

An Act to enable the Aberdare Collieries of New South Wales (Limited), a joint stock company duly incorporated under the Companies Act of 1899, to construct a railway from the Aberdare Collieries to a line constructed by the East Greta Coal-mining Company (Limited), under the provisions of the Stanford Coal-mine Railway Act of 1900. [27th December, 1901.]

ABERDARE
COLLIERIES
RAILWAY.

WHEREAS the Aberdare Collieries of New South Wales (Limited), a joint stock company duly incorporated under the Companies Act of 1899, hereinafter called the Company, are opening coal-mines upon lands situated in the parish of Cessnock, in the county of Northumberland, near Cessnock, and in order to facilitate communication between the said coal-mines and the Great Northern Railway the said company is desirous of constructing a railway from its said collieries to a line hereinafter called the Stanford Coal-mine Railway, constructed by the East Greta Coal-mining Company (Limited) under the provisions of the Stanford Coal-mine Railway Act of 1900; but as part of such proposed railway is intended to be made upon and pass through land believed to be the property of the Crown, bodies corporate, and private persons respectively, the same cannot be made without legislative authority: And whereas the said coal-mines are likely to prove beneficial to the State, and the public are concerned in promoting such an increase in and facilities for the supply of coal for local consumption, steam navigation, and export, as would result from the construction of the said proposed railway, and traffic on the Great Northern

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Northern Railway would be increased thereby. It is therefore desirable to authorise by legislative enactment the construction of the said railway, subject to the provisions hereinafter contained, upon payment of compensation to the several parties through whose land the same shall pass for such portion of their respective lands as may be required to be taken and occupied thereby: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Authority to construct railway and connect same with Stanford Coal-mine.

1. It shall be lawful for the said company or its assigns to make and construct a railway which shall be of the same gauge as the Government Railways, namely, four feet eight and a half inches, commencing at the west boundary of portion number seventeen, in the parish of Cessnock, county of Northumberland, and running thence easterly and north-easterly through Crown lands, in the said parish and in the parish of Stanford, to a point about eleven chains west of portion forty-five, in the last-mentioned parish, thence generally in a north-easterly direction, within the parish of Heddon through Crown lands and the lands of Messieurs Callaghan and Weston, thence again through Crown lands and the lands of Callaghan aforesaid, thence through the village reserve and the lands of Messieurs Clift, D'Arcy Wentworth, and Miss Nind, to a point on the Stanford railway about one mile and ten chains southerly from the junction of that railway with a railway constructed by the East Greta Coal-mining Company (Limited) under the provisions of the Silkstone Coal-mine Railway Act of 1889 and the Acts amending the same, such railway to be in the direction described in the Schedule, and to make and construct such loop-lines, stations, and sidings as may be necessary for the safe and convenient use of the railway to be constructed as aforesaid, and connecting with the said railway, and to take and use so much of the said Crown lands, and so much of the lands of private persons through which the said railway shall pass, as the company may require for their said railway, loop-lines, stations, and sidings: Provided that the land taken for the railway shall not exceed one chain in width except where an additional width shall be required for stations, sidings, loops, embankments, cuttings, and crossings, for which purpose the width of land taken shall not exceed three chains. The said railway shall be constructed in a proper and workmanlike manner, to the satisfaction of the Engineer-in-Chief for Railway Construction and the Railway Commissioners.

Penalty on failure to carry out works.

2. The said company shall within one month after the passing of this Act deposit the sum of two thousand pounds with the Colonial Treasurer as a guarantee for the due carrying out of the works authorised by this Act, and in the event of such works not being duly carried out such sum shall become forfeited to His Majesty. 3.

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3. The said railway shall be deemed to be a branch railway within the meaning of the fifth section of the Stanford Coal-mine Railway Act of 1900, and the company and its assigns shall be deemed to be owners and occupiers of the lands in the said section mentioned; but nothing in the said section shall be construed to prohibit or prevent the construction of the said railway in the direction mentioned in the Schedule hereto.

Application of
section 5 of
Stanford Coal-mine
Railway Act.

4. The ground and soil of so much of the site of the railway and sidings as passes over or includes the lands of the said owners of lands and over Crown lands respectively, together with such rights of ingress, egress, and regress upon the adjacent land as may be necessary for the making and repair of such railway, shall, so far as is necessary for the purpose of this Act, be vested, by virtue of this Act and without the necessity of any conveyance, in the company and its assigns in fee-simple: Provided that no lands vested in the Railway Commissioners shall by virtue of this Act be vested in the company, and nothing herein contained shall prevent the said owners from carrying on any mining operations beneath the said railway which shall not interfere with the safety of the said railway and the traffic thereon, and the company shall have no further right to the soil of the said lands beneath the surface than shall be requisite for the formation and repairs of the said road by cutting, embanking, sinking wells, or otherwise: Provided that the said railway, or a portion of the said railway not less than six miles in length, shall be constructed and brought into use within three years after the passing of this Act, and that in default thereof, or if after its completion the railway or the portion so constructed shall cease to be used for two years continuously, all the said lands, including Crown lands, and all the said company's interest and estate therein, shall revert without any conveyance to the Crown and original owners thereof, their heirs and assigns, respectively; and if such portion only is so constructed within two years, so much of the said lands, including Crown lands hereby vested in the said company, as are not used for the purposes of the portion so constructed, and the company's interest and estate in such last-mentioned lands, shall revert in manner aforesaid: Provided also that if in the exercise of the powers hereby granted it be found necessary to cross-cut through, sink, raise, or use any part of any road so as to render it impassable for, or dangerous or inconvenient to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of any road interfered with, and shall at their own expense maintain such substituted road in a state as convenient as the road interfered with, or as nearly as may be. And the company, before they use the said lands of the owners of land and the said Crown lands respectively for the purposes aforesaid, shall if required so to do separate the same by a

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

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sufficient fence from the land adjoining thereto, with such gates or cattle stops as may be necessary for the convenient occupation of such land, and shall also to all private roads used by them as aforesaid put up fences, gates, or cattle stops in like manner in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, or upon the said railway line; and in case of any difference between the owners or occupiers of such roads and lands and the company as to the necessity for such fences, gates, or cattle stops, then the said company shall put up and erect or construct such fences, gates, or cattle stops, as any two justices of the peace after inquiry shall deem necessary for the purposes aforesaid on application being made to them.

Railway open to the public.

5. The railway shall be open to the public use for the conveyance of coal and goods upon payment of a toll to the company for the conveyance of coal of a sum not exceeding one penny per ton per mile, with a minimum charge of three pence per ton in respect of every ton of coal for every transit, the person seeking transit supplying and loading his own trucks or on Government waggons, and the company or Government supplying locomotive power; and all trucks when emptied shall be conveyed on their return free of charge: Provided always that it shall not be compulsory on the company to supply locomotive power unless the party seeking the transit guarantee and bring one hundred tons at least during the twelve working hours, and give notice of the same at least twenty-four hours previously. The railway shall at all times be open to the public for the conveyance of coal and goods upon payment of a toll to the company for the conveyance of coal of a sum not exceeding one half-penny per ton per mile, with a minimum charge of two pence per ton in respect of every ton of coal for every transit, and for goods of a sum not exceeding one penny half-penny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply the locomotive power as well as the trucks and waggons: Provided that so long as the company shall be willing to supply locomotive power, no other person shall use locomotive power on the line other than the Railway Commissioners: Provided that if the railway shall be damaged by parties who shall themselves use the railway for transit, and supply locomotive power, the company shall be entitled to compensation for such damage, to be recovered either by action in the Supreme Court of New South Wales, or, if such damage do not exceed the sum of thirty pounds, summarily before two justices; and in estimating such damage the company shall be entitled, not only to compensation for the cost of repairing and restoring the railway, but to the consequential damage (if any) sustained by reason of the suspension of transit or otherwise.

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6. It shall be lawful for the owners or occupiers of the lands Branch railways. adjoining thereto or traversed by the said railway to lay down upon their own lands any collateral branches of railway to communicate with the said railway for the purpose of bringing carriages, trucks, and waggons to or from or upon the said railway, and the company shall, if required, at the expense of such owners or occupiers, make openings in the rails and such additional lines of railway as may be necessary for effecting such communication in places where the communication can be made with safety to the public and without injury to the said railway, and without inconvenience to the traffic thereupon, and the company shall not take any rate or toll or other moneys for the passing of any passengers, coal, and goods, or other things along any branch so to be made by any such owner or occupier or other person. The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel. The persons making or using such branch railways shall be subject to all by-laws and regulations of the company from time to time made, with respect to passing upon or crossing the railway and otherwise; and the persons making or using such branch railways shall be bound to construct, and from time to time as need may require, to renew the off set plates and switches, according to the most approved plan adopted by the company under the direction of their engineer, and to provide all necessary signalmen, switchmen, and all other persons necessary to prevent accidents on such branch railway or the junction thereof with the railway line hereby authorised.

7. For the purposes and subject to the provisions hereinafter Power to divert or alter roads. contained, it shall be lawful for the company, their deputies, agents, servants, and workmen, and all other persons by them authorised and empowered, to divert or alter the course of any road or way crossing the railway, or to raise or sink any road or way, in order the more conveniently to carry the same over or under or by the side of the railway: Provided always that any such works shall be carried out to the satisfaction of the Commissioner for Roads, and all such diversions, alterations, and crossings, and the approaches thereto, shall thereafter be maintained and repaired by the company at their own expense, and to the satisfaction of the said Commissioner for Roads.

8. If the company does not cause another sufficient road to be Penalty for not substituting a road. so made before it interferes with any such existing road as aforesaid, or, if it fail to maintain all such diversions, alterations, crossings, and the approaches thereto, it shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted, or during which such diversions, alterations, crossings, or approaches shall remain in a state of disrepair, and such penalties shall be paid to the Secretary for Public

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Public Works, if a public road, and shall be applied for the purposes thereof, or in case of a private road, the same shall be paid to the owner thereof; and every such penalty shall be recoverable, with costs, by action in any of the superior Courts.

Right to carry
passengers.

9. It shall be lawful for, and at the request of the Railway Commissioners compulsory upon, the said company, from time to time and at all times, to carry passengers, goods, and live stock upon the said railway or any part thereof, and the said company may make, demand, take, receive, and recover such tolls or dues for carrying the same at such rates per mile or other scale of charges as shall be established from time to time by the company for or in respect of all such passengers, goods, and live stock which shall be conveyed or transported upon such railway or any part thereof respectively; and the company is hereby authorised to make such by-laws and regulations, not inconsistent with this Act, and subject to the approval of the Railway Commissioners, as may be necessary for the regulation of such traffic, and such by-laws or regulations shall be binding upon all persons using or travelling upon the said railway, and any persons offending against such by-laws or regulations shall be liable to a fine not exceeding five pounds for each offence, to be recovered in a summary way before any two justices: Provided always, that if the rates, tolls, or dues that may be established as aforesaid under and by virtue of this Act shall be found excessive, it shall be lawful for the Executive Council on the petition of any person to reduce the said rates, tolls, or dues, and to revise them in such manner as may seem most proper and advisable.

Road repairs.

10. If, in the course of making the railway, the company shall use or interfere with any road, they shall from time to time make good all damage done by them to such road to the satisfaction of the Secretary for Public Works; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such questions shall be referred to the determination of two justices, and such justices may direct such repairs to be made in the state of such road in respect of damage done by the company, and within such period as they may think reasonable, and may impose on the company for not carrying into effect such repairs any penalty not exceeding ten pounds per day as to such justices shall seem fit, and any such penalty shall be paid to the said Secretary for Public Works, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof.

Owners' crossing.

11. Until the company shall have made the bridges or other proper communications which they shall, under the provisions herein contained, have been required to make between lands intersected and the railway, and no longer, the owners and occupiers of such lands,
and

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and any other person whose right-of-way shall be affected by the want of such communications, and their respective servants, may at all times freely pass and repass with carriages, horses, and other animals directly but not otherwise across any part of the railway made in or through their respective lands solely for the purpose of occupying the same lands, or for the exercise of such right-of-way and so as not to obstruct the passage along the railway, or to damage the same. Nevertheless if the owner or occupier of any such lands have, in his arrangements with the company, received or agreed to receive compensation for or on account of any such communications instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway.

12. If the railway cross any public highway or parish road, or if a road crossing or meeting the railway line be provided at any future date, under the powers contained in the Acts relating to the establishment of public roads on a level, the company shall erect and at all times maintain to the satisfaction of the said Secretary for Public Works good and sufficient gates across such road on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates, and such gates shall be kept constantly closed across such roads on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway and prevent cattle or horses passing along the road from entering upon the railway, and the person entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty not exceeding forty shillings for every default therein, to be recoverable before any two justices in a summary way: Provided always that it shall be lawful for the Secretary for Public Works, in any case in which he shall be satisfied that it will be more conducive to the public safety that the gates or any level crossing over any such road shall be kept closed across the railway, to order that such gates shall be kept so closed instead of across the road, and in such case such gates shall be kept constantly closed across the railway except when engines or carriages passing along the railway shall have occasion to cross such road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road: Provided also that on the application of the company the Secretary for Public Works may at discretion authorise the construction of cattle stops across the railway in lieu of gates across the road, and such cattle stops shall be constructed and maintained to the satisfaction of the said Secretary for Public Works. The Secretary for Public Works may, however, at any future time, if he considers it necessary for the public

Provisions in cases where roads are crossed on a level.

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public safety, withdraw such permission and order the erection of gates and the provision of persons to open and shut them as hereinbefore provided, and such gates and persons shall be provided by the company without compensation for any loss or expense caused by the alteration.

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 railway, it shall be lawful for the company and its 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 company shall within forty-eight hours after such entry make a report to the Secretary for Public Works, specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the said Secretary shall, after considering the said report, certify that their exercise is not necessary for the public safety, or for the repair or maintenance of the line: 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 arbitration in the manner hereinafter mentioned: And provided, also, that no land shall be taken permanently for any such works otherwise than is herein provided with respect to the lands originally taken for the purpose of making the said railway.

Construction of bridges over roads.

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

The width of the arch shall be such as to leave thereunder a clear space not exceeding twenty-five feet, or such less space as may be approved by the Secretary for Public Works, if the arch be over a public road or highway, and of fourteen feet if over a private road.

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a public road or highway; and the clear height at the springing of the arch shall not be less than twelve feet; the clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private road.

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in twenty-five feet
if

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if the bridge be over a public road or highway; and one foot in sixteen feet if over a private road, not being a tramroad or railroad, and provision for the drainage of such road shall be made to the satisfaction of the Secretary for Public Works; or if the same be a tramroad or railroad, the descent shall not be greater than the ruling gradient of such tramroad or railroad:

Provided always that every such bridge shall be erected to the satisfaction of the said Commissioner and the said Engineer-in-Chief for Railway Construction.

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

Construction of bridges over railways.

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

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

The ascent shall not be more than one foot in thirty feet if the road be a public road or highway, and one foot in sixteen if a private road, not being a tramroad or railroad; or if the same be a tramroad or railroad, the ascent shall not be greater than the ruling gradient of such tramroad or railroad:

Provided always that every such bridge shall be erected to the satisfaction of the said Secretary for Public Works and the said Engineer-in-Chief for Railway Construction:

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

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

Provided

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

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

Works for benefit of owners.

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

Gates, bridges, &c.

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

Fences.

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

Drains.

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

Watering-places.

Also, proper watering-places for cattle or compensation in lieu thereof, where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering-places: And such watering-places shall be so made as to be at all times sufficiently supplied with water as theretofore, and as if the railway

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railway had not been made, or as nearly so as may be. And the said company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places :

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

17. If any person omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands, so soon as he, and the carriage, cattle, or other animals under his care have passed through the same, he shall forfeit for every such offence a sum not exceeding five pounds, to be recoverable in a summary way before any two justices.

Penalty on persons omitting to fasten gate.

18. The company shall not be entitled to any minerals under any land whereof the surface is vested in them by virtue of this Act, except only such parts thereof as shall be necessary to be dug or carried away in the construction of the works hereby authorised. And such mines shall not be deemed to vest in the said company.

Minerals not to pass.

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

Compensation clause.

Appointment of arbitrators.

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appointed an arbitrator, to appoint such arbitrator to act on behalf of both parties. And such arbitrator may proceed to hear and determine the matters which shall be in dispute. And in such case the award or determination of such single arbitrator shall be final and conclusive.

Vacancy of arbitrator to be supplied.

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

Appointment of umpire.

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

Attorney-General to appoint umpire on neglect.

22. 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, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this Act shall be final.

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

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

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

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

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

25. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed

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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 so appointed as aforesaid.

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

27. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence of a justice of the peace, make and subscribe the following declaration, that is to say:— Arbitrator or umpire to make a declaration for faithful discharge of duty.

I, 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 Aberdare Collieries Railway Act of 1901.

Made and subscribed in the presence of

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

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

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

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

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

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Compensation for temporary or permanent or recurring injuries.

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

Compensation to be made for temporary occupation.

33. In every case where the company shall take temporary possession of lands by virtue of the powers hereby granted it shall be incumbent on them within one month after their entry upon such lands, upon being required to do so, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their taking possession of such lands, and they shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices in case the parties differ, and shall also within six months after the completion of the railway pay to such owner or occupier or deposit in a 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.

Power for Government to purchase railway.

34. It shall be lawful for the Secretary for Public Works, on behalf of the Government, at any time by notice in writing to require the said company to sell, and thereupon the said company shall sell to the Government the said railway upon the terms of paying the then value (exclusive of any allowance for compensation for compulsory sale) of the said railway, and all lands, buildings, works, materials, and plant of the said promoters suitable to and used by them for the purposes of the said railway, such value in case of difference to be ascertained by arbitration in the manner provided by the Public Works Act of 1900 for settling cases of disputed compensation and subject to the terms and conditions therein contained; and when any such sale shall have been made to the said Government, the said railway, lands, buildings, works, materials, plant, and premises shall vest in the Railway Commissioners, who shall have all the rights, powers, and authorities of the said company in respect of the said railway so sold: Provided that the sum to be paid by way of purchase shall in no case exceed the total cost of the construction of the railway and related works, materials, plant, land, and buildings.

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35. For the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects, it shall be lawful for the company, subject to the provisions herein mentioned, from time to time to make such by-laws and regulations as they shall think fit: Provided that such by-laws be not repugnant to the laws of the State or of the Australian Commonwealth or to the provisions of this Act; and such by-laws shall be reduced into writing, and shall have affixed thereto the name of the company, and a copy of such by-laws shall be given to every officer and servant of the company affected thereby, and such by-laws may specify a maximum and minimum penalty for any breach thereof, such penalty to be proceeded for and recovered under the provisions of the Act eleventh and twelfth Victoria, chapter forty-three and any Act or Acts amending the same: Provided always that any by-laws of the said company relating to penalties must be first approved of by the Executive Council and published in the Government Gazette.

Company may make by-laws.

36. The production of the Gazette containing such by-laws of the company shall be sufficient evidence of such by-laws in all proceedings under the same.

Evidence of by-laws.

37. Nothing in this Act shall be deemed to authorise the said company to take or enter upon any lands belonging to the Railway Commissioners, or to alter or to interfere with the Great Northern Railway, or any of the works thereof, without the previous consent in writing in every instance of the Railway Commissioners.

Lands belonging to the Railway Commissioners not to be taken.

38. The said Commissioners may from time to time appoint any person to be inspector for the purpose of inspecting the railway and of making any inquiry with respect to the condition of the works or into the cause of any accident, provided that no person so appointed shall exercise any powers of interference in the affairs of the company; and every inspector under this Act shall, for the purpose of any inspection or inquiry which he is directed by the Railway Commissioners to make or conduct, have the following powers, that is to say:—

Railway Commissioners may appoint inspectors.

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

(4)

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- (4) If, after any such inspection, the Railway Commissioners deem the railway to be unsafe for the carriage of passengers, they may by notice in writing require the company to desist from carrying passengers until any repairs or alterations mentioned in the notice are effected, and thereupon, and until the requirements of such notice have been complied with, it shall not be lawful for the company to carry any passengers upon the said railway.

Accidents.

Where, in or about the railway, or any of the works or buildings connected with such railway, or any buildings connected with such railway, or any building or place, whether open or enclosed, occupied by the company, any of the following accidents take place in the course of working, that is to say :—

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

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

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

The Railway Commissioners may, from time to time by order, direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order.

While such order is in force notice of every accident of the class to which the order relates shall be sent to the Railway Commissioners by telegraph immediately after the accident takes place. Failure to comply with the provisions of this section shall render the company liable for each offence to a penalty not exceeding twenty pounds.

Power to assign.

39. It shall be lawful for the company at any time, by any deed or instrument in writing, to assign and transfer all the rights, powers, privileges, benefits, and advantages conferred upon them by this Act, or any interest therein, to any person or persons or to any duly registered company.

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40. Nothing herein contained shall alter, repeal, or otherwise affect the Public Works Act of 1900, or the Government Railways Act of 1901, or any Act amending the same. Public Works and Government Railways Acts not altered or repealed.

41. In this Act the word "justices" shall mean justices of the peace in and for the Territory of New South Wales; and when 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 or a stipendiary or police magistrate; the word "owner" shall mean any person who under the provisions of this Act would be able to sell land to the promoter; and the word "company" shall mean and include the said company, its successors, and assigns. Interpretation clause.

42. This Act whenever cited shall be sufficiently described as the "Aberdare Collieries Railway Act of 1901." Short title.

SCHEDULE.

Commencing at the west boundary of portion number seventeen, in the parish of Cessnock, county of Northumberland, and running thence easterly and north-easterly through Crown lands in the said parish and in the parish of Stanford to a point about eleven chains west of portion forty-five, in the last-mentioned parish; thence generally in a north-easterly direction within the parish of Heddon, through Crown lands, and the lands of Messieurs Callaghan and Weston; thence again through Crown lands and the lands of Callaghan aforesaid; thence through the village reserve and the lands of Messieurs Clift, D'Arcy Wentworth, and Miss Nind to a point on the Stanford railway about one mile and ten chains southerly from the junction of that railway with a railway constructed by the East Greta Coal-mining Company (Limited), under the provisions of the Silkstone Coal-mine Railway Act of 1889, and the Acts amending the same.