrators or umpire to deliver award to Wyman Brown, his heirs, executors, administrators and assigns.

24. 23. The arbitrator, arbitrators, or umpire shall deliver their or his award in writing to the said Wyman Brown, his heirs, executors, administrators, and assigns, who shall retain the same, and shall forthwith, on demand, at his or their own expense, furnish a copy thereof to the other party, and shall at all times, on demand, produce 50 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 the award.

Compensation to be paid within sixty days after publication of award.

Submission may be made a rule of Supreme Court.

25. 24. The submission to any such arbitration may be made a 55 rule of the Supreme Court on the application of either of the parties.

Award not to be set aside for irregularity.

26. 25. 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.

27. 26. The said Wyman Brown, his heirs, executors, adminis-
trators, and assigns 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
5 damage, loss, costs, charges, and inconvenience which may in anywise
be occasioned to the owners and occupiers of the lands through which
the said tramway shall pass, by the non-performance or negligent per-
formance by the said Wyman Brown, his heirs, executors, adminis-
trators, and assigns, of any of the matters or things hereby required
10 or authorised to be performed by them.

Compensation in
cases of negligence.

28. 27. In every case where the said Wyman Brown, his heirs,
executors, administrators, and assigns shall take temporary possession
of lands by virtue of the powers hereby granted, it shall be incumbent
on him or them, within three months after entry upon such land,
15 upon being required so to do, to pay to the occupier of the said lands
the value of any crop or dressing that may be thereon, and damaged
or injured by such entry, as well as full compensation for any other
damage of a temporary nature which he may sustain by reason of such
entry, and shall also from time to time during their occupation of the
20 said lands pay half-yearly to such occupier, or to the owner of the
lands, as the case may require, a rent, to be fixed by two Justices in
case the parties differ; and shall also, within twelve months after
such entry, pay to such owners and occupiers, or deposit in the bank
for the benefit of all parties interested, as the case may require, com-
25 pensation for all permanent or other loss, damage, or injury that may
have been sustained by them by reason of the exercise, as regards the
said lands, of the powers hereby granted, including the full value of
all clay, stone, gravel, sand, and other things taken from such lands.

Compensation in
cases of temporary
possession.

29. 28. If the owner of any lands required to be taken for the
30 construction of the said tramway is absent from the Colony, or cannot
upon diligent inquiry be found, or is under disability, or if any such
lands are vested in persons who have respectively only limited or
qualified interests therein, and who cannot enter into binding agree-
ments with the said Wyman Brown, his heirs, executors, adminis-
35 trators, and assigns for the purchase of such lands, or join in submitting
their claims for compensation to arbitration as hereinbefore provided,
the purchase money or compensation payable by the said Wyman
Brown, his heirs, executors, administrators, and assigns, in respect of
such lands, shall be determined by the valuation of a surveyor, to be
40 nominated as hereinafter mentioned.

Proceedings in
absence of owner.

30. 29. Upon application by the said Wyman Brown, his heirs,
executors, administrators, and assigns to two Justices, and upon such
proof as may be satisfactory to them that there is no person in the
Colony or to be found who can enter into a binding contract with the
45 said Wyman Brown, his heirs, executors, administrators, and assigns,
or join with the said Wyman Brown, his heirs, executors, adminis-
trators, and assigns in submitting his claims for compensation to
arbitration in respect of any lands required to be taken for the
construction of the said tramway, such Justices shall by writing under
50 their hands nominate a licensed surveyor for determining such com-
pensation as aforesaid, and such surveyor shall determine the same
accordingly, and shall annex to his valuation a declaration in writing
subscribed by him of the correctness thereof.

Justices to appoint
surveyor in certain
cases.

31. 30. Before such surveyor shall enter upon the duty of making
55 such valuation as aforesaid he shall in the presence of such Justices or
one of them make and subscribe the following declaration at the foot
of such nomination, that is to say:—

Declaration by
surveyor.

I, A.B., do solemnly and sincerely declare that I will faithfully,
impartially, and honestly, according to the best of my skill
60 and ability, execute the duty of making the valuation
hereby referred to me.

Made and subscribed at
in the presence of

A.B.
And

Production of
valuation, &c.

And if any such surveyor shall corruptly make such declaration or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

32. 31. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved 5 together therewith by the said Wyman Brown, his heirs, executors, administrators, and assigns; and they shall at all times produce the said valuation and documents on demand to all parties interested in the lands comprised in such valuation.

Cost of valuation,
how borne.

33. 32. All the expenses of and incident to any such valuation 10 shall be borne by the said Wyman Brown, his heirs, executors, administrators, and assigns.

Compensation not
exceeding £50 how
to be dealt with.

34. 33. If the amount of compensation determined by any such surveyor does not exceed the sum of fifty pounds, it shall, except in the cases where the owner is absent from the Colony, or cannot be 15 found, be paid by the said Wyman Brown, his heirs, executors, administrators, and assigns to the person or persons for the time being entitled to the rents and profits of the lands in respect whereof the same shall be payable for their own use and benefit, or in the case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any 20 such persons, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

Compensation how
dealt with in
absence of owner.

35. 34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 25 where the owner is absent from the Colony, or cannot be found, whether it exceeds the sum of fifty pounds or not, it shall be paid by the said Wyman Brown, his heirs, executors, administrators, and assigns into the hands of the Master in Equity of the Supreme Court in the matter of this Act, in trust for the parties interested in the 30 lands in respect of which it is paid in; and a certificate from the said Master in Equity of the fact of the money being so paid in shall be a sufficient discharge to the said Wyman Brown, his heirs, executors, administrators, and assigns, for the money so paid. Provided that all moneys so paid in shall be dealt with by the Supreme Court in the 35 same manner in all respects as moneys paid in under an Act passed in the twenty-first year of Her present Majesty, and entitled "*An Act for better securing Trust Funds, and for the relief of Trustees.*" And shall be subject, in all respects, to the provisions of the said Act, and all rules of the said Court made thereunder. 40

Cases of dispute
Sheriff may issue
warrant.

36. 35. If in any case in which, according to the provisions of this Act, the said Wyman Brown, his heirs, executors, administrators, and assigns, is authorised to enter upon and take possession of any lands required for the purposes of the said tramway, the owner or occupier of any such lands, or any other person, shall refuse to give up 45 possession thereof, or hinder the said Wyman Brown, his heirs, executors, administrators, and assigns, from entering upon or taking possession of the same, it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, to issue his or their warrant to the sheriff to deliver possession of the same to the persons 50 appointed by the said Wyman Brown, his heirs, executors, administrators, and assigns in such warrant, to receive the same, and upon receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by 55 the party so refusing to give possession, and the amount of such costs shall be deducted and retained by the said Wyman Brown, his heirs, executors, administrators, and assigns, from the compensation (if any) then payable to such person refusing to give possession; or if no such compensation

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 the amount of such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice of the Peace

5 for that purpose he shall ~~shall~~ **may** issue his warrant accordingly.

37. 36. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such tramway, upon giving to the said Wyman Brown, his heirs, executors, administrators, and assigns, three months' notice in writing of his intention to do so.

Power of purchase of railway by Government.

10 If the amount tendered for the purchase of the property be considered inadequate by the said Wyman Brown, his heirs, executors, administrators, and assigns, the amounts shall be ascertained by assessment, in terms of the "Public Lands Acquisition Act."

38. 37. It shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, at any time, by any deed or instrument in writing, to assign and transfer all the rights, powers, privileges, benefits, and advantages conferred upon him or them by this Act, to any person or persons, or to any duly incorporated company, and upon any such transfer or assignment being signed or

Power to assign.

20 executed, the person or persons, or duly incorporated company in whose favour such transfer or assignment is made, shall then stand in the place of the said Wyman Brown, his heirs, executors, administrators, and assigns, and shall have all the rights, powers, benefits, privileges, and advantages conferred upon the said Wyman Brown,

25 his heirs, executors, administrators, and assigns, by this Act.

39. 38. The work in connection with the construction of the said tramway hereby authorised must be commenced within six months from the passing of this Act, and the said tramway must be completed within two years from the date of the passing of this Act.

Commencement and completion of work.

30 40. 39. In this Act the said words **Justices or Justice** shall mean **Justices or a Justice** of the Peace in and for the territory of New South Wales, and where any matter shall be authorised or required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions, and the

Interpretation clause.

35 word "owner" shall mean any person or corporation who, under the provisions of this Act, would be able to sell land to the said Wyman Brown, his heirs, executors, administrators, or assigns.

41. 40. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1891."

Short title.

40

SCHEDULE.

Commencing at a point on the Broken Hill Proprietary tram line, to be determined on mineral lease (10) ten, in the parish of Picton, county of Yancowinna; thence in a south-westerly direction through mineral leases numbers thirty-eight, fifty-one, ninety-two, six, and five, about sixty chains; thence south-easterly through mineral

45 leases numbers eighty-eight, eighty-nine, one hundred and sixty-seven (167), one hundred and eleven (111), and one hundred and twelve (112), entering parish of Soudan; thence south-easterly through homestead lease 87-5; thence south-easterly through mineral leases numbers one hundred and seventy-two, and one hundred and seventy-three, entering parish of Sebastopol; thence south-easterly to mineral lease number two,

50 parish of Sebastopol, county of Yancowinna, making a total distance from Broken Hill to the Balaclava mines and quarries of about twelve miles; the limit of deviation allowed by this Act shall be one and a half miles on each side of the above described line.

consequently shall be liable to each person or if the same is less than the amount of such debt, then such person or the person thereof beyond the amount of such debt shall be liable to each person or the person thereof.

4. The person or persons who are liable to each person or the person thereof shall be liable to each person or the person thereof.

5. The person or persons who are liable to each person or the person thereof shall be liable to each person or the person thereof.

6. The person or persons who are liable to each person or the person thereof shall be liable to each person or the person thereof.

7. The person or persons who are liable to each person or the person thereof shall be liable to each person or the person thereof.

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12. The person or persons who are liable to each person or the person thereof shall be liable to each person or the person thereof.

13. The person or persons who are liable to each person or the person thereof shall be liable to each person or the person thereof.

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16. The person or persons who are liable to each person or the person thereof shall be liable to each person or the person thereof.

17. The person or persons who are liable to each person or the person thereof shall be liable to each person or the person thereof.

18. The person or persons who are liable to each person or the person thereof shall be liable to each person or the person thereof.

A BILL

To authorise the construction and maintenance of a Tramway from the mines and quarries on Mineral Lease portion 2, parish Sebastopol, in the Colony of New South Wales, to a point to be determined, on Mineral Lease portion 10, parish Picton, in the said Colony, connecting with the tramway system of the Broken Hill mines.

WHEREAS large quantities of mineral ores exist and are being quarried and mined at the quarries and mines on the lands situate in the parish of Sebastopol, county of Yancowinna, in the Colony of New South Wales, now held under lease from the Crown by Wyman Brown, of Sydney, in the said Colony, gentleman. And whereas large quantities of timber suitable for fuel exist upon the said lands. And whereas for the purpose of facilitating the carriage of the said mineral ores, fuel, and timber from the said quarries, mines, and lands, the said Wyman Brown is desirous of constructing a single or double tramway for horse, steam, or other traction, over, across, and along the lands described in the Schedule hereto, from the said quarries, mines, and lands, in the said parish of Sebastopol, to a point to be determined on Mineral Lease, portion 10, parish of Picton, county Yancowinna, aforesaid. And whereas such tramway cannot be made without Legislative authority. And whereas the construction of the said proposed tramway would be largely for the benefit of the mining public by materially decreasing the cost of carriage, thereby enabling the poorer class of ores to be profitably worked, and would be also the means of supplying the district of Broken Hill with cheap fuel, and it is therefore advisable to authorise, by Legislative enactment, the construction and maintenance of the said proposed tramway, subject to the provisions hereinafter contained. **BE IT THEREFORE ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. It shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, upon the terms and conditions and subject to the provisions hereinafter contained, to make and construct

Preamble.

Authority to
construct tramway.

construct a tramway for the carrying of the said mineral ores, fuel, timber, and of all persons engaged, and all materials, goods, and plant necessary in and about the working thereof, from and to the said quarries, mines, and lands in the parish of Sebastopol aforesaid, by the route, and along and over the roads, streets, lands, and reserves, both public and private, described in the Schedule hereto, and to take and use so much of the said roads, streets, lands, and reserves, both public and private, as may be required for the purposes of such tramway, but so that the same shall not occupy in part thereof on private lands *a greater space in breadth than thirty-three feet*, and on public lands in breadth sixty-six feet, *including the support and foundations thereof*, and to take and use so much public lands adjoining the said tramway not exceeding in the aggregate eighty acres, as may be required for the purpose of constructing tanks, sidings, or other necessary works in connection with such tramway.

Levels of line.

2. The gauge of the said tramway shall be *three feet six inches*, and where it traverses public thoroughfares shall be laid at about the general level of such thoroughfares and so that the rails shall not project above the surface thereof; and the said Wyman Brown, his heirs, executors, administrators, or assigns, shall maintain in perfect order and repair the said tramway, and where the said tramway traverses public thoroughfares, shall maintain, perfect, and keep in order and repair the pavements of the same between the rails of the said tramway and for the space of one foot six inches on each side of the said rails, and furthermore shall erect and maintain all necessary causeways in connection with the said tramway.

Tramway to remain property of Wyman Brown, his heirs, executors, administrators, and assigns.

3. The tramway and the material thereof shall not cease to be the property of the said Wyman Brown, his heirs, executors, administrators, and assigns, by reason of the same being laid as aforesaid.

Authorised persons to have rights over streets.

4. The said Wyman Brown, his heirs, executors, administrators, and assigns, and all other person or persons duly authorised, shall have all necessary rights over the roads, streets, and lands described in the Schedule to this Act as are required for the construction, repair, completion, and use of the said tramway. Provided that there shall be no interference with ordinary traffic beyond what is reasonable and necessary for such purpose.

Carriage.

5. The tramway shall be for the use of the said Wyman Brown, his heirs, executors, administrators, and assigns, and of all persons engaged by him or them in and about the carriage, winning, and obtaining of fuel and timber and the said mineral ores, and for the carriage of the said fuel, timber, and mineral ores, and of all plant, goods, and things necessary in and about the winning and obtaining the same, and shall be confined to the conveyance of such mineral ores and fuel, timber, and plant as aforesaid, and of all goods and things

things necessary in and about the same, and of all persons engaged in and about the same as aforesaid, to and from the said quarries, mines, and lands of the said Wyman Brown.

6. It shall be lawful for the persons using the said tramway to
 5 employ horses, steam, or other motive power, and carriages, waggons, or trucks to be drawn thereby.

To employ horse, steam, or other motive power.

7. The said Wyman Brown, his heirs, executors, administrators,
 and assigns shall not be entitled to any mines of coal, iron, slate or
 10 other minerals under any land whereof the surface is vested in him or 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 authorised, and such mines shall not be deemed to vest in the said Wyman Brown, his heirs, executors, administrators, and assigns.

Wyman Brown, his heirs, executors, administrators, and assigns, not entitled to minerals.

8. Upon the completion of the tramway and works authorised
 15 by this Act it shall be lawful for the Governor, with the advice of the Executive Council, in consideration of such completion, to grant to the said Wyman Brown, his heirs, executors, administrators or assigns, a lease, or leases, for a term not exceeding twenty-one years of such Crown lands as shall have been necessarily used or taken for
 20 the said tramway at an annual rental not exceeding two shillings per acre.

Power to grant leases of land for tramway.

9. Before commencing the said tramway by this Act authorised
 to be made, the said Wyman Brown, his heirs, executors, adminis-
 trators or assigns shall by some qualified engineer by them to be
 25 appointed, cause to be made and taken levels and surveys of the private lands through which such tramway is to be carried, together with a map or plan of the line of the said tramway, and of the lands through which it is to pass. Provided that it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, or assigns,
 30 in making the said map or plan of the said line to deviate to the extent of not more than one and a half miles on either side of the line described in the Schedule hereto annexed. And the said map or plan shall be kept at some convenient office at Broken Hill, and true copies thereof, signed by the said Wyman Brown, his heirs, executors,
 35 administrators, or assigns, shall be deposited with the Clerk of Petty Sessions, at Broken Hill aforesaid, and such map or plan and copies thereof respectively shall be opened at all convenient times for public examination from the day of the date on which such notice as in the next succeeding section is provided shall be first published, and all
 40 persons shall be at liberty at all proper and convenient times to inspect the said map or plan or copies as aforesaid.

Before commencing tramway, survey to be made.

To be open to public inspection.

10. The said Wyman Brown, his heirs, executors, adminis-
 trators, or assigns shall by advertisement in the *Government Gazette*,

Notice to be given of intention to make tramway.

and

and in one or more Sydney newspapers, and in one or more newspapers published or circulating in Broken Hill respectively, at least thirty days before the commencement of the formation of the tramway, give notice that they intend to construct the said tramway between the places thereof specified, according to a map or plan to be seen at an office (in the said notice specified) in Broken Hill aforesaid, and at the office of the said Clerk of Petty Sessions. 5

Omission in map or plan not to impede making the tramway, &c.

11. No advantage shall be taken of or against the said Wyman Brown, his heirs, executors, administrators, or assigns, or any interruption be given to the making of such tramway or other works on account of any omission or error in the said map or plan, but it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, or assigns, by themselves, their agents, officers, surveyors, servants, and workmen, to enter into and upon and to take and use for the purpose of this Act any lands or grounds set out and described in the said map or plan, notwithstanding any such omission or error, in case it shall appear to any two Justices acting for the district or place in which such lands or grounds shall be situated and be certified by writing under their hands, that such omission or error proceeds from mistake and not from fraud. 10 15 20

Notice of lands required for tramway.

12. When the said Wyman Brown, his heirs, executors, administrators, or assigns shall have made and completed the map or plan hereinbefore required to be made, he or they shall give notice of the lands taken and required for the said tramway, to all the parties interested in such lands, or to such of the said parties as shall be known to the said Wyman Brown, his heirs, executors, administrators or assigns. And every such notice shall state the particulars of the lands so taken or required as aforesaid, and that the said Wyman Brown, his heirs, executors, administrators, or assigns is or are willing to treat as to the compensation to be made to all parties for the lands taken or to be taken, and the damage sustained or to be sustained by them by reason of the exercise of the powers conferred by this Act and shall demand in the said notice from such parties, and the said parties are hereby required to deliver forthwith to the said Wyman Brown, his heirs, executors, administrators, or assigns, the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof, together with an abstract of their title to such land, and if they claim in respect of damage the nature of the damage which they have sustained or will sustain by reason of the taking of such lands. 25 30 35 40

Service of notice on owners and occupiers of land.

13. All notices required to be served by the said Wyman Brown, his heirs, executors, administrators, or assigns, upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found), and in case any 45

any such parties shall be absent from the Colony or cannot be found after diligent inquiry, shall be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

- 5 14. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the said tramway, it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, and his or their workmen and servants, to enter upon the land adjoining thereto at any time
10 whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose; but in every such case the said Wyman Brown, his heirs, executors, administrators, or assigns, shall, within fourteen days after such entry, make a report to the Secretary for Public Works, specifying
15 the nature of such accident or apprehended accident and of the works necessary to be done, and such powers shall cease and determine if the said Secretary shall, after considering the said report, certify that their exercise is not necessary for the public safety. Provided also that such works shall be as little injurious to the said adjoining lands
20 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
25 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 tramway.
- 30 15. If within twenty-eight days of the service of such notice as aforesaid the said persons through whose land the tramway shall pass, or any of them, and the said Wyman Brown, his heirs, executors, administrators, and assigns, shall not agree as to the amount of compensation to be paid by him or them for the said lands belonging
35 to the said parties, or any of them, or for any damage that may be sustained by them or him, by reason of the execution of the works, or if any other question as to compensation shall arise under this Act, the amount of such compensation shall be settled by arbitrators in manner hereinafter mentioned (that is to say), unless both parties
40 concur in the appointment of a single arbitrator, each party on the request of the other shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred; and every appointment of an arbitrator shall be under the hand and seal of such person or persons respectively; and such appointment shall be
45 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

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

Compensation to be settled by arbitration.

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 such dispute or other matter shall have arisen, and after a request in writing shall 5 have been served by the one party on the other party to appoint an arbitrator, such last mentioned party shall fail to appoint such arbitrator, then upon such failure it shall be lawful for the Attorney-General for the time being of the said Colony, on the application of the party who has himself appointed an arbitrator, to appoint such 10 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.

Proceedings in case
of disability of
arbitrator.

16. If before the matter so referred shall be determined any 15 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 20 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 powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, neglect, or disability as aforesaid. 25

Appointment of
umpire.

17. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint in 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 30 shall die, or refuse, or for seven days neglect to act after being called upon so to do by the arbitrators or either of them, they shall forthwith after such death, refusal, or neglect, appoint another umpire in his place, and the decision of every such umpire upon the matters so referred to him shall be final. 35

Neglect to appoint
umpire.

18. If in either of the cases aforesaid the arbitrators shall refuse or for seven days after request of either party to such arbitration neglect to appoint an umpire, it shall be lawful for the Attorney-General for the time being, on the application of either party to such 40 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 disability
of single arbitrator.

19. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable, or shall refuse, or for 45 fourteen

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.

- 5 20. If when more than one arbitrator shall have been appointed, and when neither of them shall die, become incapable, refuse, or neglect to act as aforesaid, such arbitrators shall fail to make their award within fourteen days after the day on which the last of such arbitrators shall have been appointed, or within such extended time
 10 (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.

Arbitrators failing to make their award, matters referred to umpire.

21. The said arbitrator or arbitrators, or his or their umpire, may call for the production of any documents in the possession or
 15 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.

Arbitrators may order production of documents, &c.

22. Before any arbitrator or umpire shall enter upon the
 20 consideration of any matter referred to him, he shall, in the presence of a Justice of the Peace, Notary Public, or Commissioner for Affidavits for the said Colony, make and subscribe the following declaration, that is to say—

Declaration by arbitrators or umpire.

- I, A.B., do solemnly and sincerely declare that I will faithfully
 25 and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the "Balaclava Tramway Act."

Made and subscribed at
 in the presence of

A.B.

- 30 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 misdemeanour.

23. All the costs of any such arbitration and incident thereto shall be in the discretion of the arbitrator or arbitrators or umpire,
 35 and the costs of the arbitrator or arbitrators or umpire shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth, or more, less than the amount which shall have been offered by the said Wyman Brown, his heirs, executors, administrators, and assigns, in which case the whole costs of the arbitration,
 40 and also the costs of and incident to the said arbitration, shall be paid by the claimant. Provided that, if either party shall be dissatisfied with the costs allowed by the said arbitrator or arbitrators or umpire

Cost of arbitration, how to be borne.

Costs may be taxed.

as

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.

Arbitrators or
umpire to deliver
award to Wyman
Brown, his heirs,
executors, adminis-
trators and assigns.

24. The arbitrator, arbitrators, or umpire shall deliver their or his award in writing to the said Wyman Brown, his heirs, executors, administrators, and assigns, who shall retain the same, and shall forthwith, on demand, at his or 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 the award. 5 10

Compensation to be
paid within sixty
days after publica-
tion of award.

Submission may be
made a rule of
Supreme Court.

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

Award not to be set
aside for
irregularity.

26. 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. 15

Compensation in
cases of negligence.

27. The said Wyman Brown, his heirs, executors, administrators, and assigns 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 owners and occupiers of the lands through which the said tramway shall pass, by the non-performance or negligent performance by the said Wyman Brown, his heirs, executors, administrators, and assigns, of any of the matters or things hereby required or authorised to be performed by them. 20 25

Compensation in
cases of temporary
possession.

28. In every case where the said Wyman Brown, his heirs, executors, administrators, and assigns shall take temporary possession of lands by virtue of the powers hereby granted, it shall be incumbent on him or them, within three months after entry upon such land, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, and damaged or injured by such entry, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of such entry, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier, or to the owner of the lands, as the case may require, a rent, to be fixed by two Justices in case the parties differ; and shall also, within twelve months after such entry, pay to such owners and occupiers, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said 30 35 40

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

29. If the owner of any lands required to be taken for the construction of the said tramway is absent from the Colony, or cannot
 5 upon diligent inquiry be found, or is under disability, or if any such lands are vested in persons who have respectively only limited or qualified interests therein, and who cannot enter into binding agreements with the said Wyman Brown, his heirs, executors, administrators, and assigns for the purchase of such lands, or join in
 10 submitting their claims for compensation to arbitration as hereinbefore provided, the purchase money or compensation payable by the said Wyman Brown, his heirs, executors, administrators, and assigns, in respect of such lands, shall be determined by the valuation of a surveyor, to be nominated as hereinafter mentioned.

Proceedings in
absence of owner.

15 30. Upon application by the said Wyman Brown, his heirs, executors, administrators, and assigns to two Justices, and upon such proof as may be satisfactory to them that there is no person in the Colony or to be found who can enter into a binding contract with the said Wyman Brown, his heirs, executors, administrators, and assigns,
 20 or join with the said Wyman Brown, his heirs, executors, administrators, and assigns in submitting his claims for compensation to arbitration in respect of any lands required to be taken for the construction of the said tramway, such Justices shall by writing under their hands nominate a licensed surveyor for determining such com-
 25 pensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Justices to appoint
surveyor in certain
cases.

31. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall in the presence of such Justices or
 30 one of them make and subscribe the following declaration at the foot of such nomination, that is to say:—

Declaration by
surveyor.

I, A.B., do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation
 35 hereby referred to me.

Made and subscribed at
in the presence of

A.B.

And if any such surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he
 40 shall be guilty of a misdemeanour.

32. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved
 together

Production of
valuation, &c.

together therewith by the said Wyman Brown, his heirs, executors, administrators, and assigns; and they shall at all times produce the said valuation and documents on demand to all parties interested in the lands comprised in such valuation.

Cost of valuation,
how borne.

33. All the expenses of and incident to any such valuation 5
shall be borne by the said Wyman Brown, his heirs, executors,
administrators, and assigns.

Compensation not
exceeding £50 how
to be dealt with.

34. If the amount of compensation determined by any such
surveyor does not exceed the sum of fifty pounds, it shall, except in
the cases where the owner is absent from the Colony, or cannot be 10
found, be paid by the said Wyman Brown, his heirs, executors,
administrators, and assigns to the person or persons for the time
being entitled to the rents and profits of the lands in respect whereof
the same shall be payable for their own use and benefit, or in the case
of the coverture, infancy, idioty, lunacy, or other incapacity of any 15
such persons, then such money shall be paid for their use to the
respective husbands, guardians, committees, or trustees of such
persons.

Compensation how
dealt with in
absence of owner.

35. If the amount of compensation determined by any such
surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 20
where the owner is absent from the Colony, or cannot be found,
whether it exceeds the sum of fifty pounds or not, it shall be paid by
the said Wyman Brown, his heirs, executors, administrators, and
assigns into the hands of the Master in Equity of the Supreme Court
in the matter of this Act, in trust for the parties interested in the 25
lands in respect of which it is paid in; and a certificate from the said
Master in Equity of the fact of the money being so paid in shall be a
sufficient discharge to the said Wyman Brown, his heirs, executors,
administrators, and assigns, for the money so paid. Provided that all
moneys so paid in shall be dealt with by the Supreme Court in the 30
same manner in all respects as moneys paid in under an Act passed
in the twenty-first year of Her present Majesty, and entitled "*An Act
for better securing Trust Funds, and for the relief of Trustees.*" And
shall be subject, in all respects, to the provisions of the said Act, and
all rules of the said Court made thereunder. 35

Cases of dispute
Sheriff may issue
warrant.

36. If in any case in which, according to the provisions of this
Act, the said Wyman Brown, his heirs, executors, administrators, and
assigns, is authorised to enter upon and take possession of any lands
required for the purposes of the said tramway, the owner or occupier
of any such lands, or any other person, shall refuse to give up 40
possession thereof, or hinder the said Wyman Brown, his heirs,
executors, administrators, and assigns, from entering upon or taking
possession of the same, it shall be lawful for the said Wyman Brown,
his heirs, executors, administrators, and assigns, to issue his or their

warrant

warrant to the Sheriff to deliver possession of the same to the persons appointed by the said Wyman Brown, his heirs, executors, administrators, and assigns in such warrant, to receive the same, and upon receipt of such warrant the Sheriff shall deliver possession of any such
 5 lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the party so refusing to give possession, and the amount of such costs shall be deducted and retained by the said Wyman Brown, his heirs, executors, administrators, and assigns, from the compensation (if any)
 10 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 the amount of such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice of the
 15 Peace for that purpose he shall issue his warrant accordingly.

37. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such tramway, upon giving to the said Wyman Brown, his heirs, executors, administrators, and assigns, three months' notice in writing of his intention to do so.
 20 If the amount tendered for the purchase of the property be considered inadequate by the said Wyman Brown, his heirs, executors, administrators, and assigns, the amounts shall be ascertained by assessment, in terms of the "Public Lands Acquisition Act."

Power of purchase
of railway by
Government.

38. It shall be lawful for the said Wyman Brown, his heirs,
 25 executors, administrators, and assigns, at any time, by any deed or instrument in writing, to assign and transfer all the rights, powers, privileges, benefits, and advantages conferred upon him or them by this Act, to any person or persons, or to any duly incorporated company, and upon any such transfer or assignment being signed
 30 or executed, the person or persons, or duly incorporated company in whose favour such transfer or assignment is made, shall then stand in the place of the said Wyman Brown, his heirs, executors, administrators, and assigns, and shall have all the rights, powers, benefits, privileges, and advantages conferred upon the said Wyman Brown,
 35 his heirs, executors, administrators, and assigns, by this Act.

Power to assign.

39. The work in connection with the construction of the said tramway hereby authorised must be commenced within six months
 from the passing of this Act, and the said tramway must be completed within two years from the date of the passing of this Act.

Commencement and
completion of work.

40. In this Act the said Justices shall mean Justices of the
 40 Peace in and for the territory of New South Wales, and where any matter shall be authorised or required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions, and the word "owner" shall mean
 any

Interpretation clause.

any person or corporation who, under the provisions of this Act, would be able to sell land to the said Wyman Brown, his heirs, executors, administrators, or assigns.

Short title.

41. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1891."

5

SCHEDULE.

Commencing at a point on the Broken Hill Proprietary Tram Line, to be determined on mineral lease (10) ten, in the parish of Picton, county of Yancowinna, thence in a south-westerly direction through mineral leases numbers thirty-eight, fifty-one, ninety-two, six, and five, about sixty chains; thence south-easterly through mineral leases numbers eighty-eight, eighty-nine, one hundred and sixty-seven (167), one hundred and eleven (111), and one hundred and twelve (112), entering parish of Soudan, thence south-easterly through homestead lease 87-5, thence south-easterly through mineral leases numbers one hundred and seventy-two, and one hundred and seventy-three, entering parish of Sebastopol, thence south-easterly to mineral lease number two, parish of Sebastopol, county of Yancowinna, making a total distance from Broken Hill to the Balaclava mines and quarries, of about twelve miles; the limit of deviation allowed by this Act shall be $1\frac{1}{2}$ miles on each side of the above described line.

A BILL

To authorise the construction and maintenance of a Tramway from the mines and quarries on Mineral Lease portion 2, parish Sebastopol, in the Colony of New South Wales, to a point to be determined, on Mineral Lease portion 10, parish Picton, in the said Colony, connecting with the tramway system of the Broken Hill mines.

WHEREAS large quantities of mineral ores exist and are being quarried and mined at the quarries and mines on the lands situate in the parish of Sebastopol, county of Yancowinna, in the Colony of New South Wales, now held under lease from the Crown by Wyman Brown, of Sydney, in the said Colony, gentleman. And whereas large quantities of timber suitable for fuel exist upon the said lands. And whereas for the purpose of facilitating the carriage of the said mineral ores, fuel, and timber from the said quarries, mines, and lands, the said Wyman Brown is desirous of constructing a single or double tramway for horse, steam, or other traction, over, across, and along the lands described in the Schedule hereto, from the said quarries, mines, and lands, in the said parish of Sebastopol, to a point to be determined on Mineral Lease, portion 10, parish of Picton, county Yancowinna, aforesaid. And whereas such tramway cannot be made without Legislative authority. And whereas the construction of the said proposed tramway would be largely for the benefit of the mining public by materially decreasing the cost of carriage, thereby enabling the poorer class of ores to be profitably worked, and would be also the means of supplying the district of Broken Hill with cheap fuel, and it is therefore advisable to authorise, by Legislative enactment, the construction and maintenance of the said proposed tramway, subject to the provisions hereinafter contained. **BE IT THEREFORE ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. It shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, upon the terms and conditions and subject to the provisions hereinafter contained, to make and construct

Preamble.

Authority to construct tramway.

construct a tramway for the carrying of the said mineral ores, fuel, timber, and of all persons engaged, and all materials, goods, and plant necessary in and about the working thereof, from and to the said quarries, mines, and lands in the parish of Sebastopol aforesaid, by the route, and along and over the roads, streets, lands, and reserves, both public and private, described in the Schedule hereto, and to take and use so much of the said roads, streets, lands, and reserves, both public and private, as may be required for the purposes of such tramway, but so that the same shall not occupy in part thereof on private lands *a greater space in breadth than thirty-three feet*, and on public lands in breadth sixty-six feet, *including the support and foundations thereof*, and to take and use so much public lands adjoining the said tramway not exceeding in the aggregate eighty acres, as may be required for the purpose of constructing tanks, sidings, or other necessary works in connection with such tramway.

Levels of line.

2. The gauge of the said tramway shall be *three feet six inches*, and where it traverses public thoroughfares shall be laid at about the general level of such thoroughfares and so that the rails shall not project above the surface thereof; and the said Wyman Brown, his heirs, executors, administrators, or assigns, shall maintain in perfect order and repair the said tramway, and where the said tramway traverses public thoroughfares, shall maintain, perfect, and keep in order and repair the pavements of the same between the rails of the said tramway and for the space of one foot six inches on each side of the said rails, and furthermore shall erect and maintain all necessary causeways in connection with the said tramway.

Tramway to remain property of Wyman Brown, his heirs, executors, administrators, and assigns.

3. The tramway and the material thereof shall not cease to be the property of the said Wyman Brown, his heirs, executors, administrators, and assigns, by reason of the same being laid as aforesaid.

Authorised persons to have rights over streets.

4. The said Wyman Brown, his heirs, executors, administrators, and assigns, and all other person or persons duly authorised, shall have all necessary rights over the roads, streets, and lands described in the Schedule to this Act as are required for the construction, repair, completion, and use of the said tramway. Provided that there shall be no interference with ordinary traffic beyond what is reasonable and necessary for such purpose.

Carriage.

5. The tramway shall be for the use of the said Wyman Brown, his heirs, executors, administrators, and assigns, and of all persons engaged by him or them in and about the carriage, winning, and obtaining of fuel and timber and the said mineral ores, and for the carriage of the said fuel, timber, and mineral ores, and of all plant, goods, and things necessary in and about the winning and obtaining the same, and shall be confined to the conveyance of such mineral ores and fuel, timber, and plant as aforesaid, and of all goods and things

things necessary in and about the same, and of all persons engaged in and about the same as aforesaid, to and from the said quarries, mines, and lands of the said Wyman Brown.

6. It shall be lawful for the persons using the said tramway to
5 employ horses, steam, or other motive power, and carriages, waggons, or trucks to be drawn thereby.

To employ horse, steam, or other motive power.

7. The said Wyman Brown, his heirs, executors, administrators,
and assigns shall not be entitled to any mines of coal, iron, slate or
10 other minerals under any land whereof the surface is vested in him or 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 authorised, and such mines shall not be deemed to vest in the said Wyman Brown, his heirs, executors, administrators, and assigns.

Wyman Brown, his heirs, executors, administrators, and assigns, not entitled to minerals.

8. Upon the completion of the tramway and works authorised
15 by this Act it shall be lawful for the Governor, with the advice of the Executive Council, in consideration of such completion, to grant to the said Wyman Brown, his heirs, executors, administrators or assigns, a lease, or leases, for a term not exceeding twenty-one years of such Crown lands as shall have been necessarily used or taken for
20 the said tramway at an annual rental not exceeding two shillings per acre.

Power to grant leases of land for tramway.

9. Before commencing the said tramway by this Act authorised
to be made, the said Wyman Brown, his heirs, executors, adminis-
trators or assigns shall by some qualified engineer by them to be
25 appointed, cause to be made and taken levels and surveys of the private lands through which such tramway is to be carried, together with a map or plan of the line of the said tramway, and of the lands through which it is to pass. Provided that it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, or assigns,
30 in making the said map or plan of the said line to deviate to the extent of not more than one and a half miles on either side of the line described in the Schedule hereto annexed. And the said map or plan shall be kept at some convenient office at Broken Hill, and true copies thereof, signed by the said Wyman Brown, his heirs, executors,
35 administrators, or assigns, shall be deposited with the Clerk of Petty Sessions, at Broken Hill aforesaid, and such map or plan and copies thereof respectively shall be opened at all convenient times for public examination from the day of the date on which such notice as in the next succeeding section is provided shall be first published, and all
40 persons shall be at liberty at all proper and convenient times to inspect the said map or plan or copies as aforesaid.

Before commencing tramway, survey to be made.

To be open to public inspection.

10. The said Wyman Brown, his heirs, executors, adminis-
trators, or assigns shall by advertisement in the *Government Gazette*,

Notice to be given of intention to make tramway.

and

and in one or more Sydney newspapers, and in one or more newspapers published or circulating in Broken Hill respectively, at least thirty days before the commencement of the formation of the tramway, give notice that they intend to construct the said tramway between the places thereof specified, according to a map or plan to be seen at an office (in the said notice specified) in Broken Hill aforesaid, and at the office of the said Clerk of Petty Sessions. 5

Omission in map or plan not to impede making the tramway, &c.

11. No advantage shall be taken of or against the said Wyman Brown, his heirs, executors, administrators, or assigns, or any interruption be given to the making of such tramway or other works on account of any omission or error in the said map or plan, but it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, or assigns, by themselves, their agents, officers, surveyors, servants, and workmen, to enter into and upon and to take and use for the purpose of this Act any lands or grounds set out and described in the said map or plan, notwithstanding any such omission or error, in case it shall appear to any two Justices acting for the district or place in which such lands or grounds shall be situated and be certified by writing under their hands, that such omission or error proceeds from mistake and not from fraud. 10 15 20

Notice of lands required for tramway.

12. When the said Wyman Brown, his heirs, executors, administrators, or assigns shall have made and completed the map or plan hereinbefore required to be made, he or they shall give notice of the lands taken and required for the said tramway, to all the parties interested in such lands, or to such of the said parties as shall be known to the said Wyman Brown, his heirs, executors, administrators or assigns. And every such notice shall state the particulars of the lands so taken or required as aforesaid, and that the said Wyman Brown, his heirs, executors, administrators, or assigns is or are willing to treat as to the compensation to be made to all parties for the lands taken or to be taken, and the damage sustained or to be sustained by them by reason of the exercise of the powers conferred by this Act and shall demand in the said notice from such parties, and the said parties are hereby required to deliver forthwith to the said Wyman Brown, his heirs, executors, administrators, or assigns, the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof, together with an abstract of their title to such land, and if they claim in respect of damage the nature of the damage which they have sustained or will sustain by reason of the taking of such lands. 25 30 35 40

Service of notice on owners and occupiers of land.

13. All notices required to be served by the said Wyman Brown, his heirs, executors, administrators, or assigns, upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found), and in case any 45

any such parties shall be absent from the Colony or cannot be found after diligent inquiry, shall be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

- 5 14. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the said tramway, it shall be lawful for the said Wyman Brown, his heirs, executors, administrators, and assigns, and his or their workmen and servants, to enter upon the land adjoining thereto at any time
10 whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose; but in every such case the said Wyman Brown, his heirs, executors, administrators, or assigns, shall, within fourteen days after such entry, make a report to the Secretary for Public Works, specifying
15 the nature of such accident or apprehended accident and of the works necessary to be done, and such powers shall cease and determine if the said Secretary shall, after considering the said report, certify that their exercise is not necessary for the public safety. Provided also that such works shall be as little injurious to the said adjoining lands
20 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
25 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 tramway.
- 30 15. If within twenty-eight days of the service of such notice as aforesaid the said persons through whose land the tramway shall pass, or any of them, and the said Wyman Brown, his heirs, executors, administrators, and assigns, shall not agree as to the amount of compensation to be paid by him or them for the said lands belonging
35 to the said parties, or any of them, or for any damage that may be sustained by them or him, by reason of the execution of the works, or if any other question as to compensation shall arise under this Act, the amount of such compensation shall be settled by arbitrators in manner hereinafter mentioned (that is to say), unless both parties
40 concur in the appointment of a single arbitrator, each party on the request of the other shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred; and every appointment of an arbitrator shall be under the hand and seal of such person or persons respectively; and such appointment shall be
45 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

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

Compensation to be settled by arbitration.

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 such dispute or other matter shall have arisen, and after a request in writing shall 5 have been served by the one party on the other party to appoint an arbitrator, such last mentioned party shall fail to appoint such arbitrator, then upon such failure it shall be lawful for the Attorney-General for the time being of the said Colony, on the application of the party who has himself appointed an arbitrator, to appoint such 10 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.

Proceedings in case
of disability of
arbitrator.

16. If before the matter so referred shall be determined any 15 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 20 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 powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, neglect, or disability as aforesaid. 25

Appointment of
umpire.

17. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint in 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 30 shall die, or refuse, or for seven days neglect to act after being called upon so to do by the arbitrators or either of them, they shall forthwith after such death, refusal, or neglect, appoint another umpire in his place, and the decision of every such umpire upon the matters so referred to him shall be final. 35

Neglect to appoint
umpire.

18. If in either of the cases aforesaid the arbitrators shall refuse or for seven days after request of either party to such arbitration neglect to appoint an umpire, it shall be lawful for the Attorney-General for the time being, on the application of either party to such 40 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 disability
of single arbitrator.

19. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable, or shall refuse, or for 45 fourteen

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.

5 20. If when more than one arbitrator shall have been appointed, and when neither of them shall die, become incapable, refuse, or neglect to act as aforesaid, such arbitrators shall fail to make their award within fourteen days after the day on which the last of such arbitrators shall have been appointed, or within such extended time
10 (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.

Arbitrators failing to make their award, matters referred to umpire.

21. The said arbitrator or arbitrators, or his or their umpire, may call for the production of any documents in the possession or
15 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.

Arbitrators may order production of documents, &c.

22. Before any arbitrator or umpire shall enter upon the
20 consideration of any matter referred to him, he shall, in the presence of a Justice of the Peace, Notary Public, or Commissioner for Affidavits for the said Colony, make and subscribe the following declaration, that is to say—

Declaration by arbitrators or umpire.

25 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 "Balaclava Tramway Act."

Made and subscribed at
in the presence of

A.B.

30 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 misdemeanour.

23. All the costs of any such arbitration and incident thereto shall be in the discretion of the arbitrator or arbitrators or umpire,
35 and the costs of the arbitrator or arbitrators or umpire shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth, or more, less than the amount which shall have been offered by the said Wyman Brown, his heirs, executors, administrators, and assigns, in which case the whole costs of the arbitration,
40 and also the costs of and incident to the said arbitration, shall be paid by the claimant. Provided that, if either party shall be dissatisfied with the costs allowed by the said arbitrator or arbitrators or umpire

Cost of arbitration, how to be borne.

Costs may be taxed.

as

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.

Arbitrators or
umpire to deliver
award to Wyman
Brown, his heirs,
executors, adminis-
trators and assigns.

24. The arbitrator, arbitrators, or umpire shall deliver their or his award in writing to the said Wyman Brown, his heirs, executors, administrators, and assigns, who shall retain the same, and shall forthwith, on demand, at his or 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 the award. 5 10

Compensation to be
paid within sixty
days after publica-
tion of award.

Submission may be
made a rule of
Supreme Court.

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

Award not to be set
aside for
irregularity.

26. 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. 15

Compensation in
cases of negligence.

27. The said Wyman Brown, his heirs, executors, administrators, and assigns 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 owners and occupiers of the lands through which the said tramway shall pass, by the non-performance or negligent performance by the said Wyman Brown, his heirs, executors, administrators, and assigns, of any of the matters or things hereby required or authorised to be performed by them. 20 25

Compensation in
cases of temporary
possession.

28. In every case where the said Wyman Brown, his heirs, executors, administrators, and assigns shall take temporary possession of lands by virtue of the powers hereby granted, it shall be incumbent on him or them, within three months after entry upon such land, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, and damaged or injured by such entry, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of such entry, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier, or to the owner of the lands, as the case may require, a rent, to be fixed by two Justices in case the parties differ; and shall also, within twelve months after such entry, pay to such owners and occupiers, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said 30 35 40

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

29. If the owner of any lands required to be taken for the construction of the said tramway is absent from the Colony, or cannot
 5 upon diligent inquiry be found, or is under disability, or if any such lands are vested in persons who have respectively only limited or qualified interests therein, and who cannot enter into binding agreements with the said Wyman Brown, his heirs, executors, administrators, and assigns for the purchase of such lands, or join in
 10 submitting their claims for compensation to arbitration as hereinbefore provided, the purchase money or compensation payable by the said Wyman Brown, his heirs, executors, administrators, and assigns, in respect of such lands, shall be determined by the valuation of a surveyor, to be nominated as hereinafter mentioned.

Proceedings in
absence of owner.

15 30. Upon application by the said Wyman Brown, his heirs, executors, administrators, and assigns to two Justices, and upon such proof as may be satisfactory to them that there is no person in the Colony or to be found who can enter into a binding contract with the said Wyman Brown, his heirs, executors, administrators, and assigns,
 20 or join with the said Wyman Brown, his heirs, executors, administrators, and assigns in submitting his claims for compensation to arbitration in respect of any lands required to be taken for the construction of the said tramway, such Justices shall by writing under their hands nominate a licensed surveyor for determining such com-
 25 pensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Justices to appoint
surveyor in certain
cases.

31. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall in the presence of such Justices or
 30 one of them make and subscribe the following declaration at the foot of such nomination, that is to say:—

Declaration by
surveyor.

I, A.B., do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation
 35 hereby referred to me.

Made and subscribed at
 in the presence of

A.B.

And if any such surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he
 40 shall be guilty of a misdemeanour.

32. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved
 together

Production of
valuation, &c.

together therewith by the said Wyman Brown, his heirs, executors, administrators, and assigns; and they shall at all times produce the said valuation and documents on demand to all parties interested in the lands comprised in such valuation.

Cost of valuation,
how borne.

33. All the expenses of and incident to any such valuation 5
shall be borne by the said Wyman Brown, his heirs, executors,
administrators, and assigns.

Compensation not
exceeding £50 how
to be dealt with.

34. If the amount of compensation determined by any such
surveyor does not exceed the sum of fifty pounds, it shall, except in
the cases where the owner is absent from the Colony, or cannot be 10
found, be paid by the said Wyman Brown, his heirs, executors,
administrators, and assigns to the person or persons for the time
being entitled to the rents and profits of the lands in respect whereof
the same shall be payable for their own use and benefit, or in the case
of the coverture, infancy, idiotcy, lunacy, or other incapacity of any 15
such persons, then such money shall be paid for their use to the
respective husbands, guardians, committees, or trustees of such
persons.

Compensation how
dealt with in
absence of owner.

35. If the amount of compensation determined by any such
surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 20
where the owner is absent from the Colony, or cannot be found,
whether it exceeds the sum of fifty pounds or not, it shall be paid by
the said Wyman Brown, his heirs, executors, administrators, and
assigns into the hands of the Master in Equity of the Supreme Court
in the matter of this Act, in trust for the parties interested in the 25
lands in respect of which it is paid in; and a certificate from the said
Master in Equity of the fact of the money being so paid in shall be a
sufficient discharge to the said Wyman Brown, his heirs, executors,
administrators, and assigns, for the money so paid. Provided that all
moneys so paid in shall be dealt with by the Supreme Court in the 30
same manner in all respects as moneys paid in under an Act passed
in the twenty-first year of Her present Majesty, and entitled "*An Act
for better securing Trust Funds, and for the relief of Trustees.*" And
shall be subject, in all respects, to the provisions of the said Act, and
all rules of the said Court made thereunder. 35

Cases of dispute
Sheriff may issue
warrant.

36. If in any case in which, according to the provisions of this
Act, the said Wyman Brown, his heirs, executors, administrators, and
assigns, is authorised to enter upon and take possession of any lands
required for the purposes of the said tramway, the owner or occupier
of any such lands, or any other person, shall refuse to give up 40
possession thereof, or hinder the said Wyman Brown, his heirs,
executors, administrators, and assigns, from entering upon or taking
possession of the same, it shall be lawful for the said Wyman Brown,
his heirs, executors, administrators, and assigns, to issue his or their

warrant

warrant to the Sheriff to deliver possession of the same to the persons appointed by the said Wyman Brown, his heirs, executors, administrators, and assigns in such warrant, to receive the same, and upon receipt of such warrant the Sheriff shall deliver possession of any such
 5 lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the party so refusing to give possession, and the amount of such costs shall be deducted and retained by the said Wyman Brown, his heirs, executors, administrators, and assigns, from the compensation (if any)
 10 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 the amount of such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice of the
 15 Peace for that purpose he shall issue his warrant accordingly.

37. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such tramway, upon giving to the said Wyman Brown, his heirs, executors, administrators, and assigns, three months' notice in writing of his intention to do so.
 20 If the amount tendered for the purchase of the property be considered inadequate by the said Wyman Brown, his heirs, executors, administrators, and assigns, the amounts shall be ascertained by assessment, in terms of the "Public Lands Acquisition Act."

Power of purchase
of railway by
Government.

38. It shall be lawful for the said Wyman Brown, his heirs,
 25 executors, administrators, and assigns, at any time, by any deed or instrument in writing, to assign and transfer all the rights, powers, privileges, benefits, and advantages conferred upon him or them by this Act, to any person or persons, or to any duly incorporated company, and upon any such transfer or assignment being signed
 30 or executed, the person or persons, or duly incorporated company in whose favour such transfer or assignment is made, shall then stand in the place of the said Wyman Brown, his heirs, executors, administrators, and assigns, and shall have all the rights, powers, benefits, privileges, and advantages conferred upon the said Wyman Brown,
 35 his heirs, executors, administrators, and assigns, by this Act.

Power to assign.

39. The work in connection with the construction of the said tramway hereby authorised must be commenced within six months from the passing of this Act, and the said tramway must be completed within two years from the date of the passing of this Act.

Commencement and
completion of work.

40. In this Act the said Justices shall mean Justices of the Peace in and for the territory of New South Wales, and where any matter shall be authorised or required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions, and the word "owner" shall mean
 any

Interpretation clause.

any person or corporation who, under the provisions of this Act, would be able to sell land to the said Wyman Brown, his heirs, executors, administrators, or assigns.

Short title.

41. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1891."

5

SCHEDULE.

Commencing at a point on the Broken Hill Proprietary Tram Line, to be determined on mineral lease (10) ten, in the parish of Picton, county of Yancowinna, thence in a south-westerly direction through mineral leases numbers thirty-eight, fifty-one, ninety-two, six, and five, about sixty chains; thence south-easterly through mineral leases numbers eighty-eight, eighty-nine, one hundred and sixty-seven (167), one hundred and eleven (111), and one hundred and twelve (112), entering parish of Soudan, thence south-easterly through homestead lease 87-5, thence south-easterly through mineral leases numbers one hundred and seventy-two, and one hundred and seventy-three, entering parish of Sebastopol, thence south-easterly to mineral lease number two, parish of Sebastopol, county of Yancowinna, making a total distance from Broken Hill to the Balaclava mines and quarries, of about twelve miles; the limit of deviation allowed by this Act shall be $1\frac{1}{2}$ miles on each side of the above described line.