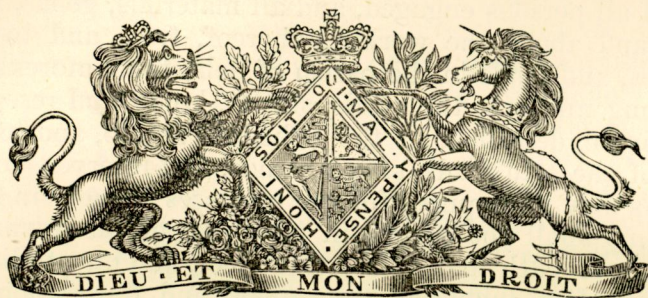


New South Wales.



ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

An Act 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. [Assented to, 29th March, 1892.]

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 public by materially decreasing the cost of carriage, thereby enabling

Preamble.

A

Balaclava Tramway.

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:—

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 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 lease, in accordance with section eight of this Act, 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, 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 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 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.

Balaclava Tramway.

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, 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. 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

Notice of lands required for tramway.

by

Balaclava Tramway.

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.

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.

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

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.

Compensation to be settled by arbitration

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 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 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 persons respectively; and such appointment shall be delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration

on

Balaclava Tramway.

on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after 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 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 single arbitrator shall be final and conclusive.

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 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 the time of such his death, refusal, neglect, or disability as aforesaid.

Proceedings in case of disability of arbitrator.

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 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 referred to him shall be final.

Appointment of umpire.

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 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.

Neglect to appoint umpire.

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

In case of disability of single arbitrator.

19. 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 (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.

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 determining

Arbitrators may order production of documents, &c.

Balaclava Tramway.

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.

21. Before any arbitrator or umpire shall enter upon the 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—

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.

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.

Cost of arbitration, how to be borne.

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 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 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.

Costs may be taxed

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

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 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.

24. 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.

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.

Compensation in cases of negligence.

26. 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.

Compensation in cases of temporary possession.

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, upon being required so to do, to pay to the occupier of the said lands
the

Balaclava Tramway.

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

28. If the owner of any lands required to be taken for the 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 agreements with the said Wyman Brown, his heirs, executors, administrators, 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 nominated as hereinafter mentioned.

Proceedings in
absence of owner.

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 said Wyman Brown, his heirs, executors, administrators, and assigns, 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 compensation 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.

30. Before such surveyor shall enter upon the duty of making 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 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 shall be guilty of a misdemeanour.

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

Production of
valuation, &c.

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

Cost of valuation,
how borne.

Balaclava Tramway.

Compensation not exceeding £50 how to be dealt with.

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 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 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.

34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 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 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 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.

Cases of dispute Sheriff may issue warrant.

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 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 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 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 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 may issue his warrant accordingly.

Power of purchase of railway by Government.

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. 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.*"

Balaclava Tramway.

37. It shall be lawful for the said Wyman Brown, his heirs, Power to assign. 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 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, his heirs, executors, administrators, and assigns, by this Act.

38. The work in connection with the construction of the said Commencement and completion of work. 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: Provided that the said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon him or them by this Act, unless he or they shall have commenced the projected tramway within the period of six months, and completed the same within a period of two years from the date aforesaid.

39. In this Act the words Justices or Justice shall mean Justices Interpretation clause. 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 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.

40. This Act may for all purposes be cited as the "*Balaclava* Short title. Tramway Act of 1892."

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 one and a half miles on each side of the above described line.

By Authority: CHARLES POTTER, Government Printer, Sydney, 1892.

[3d.]

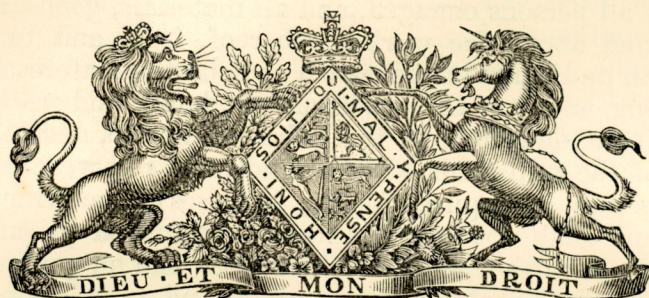
It is not possible for the author to give a complete account of the events of the year 1787, but he will endeavour to give a summary of the principal events of the year, and to show the progress of the war, and the state of the empire, at the end of the year. The year 1787 was a year of great interest and importance, and it will be interesting to see how the events of the year were connected with each other, and how they led to the final result of the year.

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New South Wales.



ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

An Act 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. [Assented to, 29th March, 1892.]

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 public by materially decreasing the cost of carriage, thereby enabling

Preamble.

Balaclava Tramway.

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:—

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 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 lease, in accordance with section eight of this Act, 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, 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 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 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.

Balaclava Tramway.

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, 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. 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

Notice of lands required for tramway.

by

Balaclava Tramway.

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.

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.

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

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.

Compensation to be settled by arbitration

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 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 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 persons respectively; and such appointment shall be delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration

on

Balaclava Tramway.

on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after 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 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 single arbitrator shall be final and conclusive.

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 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 the time of such his death, refusal, neglect, or disability as aforesaid.

Proceedings in case of disability of arbitrator.

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 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 referred to him shall be final.

Appointment of umpire.

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 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.

Neglect to appoint umpire.

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

In case of disability of single arbitrator.

19. 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 (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.

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 determining

Arbitrators may order production of documents, &c.

Balaclava Tramway.

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.

21. Before any arbitrator or umpire shall enter upon the 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—

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.

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.

Cost of arbitration, how to be borne.

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 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 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.

Costs may be taxed

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

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 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.

Award not to be set aside for irregularity.

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

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.

Compensation in cases of negligence.

26. 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.

Compensation in cases of temporary possession.

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, upon being required so to do, to pay to the occupier of the said lands

the

Balaclava Tramway.

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

28. If the owner of any lands required to be taken for the 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 agreements with the said Wyman Brown, his heirs, executors, administrators, 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 nominated as hereinafter mentioned.

Proceedings in
absence of owner.

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 said Wyman Brown, his heirs, executors, administrators, and assigns, 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 compensation 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.

30. Before such surveyor shall enter upon the duty of making 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 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 shall be guilty of a misdemeanour.

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

Production of
valuation, &c.

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

Cost of valuation,
how borne.

Balaclava Tramway.

Compensation not exceeding £50 how to be dealt with.

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 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 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.

34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 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 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 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.

Cases of dispute Sheriff may issue warrant.

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 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 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 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 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 may issue his warrant accordingly.

Power of purchase of railway by Government.

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. 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.*"

Balaclava Tramway.

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 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, his heirs, executors, administrators, and assigns, by this Act. Power to assign.

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: Provided that the said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon him or them by this Act, unless he or they shall have commenced the projected tramway within the period of six months, and completed the same within a period of two years from the date aforesaid. Commencement and completion of work.

39. In this Act the 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 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. Interpretation clause.

40. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1892." Short title.

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 one and a half miles on each side of the above described line.

By Authority: CHARLES POTTER, Government Printer, Sydney, 1892.

[3d.]

VICTORIA

It is to be noted that the...

The following...

In the...

The...

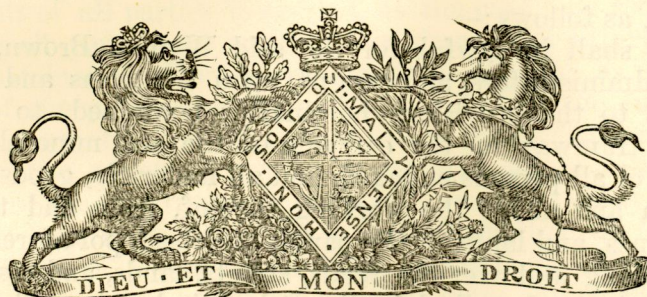
...

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

*Legislative Council Chamber,
Sydney, 23rd March, 1892.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

An Act 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. [Assented to, 29th March, 1892.]

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 public by materially decreasing the cost of carriage, thereby enabling

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

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

Balaclava Tramway.

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:—

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 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 lease, in accordance with section eight of this Act, 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, 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 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 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.

Balaclava Tramway.

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, 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. 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

Notice of lands required for tramway.

by

Balaclava Tramway.

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.

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.

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

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.

Compensation to be settled by arbitration

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 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 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 persons respectively; and such appointment shall be delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration

on

Balaclava Tramway.

on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after 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 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 single arbitrator shall be final and conclusive.

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 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 the time of such his death, refusal, neglect, or disability as aforesaid.

Proceedings in case of disability of arbitrator.

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 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 referred to him shall be final.

Appointment of umpire.

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 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.

Neglect to appoint umpire.

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

In case of disability of single arbitrator.

19. 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 (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.

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 determining

Arbitrators may order production of documents, &c.

Balaclava Tramway.

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.

21. Before any arbitrator or umpire shall enter upon the 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—

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.

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.

Cost of arbitration, how to be borne.

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 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 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.

Costs may be taxed

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

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 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.

Award not to be set aside for irregularity.

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

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.

Compensation in cases of negligence.

26. 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.

Compensation in cases of temporary possession.

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, upon being required so to do, to pay to the occupier of the said lands

the

Balaclava Tramway.

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

28. If the owner of any lands required to be taken for the 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 agreements with the said Wyman Brown, his heirs, executors, administrators, 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 nominated as hereinafter mentioned.

Proceedings in
absence of owner.

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 said Wyman Brown, his heirs, executors, administrators, and assigns, 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 compensation 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.

30. Before such surveyor shall enter upon the duty of making 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 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 shall be guilty of a misdemeanour.

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

Production of
valuation, &c.

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

Cost of valuation,
how borne.

Balaclava Tramway.

Compensation not exceeding £50 how to be dealt with.

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 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 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.

34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 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 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 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.

Cases of dispute Sheriff may issue warrant.

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 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 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 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 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 may issue his warrant accordingly.

Power of purchase of railway by Government.

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. 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.*"

Balaclava Tramway.

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 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, his heirs, executors, administrators, and assigns, by this Act. Power to assign.

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: Provided that the said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon him or them by this Act, unless he or they shall have commenced the projected tramway within the period of six months, and completed the same within a period of two years from the date aforesaid. Commencement and completion of work.

39. In this Act the 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 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. Interpretation clause.

40. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1892." Short title.

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 one and a half miles on each side of the above described line.

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

*Government House,
29th March, 1892.*

JERSEY.

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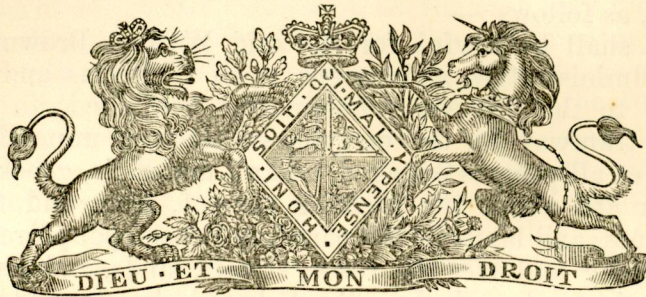
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I Certify that this PRIVATE BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council Chamber,
Sydney, 23rd March, 1892.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

An Act 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. [Assented to, 29th March, 1892.]

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 public by materially decreasing the cost of carriage, thereby enabling

Preamble.

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

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

Balaclava Tramway.

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:—

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 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 lease, in accordance with section eight of this Act, 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 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, 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 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 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.

Balaclava Tramway.

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, 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. 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

Notice of lands required for tramway.

by

Balaclava Tramway.

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.

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.

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

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.

Compensation to be settled by arbitration

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 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 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 persons respectively; and such appointment shall be delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration

on

Balaclava Tramway.

on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after 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 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 single arbitrator shall be final and conclusive.

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 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 the time of such his death, refusal, neglect, or disability as aforesaid.

Proceedings in case of disability of arbitrator.

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 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 referred to him shall be final.

Appointment of umpire.

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 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.

Neglect to appoint umpire.

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

In case of disability of single arbitrator.

19. 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 (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.

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 determining

Arbitrators may order production of documents, &c.

Balaclava Tramway.

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.

21. Before any arbitrator or umpire shall enter upon the 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—

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.

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.

Cost of arbitration, how to be borne.

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 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 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.

Costs may be taxed

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

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 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.

24. 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.

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.

Compensation in cases of negligence.

26. 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.

Compensation in cases of temporary possession.

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, upon being required so to do, to pay to the occupier of the said lands

the

Balaclava Tramway.

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

28. If the owner of any lands required to be taken for the 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 agreements with the said Wyman Brown, his heirs, executors, administrators, 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 nominated as hereinafter mentioned.

Proceedings in
absence of owner.

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 may be found who can enter into a binding contract with the said Wyman Brown, his heirs, executors, administrators, and assigns, 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 compensation 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.

30. Before such surveyor shall enter upon the duty of making 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 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 shall be guilty of a misdemeanour.

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

Production of
valuation, &c.

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

Cost of valuation,
how borne.

Balaclava Tramway.

Compensation not exceeding £50 how to be dealt with.

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 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 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.

34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 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 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 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.

Cases of dispute Sheriff may issue warrant.

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 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 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 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 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 may issue his warrant accordingly.

Power of purchase of railway by Government.

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. 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.*"

Balaclava Tramway.

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 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, his heirs, executors, administrators, and assigns, by this Act. Power to assign.

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: Provided that the said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon him or them by this Act, unless he or they shall have commenced the projected tramway within the period of six months, and completed the same within a period of two years from the date aforesaid. Commencement and completion of work.

39. In this Act the 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 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. Interpretation clause.

40. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1892." Short title.

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 one and a half miles on each side of the above described line.

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

JERSEY.

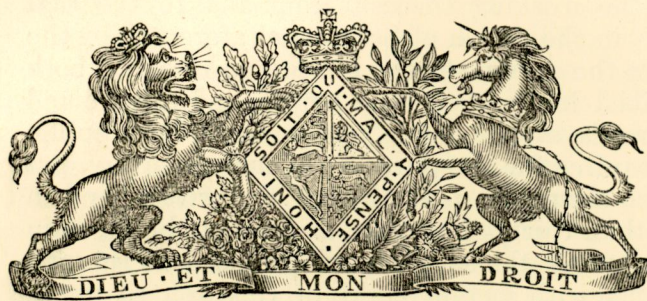
*Government House,
29th March, 1892.*

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

*Legislative Council Chamber,
Sydney, 10th March, 1892. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

An Act 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.

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 public by materially decreasing the cost of carriage, thereby enabling

Balaclava Tramway.

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:—

10 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 lease, in accordance with section eight of this Act, so much
25 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.

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
30 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
35 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.

3. The tramway and the material thereof shall not cease to be
40 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 have all necessary rights over the roads, streets, and lands described
45 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.

5. The tramway shall be for the use of the said Wyman Brown,
50 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
55 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 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.

Balaclava Tramway.

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, 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. 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

Notice of lands required for tramway.

Balaclava Tramway.

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.

10 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
15 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.

Service of notice on owners and occupiers of land.

20 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
25 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
30 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,
35 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
40 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.

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

45 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 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
50 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 concur in the appointment of a single arbitrator, each party on the
55 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 delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration

Compensation to be settled by arbitration.

on

Balaclava Tramway.

on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of 5 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 lawful for the Attorney-General for the time being of the said Colony, 10 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 single arbitrator shall be final and conclusive.

15 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 writing some other person to act in his place, and if for the space of 20 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 the time of such his death, refusal, neglect, or disability as aforesaid.

Proceedings in case of disability of arbitrator.

25 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 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.

Appointment of umpire.

35 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 arbitration, to appoint an umpire, and the decision of such umpire on 40 the matters on which the arbitrators shall differ or which shall be referred to him under this Act, shall be final.

Neglect to appoint umpire.

18. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable, or shall refuse, or for 45 fourteen days neglect to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this Act, in the same manner as if such arbitrator had not been appointed.

In case of disability of single arbitrator.

19. If when more than one arbitrator shall have been appointed, and when neither of them shall die, become incapable, refuse, or 50 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 arbitrators, under their hands, the matters referred to them shall be 55 determined by the umpire to be appointed as aforesaid.

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

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 60 determining

Arbitrators may order production of documents, &c.

Balaclava Tramway.

determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

21. Before any arbitrator or umpire shall enter upon the 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—

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

Made and subscribed at
in the presence of

A.B.

15 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.

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 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 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.

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 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.

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

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.

26. 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.

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, upon being required so to do, to pay to the occupier of the said lands

the

Balaclava Tramway.

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
 5 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
 10 for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers hereby granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

28. If the owner of any lands required to be taken for the
 15 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 agreements with the said Wyman Brown, his heirs, executors, adminis-
 20 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
 25 nominated as hereinafter mentioned.

Proceedings in
absence of owner.

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
 30 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
 35 their hands nominate a licensed surveyor for determining such compensation 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.

30. Before such surveyor shall enter upon the duty of making
 40 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
 45 and ability, execute the duty of making the valuation 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
 50 having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

31. The said nomination and declaration shall be annexed to
 the valuation to be made by such surveyor, and shall be preserved
 together therewith by the said Wyman Brown, his heirs, executors,
 55 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.

Production of
valuation, &c.

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

Cost of valuation,
how borne.

Balaclava Tramway.

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 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 such persons, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

Compensation not exceeding £50 how to be dealt with.

34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 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 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 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.

Compensation how dealt with in absence of owner.

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 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 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 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 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 may issue his warrant accordingly.

Cases of dispute Sheriff may issue warrant.

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. 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.

Balaclava Tramway.

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

Power to assign.

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: Provided that the said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon him or them by this Act, unless he or they shall have commenced the projected tramway within the period of six months, and completed the same within a period of two years from the date aforesaid.

Commencement and completion of work.

39. In this Act the 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 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.

Interpretation clause.

40. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1892."

Short title.

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 one and a half miles on each side of the above described line.

It is the policy of the Department of the Interior to manage the public lands and resources under its jurisdiction for the multiple use and sustained yield of such lands and resources. This policy is to be carried out in accordance with the following principles:

1. To protect and preserve the public lands and resources for the benefit and enjoyment of present and future generations.
2. To manage the public lands and resources for the multiple use and sustained yield of such lands and resources.
3. To protect and preserve the public lands and resources for the benefit and enjoyment of present and future generations.
4. To manage the public lands and resources for the multiple use and sustained yield of such lands and resources.
5. To protect and preserve the public lands and resources for the benefit and enjoyment of present and future generations.
6. To manage the public lands and resources for the multiple use and sustained yield of such lands and resources.
7. To protect and preserve the public lands and resources for the benefit and enjoyment of present and future generations.
8. To manage the public lands and resources for the multiple use and sustained yield of such lands and resources.
9. To protect and preserve the public lands and resources for the benefit and enjoyment of present and future generations.
10. To manage the public lands and resources for the multiple use and sustained yield of such lands and resources.

The Bureau of Land Management is committed to the protection and preservation of the public lands and resources under its jurisdiction. This commitment is based on the following principles:

1. To protect and preserve the public lands and resources for the benefit and enjoyment of present and future generations.
2. To manage the public lands and resources for the multiple use and sustained yield of such lands and resources.
3. To protect and preserve the public lands and resources for the benefit and enjoyment of present and future generations.
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The Bureau of Land Management is committed to the protection and preservation of the public lands and resources under its jurisdiction. This commitment is based on the following principles:

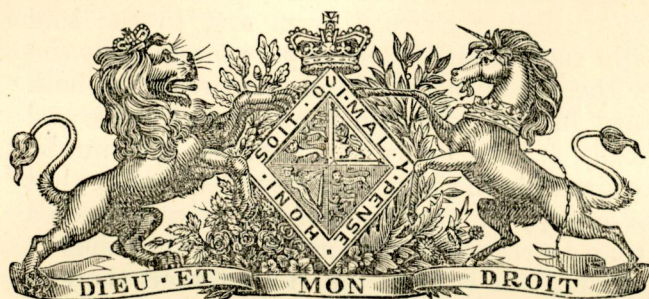
1. To protect and preserve the public lands and resources for the benefit and enjoyment of present and future generations.
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9. To protect and preserve the public lands and resources for the benefit and enjoyment of present and future generations.
10. To manage the public lands and resources for the multiple use and sustained yield of such lands and resources.

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

*Legislative Council Chamber,
Sydney, 10th March, 1892.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

An Act 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.

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 public by materially decreasing the cost of carriage, thereby enabling

Preamble.

Balaclava Tramway.

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 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 lease, in accordance with section eight of this Act, so much 25 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.

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 30 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 35 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.

3. The tramway and the material thereof shall not cease to be 40 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 have all necessary rights over the roads, streets, and lands described 45 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.

5. The tramway shall be for the use of the said Wyman Brown, 50 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 55 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 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.

Balaclava Tramway.

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, 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. 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

Balaclava Tramway.

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.

10 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
15 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.

Service of notice on owners and occupiers of land.

20 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
25 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
30 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,
35 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
40 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.

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

45 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 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
50 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 concur in the appointment of a single arbitrator, each party on the
55 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 delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration

Compensation to be settled by arbitration.

Balaclava Tramway.

on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of 5 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 lawful for the Attorney-General for the time being of the said Colony, 10 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 single arbitrator shall be final and conclusive.

15 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 writing some other person to act in his place, and if for the space of 20 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 the time of such his death, refusal, neglect, or disability as aforesaid.

Proceedings in case of disability of arbitrator.

25 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 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.

Appointment of umpire.

35 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 arbitration, to appoint an umpire, and the decision of such umpire on 40 the matters on which the arbitrators shall differ or which shall be referred to him under this Act, shall be final.

Neglect to appoint umpire.

18. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable, or shall refuse, or for 45 fourteen days neglect to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this Act, in the same manner as if such arbitrator had not been appointed.

In case of disability of single arbitrator.

19. If when more than one arbitrator shall have been appointed, and when neither of them shall die, become incapable, refuse, or 50 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 arbitrators, under their hands, the matters referred to them shall be 55 determined by the umpire to be appointed as aforesaid.

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

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 60 determining

Arbitrators may order production of documents, &c.

Balaclava Tramway.

determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

21. Before any arbitrator or umpire shall enter upon the 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—

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.

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.

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 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 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.

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 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.

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

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.

26. 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.

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, upon being required so to do, to pay to the occupier of the said lands

the

Declaration by arbitrators or umpire.

Cost of arbitration, how to be borne.

Costs may be taxed

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

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

Submission may be made a rule of Supreme Court.

Award not to be set aside for irregularity.

Compensation in cases of negligence.

Compensation in cases of temporary possession.

Balaclava Tramway.

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
 5 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-
 10 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.

28. If the owner of any lands required to be taken for the
 15 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 agreements with the said Wyman Brown, his heirs, executors, adminis-
 20 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
 25 nominated as hereinafter mentioned.

Proceedings in
absence of owner.

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
 30 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
 35 their hands nominate a licensed surveyor for determining such compensation 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.

30. Before such surveyor shall enter upon the duty of making
 40 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,
 45 impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation 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
 50 having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

31. The said nomination and declaration shall be annexed to
 the valuation to be made by such surveyor, and shall be preserved
 together therewith by the said Wyman Brown, his heirs, executors,
 55 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.

Production of
valuation, &c.

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

Cost of valuation,
how borne.

Balaclava Tramway.

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 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 such persons, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

Compensation not exceeding £50 how to be dealt with.

34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 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 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 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.

Compensation how dealt with in absence of owner.

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 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 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 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 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 may issue his warrant accordingly.

Cases of dispute Sheriff may issue warrant.

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. 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.

Balaclava Tramway.

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

Power to assign.

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: Provided that the said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon him or them by this Act, unless he or they shall have commenced the projected tramway within the period of six months, and completed the same within a period of two years from the date aforesaid.

Commencement and completion of work.

39. In this Act the 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 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.

Interpretation clause.

40. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1892."

Short title.

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 one and a half miles on each side of the above described line.

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

*Legislative Council Chamber,
Sydney, March, 1892.* }

Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

An Act 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.

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 public by materially decreasing the cost of carriage, thereby enabling

Balaclava Tramway.

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 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 lease, in accordance with section eight of this Act, so much 25 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.

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 30 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 35 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.

3. The tramway and the material thereof shall not cease to be 40 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 have all necessary rights over the roads, streets, and lands described 45 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.

5. The tramway shall be for the use of the said Wyman Brown, 50 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 55 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 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.

Balaclava Tramway.

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, 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.

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. To be open to public inspection.

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 Notice to be given of intention to make tramway.

Balaclava Tramway.

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.

10 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
15 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.

Service of notice on owners and occupiers of land.

20 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
25 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
30 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,
35 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
40 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.

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

45 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 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
50 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 concur in the appointment of a single arbitrator, each party on the
55 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 delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration

Compensation to be settled by arbitration.

Balaclava Tramway.

on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of
 5 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 lawful for the Attorney-General for the time being of the said Colony,
 10 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 single arbitrator shall be final and conclusive.

15 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 writing some other person to act in his place, and if for the space of
 20 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 the time of such his death, refusal, neglect, or disability as aforesaid.

Proceedings in case of disability of arbitrator.

25 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 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.

Appointment of umpire.

35 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 arbitration, to appoint an umpire, and the decision of such umpire on
 40 the matters on which the arbitrators shall differ or which shall be referred to him under this Act, shall be final.

Neglect to appoint umpire.

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

In case of disability of single arbitrator.

50 19. 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 (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
 55 determined by the umpire to be appointed as aforesaid.

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

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
 determining

Arbitrators may order production of documents, &c.

Balaclava Tramway.

determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

21. Before any arbitrator or umpire shall enter upon the 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—

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

Made and subscribed at
in the presence of

A.B.

15 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.

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 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 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.

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 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.

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

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.

26. 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.

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, upon being required so to do, to pay to the occupier of the said lands the

Declaration by arbitrators or umpire.

Cost of arbitration, how to be borne.

Costs may be taxed

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

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

Submission may be made a rule of Supreme Court.

Award not to be set aside for irregularity.

Compensation in cases of negligence.

Compensation in cases of temporary possession.

Balaclava Tramway.

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 5 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- 10 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.

28. If the owner of any lands required to be taken for the 15 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- 20 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 25 nominated as hereinafter mentioned.

29. Upon application by the said Wyman Brown, his heirs, 30 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, or join with the said Wyman Brown, his heirs, executors, adminis- 35 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 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.

30. Before such surveyor shall enter upon the duty of making 40 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:—

I, A.B., do solemnly and sincerely declare that I will faithfully, 45 impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation 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 50 having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

31. The said nomination and declaration shall be annexed to 55 the valuation to be made by such surveyor, and shall be preserved 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.

32. All the expenses of and incident to any such valuation 60 shall be borne by the said Wyman Brown, his heirs, executors, administrators, and assigns.

Balaclava Tramway.

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 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 such persons, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

Compensation not exceeding £50 how to be dealt with.

34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 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 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 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.

Compensation how dealt with in absence of owner.

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 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 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 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 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 may issue his warrant accordingly.

Cases of dispute Sheriff may issue warrant.

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. 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.

Balaclava Tramway.

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

Power to assign.

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: Provided that the said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon him or them by this Act, unless he or they shall have commenced the projected tramway within the period of six months, and completed the same within a period of two years from the date aforesaid.

Commencement and completion of work.

39. In this Act the 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 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.

Interpretation clause.

40. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1892."

Short title.

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 one and a half miles on each side of the above described line.

Victoria Railway

17. It shall be lawful for the said Victoria Railway Company to...
18. The said Victoria Railway Company shall be authorized to...
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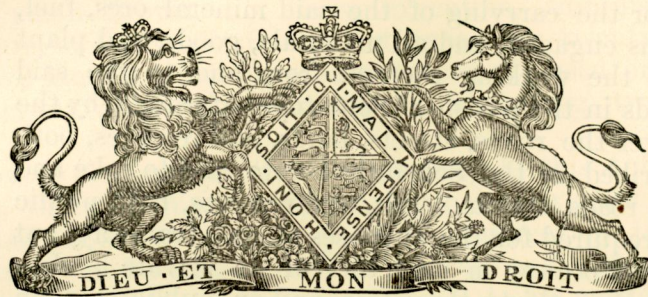
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This PRIVATE BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

*Legislative Council Chamber,
Sydney, March, 1892.* }

Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

An Act 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.

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 public by materially decreasing the cost of carriage, thereby enabling

Preamble.

Balaclava Tramway.

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:—

10 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 lease, in accordance with section eight of this Act, so much
25 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.

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
30 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
35 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.

3. The tramway and the material thereof shall not cease to be
40 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 have all necessary rights over the roads, streets, and lands described
45 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.

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
55 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 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.

Balaclava Tramway.

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, 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. 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

Notice of lands required for tramway.

Balaclava Tramway.

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, adminis-

5 trators, 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.

10 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

Service of notice on owners and occupiers of land.

15 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.

20 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

25 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

30 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,

35 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

40 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.

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

45 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 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

50 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 concur in the appointment of a single arbitrator, each party on the

55 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 delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration

Compensation to be settled by arbitration.

on

Balaclava Tramway.

on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of 5 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 lawful for the Attorney-General for the time being of the said Colony, 10 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 single arbitrator shall be final and conclusive.

15 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 writing some other person to act in his place, and if for the space of 20 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 the time of such his death, refusal, neglect, or disability as aforesaid.

Proceedings in case of disability of arbitrator.

25 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 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.

Appointment of umpire.

35 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 arbitration, to appoint an umpire, and the decision of such umpire on 40 the matters on which the arbitrators shall differ or which shall be referred to him under this Act, shall be final.

Neglect to appoint umpire.

18. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable, or shall refuse, or for 45 fourteen days neglect to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this Act, in the same manner as if such arbitrator had not been appointed.

In case of disability of single arbitrator.

19. If when more than one arbitrator shall have been appointed, and when neither of them shall die, become incapable, refuse, or 50 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 arbitrators, under their hands, the matters referred to them shall be 55 determined by the umpire to be appointed as aforesaid.

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

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 60 determining

Arbitrators may order production of documents, &c.

Balaclava Tramway.

determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

21. Before any arbitrator or umpire shall enter upon the 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.

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

Made and subscribed at
in the presence of

A.B.

15 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.

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 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 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.

Cost of arbitration, how to be borne.

Costs may be taxed

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 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.

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

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

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

Submission may be made a rule of Supreme Court.

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.

Award not to be set aside for irregularity.

26. 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.

Compensation in cases of negligence.

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, upon being required so to do, to pay to the occupier of the said lands the

Compensation in cases of temporary possession.

Balaclava Tramway.

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 5 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- 10 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.

28. If the owner of any lands required to be taken for the 15 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- 20 ments with the said Wyman Brown, his heirs, executors, adminis- 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 25 nominated as hereinafter mentioned.

29. Upon application by the said Wyman Brown, his heirs, 30 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, or join with the said Wyman Brown, his heirs, executors, adminis- 35 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 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.

30. Before such surveyor shall enter upon the duty of making 40 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:—

I, A.B., do solemnly and sincerely declare that I will faithfully, 45 impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation 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 50 having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

31. The said nomination and declaration shall be annexed to 55 the valuation to be made by such surveyor, and shall be preserved 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.

32. All the expenses of and incident to any such valuation 60 shall be borne by the said Wyman Brown, his heirs, executors, administrators, and assigns.

Proceedings in
absence of owner.Justices to appoint
surveyor in certain
cases.Declaration by
surveyor.Production of
valuation, &c.Cost of valuation,
how borne.

Balaclava Tramway.

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 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 such persons, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

Compensation not exceeding £50 how to be dealt with.

34. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases 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 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 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.

Compensation how dealt with in absence of owner.

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 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 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 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 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 may issue his warrant accordingly.

Cases of dispute Sheriff may issue warrant.

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. 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.

Balaclava Tramway.

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

Power to assign.

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: Provided that the said Wyman Brown, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon him or them by this Act, unless he or they shall have commenced the projected tramway within the period of six months, and completed the same within a period of two years from the date aforesaid.

Commencement and completion of work.

39. In this Act the 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 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.

Interpretation clause.

40. This Act may for all purposes be cited as the "Balaclava Tramway Act of 1892."

Short title.

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 one and a half miles on each side of the above described line.

Wynnam's Act

27. It shall be lawful for the said Wynnam Brown, his heirs, executors, administrators, and assigns at any time, by any deed or instrument in writing to be made and signed by the said Wynnam Brown, his heirs, executors, administrators, or assigns, to transfer or convey to any person or persons, or to any body incorporated or unincorporated, and upon any such transfer or conveyance being made or executed, the person or persons, or body incorporated or unincorporated, whose favour such transfer or conveyance is made, shall then stand in the place of the said Wynnam Brown, his heirs, executors, administrators, and assigns, and shall have all the rights, powers, benefits, privileges, and advantages conferred upon the said Wynnam Brown, his heirs, executors, administrators, and assigns, by this Act.

28. The work in connection with the construction of the said railway, hereby authorized, shall be deemed to be commenced within six months from the passing of this Act, and the said railway shall be completed within two years from the date of the passing of this Act. Provided that the said Wynnam Brown, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon him or them by this Act, unless he or they shall have commenced the proposed railway within the period of six months, and completed the same within a period of two years from the date aforesaid.

29. In this Act the words "father or father-in-law" shall mean grandfather or a trustee of the Estate in and for the territory of New South Wales, and where any estate shall be authorized or required to be done by two trustees the expression "two trustees" shall mean two trustees associated and acting together in their respective and the word "owner" shall mean any person or corporation who, under the provisions of this Act, would be able to sell land to the said Wynnam Brown, his heirs, executors, administrators, or assigns.

30. This Act may for all purposes be cited as the "Wynnam's Act."

31. The Act may for all purposes be cited as the "Wynnam's Act."

32. The Act may for all purposes be cited as the "Wynnam's Act."

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