

An Act to amend the Minmi and Hexham Railway Act. [10th May, 1861.]

MINMI AND HEXHAM
RAILWAY.

WHEREAS in the eighteenth year of the reign of Her present Majesty an Act was passed which it was thereby enacted might be cited as “The Minmi and Hexham Railway Act” and in which the word “promoters” was to mean John Eales and John Christian their heirs and assigns And whereas by an indenture dated on or about the fourteenth day of December one thousand eight hundred and fifty-nine and made between the said John Eales and Jane his wife of the first part the said John Christian of the second part and James Brown and Alexander Brown therein mentioned to carry on business together in partnership under the firm of James and Alexander Brown of the third part they the said John Eales and John Christian did grant bargain sell alien release and confirm unto the said James Brown and Alexander Brown and their heirs (amongst other things) the land described in the Schedule to the said Act and all the legal equitable beneficial and other estate right title and interest whatsoever of the said John Eales and John Christian and of each of them under or by virtue of the said Act And whereas further land in the vicinity of the said railway is required for the purposes thereof but there are no persons in this Colony competent to sell and convey the said land so as to make a good title thereto 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—

Preamble.

18 Vic.

Minmi and Hexham
Railway Act.

1. Upon payment at any time within one year after the passing of this Act into the hands of the Master in Equity of the compensation hereinafter referred to the fee simple in possession of the lands described in the Schedule to this Act shall by virtue of this Act and without the necessity of any conveyance be vested in the said James Brown and Alexander Brown their heirs and assigns.

Land vested in
promoters.

2. The amount of the compensation for the said lands to be paid by the said James Brown and Alexander Brown their heirs or assigns shall be determined in manner hereinafter specified.

Compensation.

3. Upon application by the said James Brown and Alexander Brown their heirs or assigns to a Judge of the Supreme Court seven days notice of the intention to apply on a day therein named having first been given in the *Gazette* such Judge shall by order in writing appoint some competent person to be valuator for the purposes of this Act.

Appointment of
valuator.

4. The valuator shall determine the amount of the said compensation Provided that if he shall estimate the compensation at less than that sum which would be the price of the whole of the land taken by this Act upon a calculation of eighty pounds per acre for every part thereof then such sum calculated at eighty pounds per acre shall be the amount of the compensation.

Valuator to deter-
mine compensation
—Minimum.

5. The valuator shall annex to his valuation a certificate in writing subscribed by him of the correctness thereof and he shall before commencing the valuation make and subscribe in the presence of one Justice of the Peace a declaration to be written at the foot of the said order and to be to the following effect viz.—

Valuator’s certificate
and declaration.

“ I A. B. do solemnly and sincerely declare that I have no
“ interest directly or indirectly in the property to which
“ the above order relates nor in the matter of the valuation
“ thereof

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“ thereof and that I will honestly faithfully and impartially
 “ according to the best of my skill and ability execute the
 “ duty of making the valuation by the said order referred
 “ to me.

A. B.

“ Declared and subscribed in the presence of .”

Punishment for his
misconduct.

And if the declarant shall corruptly make such declaration or having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

Directions to
valuator.

6. In estimating the amount of compensation regard shall be had by the valuator not only to the value of the lands purchased or taken but also to the damage (if any) to be sustained by the owner or owners of the lands by severing the lands taken from the other lands of such owner or owners or by otherwise injuriously affecting such other lands by the exercise of the powers of this Act and the valuator shall assess the same according to what he shall find to have been the value of such lands at the time of the passing of this Act and without reference to any alteration in such value arising from works or improvements made under the authority of this Act.

Appointment &c. in
duplicate.

7. The order appointing the valuator and his declaration valuation and certificate shall all be made in duplicate and one set thereof shall or may be retained by the said James Brown and Alexander Brown their heirs or assigns and the other set thereof shall be delivered to the Master in Equity at the time of the payment to him of the said compensation as hereinafter provided.

Costs of valuation
&c.

8. The costs and expenses of the appointment of the valuator and of the valuation shall be paid and borne in such manner as the Judge appointing the valuator shall direct.

Compensation to be
paid to Master in
Equity.

9. The amount of the said compensation shall be paid into the hands of the Master in Equity to be by him deposited to the account of such Master in the matter of this Act in accordance with the method prescribed by any Act or by any rules for the time being in force for regulating moneys paid into the Supreme Court in its equitable jurisdiction.

Payment to Master
a good discharge.

10. The payment of the said compensation money into the hands of the Master in Equity shall be a good and valid discharge to the said James Brown and Alexander Brown their heirs or assigns and they shall not be bound or required to see to the application of the said money.

Compensation how
to be paid out of
Court.

11. The money which shall be paid into the hands of the Master in Equity may be invested in manner hereinafter authorized or may upon an order of the said Supreme Court or any Judge thereof be applied in or towards the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid or affecting other lands settled therewith to the same or the like uses trusts or purposes or in or towards the redemption of the quit rent of any such land or lands or in payment to any person or persons being or becoming absolutely entitled to such money.

Investment.

12. Until such money shall have been so applied it may upon a statement of facts being left in the Master's office and without the necessity of any order be invested in the name of the said Master with his approbation in or upon Government or real securities and the interest dividends and annual proceeds of every such investment shall be paid in such manner as the said Court or Judge shall order.

Costs of investment.

13. The respective costs of once investing the said money in or on real securities and of once investing the said money in or on Government securities shall be taxed by the said Master who shall certify to whom such costs ought to be paid and such costs respectively shall within fourteen days after taxation be paid by the said James Brown

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Brown and Alexander Brown their heirs or assigns unless the said Court or Judge shall order to the contrary.

14. The said Court or Judge may make any order which shall seem fit for enforcing payment of or otherwise howsoever in respect to the said respective costs or any part thereof. Orders as to costs of investment.

15. It shall be lawful for the said Court or Judge to order the said James Brown and Alexander Brown their heirs or assigns to pay the costs of not more than two orders for payment of interest dividends or annual proceeds of the securities in or on which the said money shall be invested and the costs of not more than one order for the payment out of Court of the principal of the said money or for the transfer and delivery of such securities to the parties entitled including the costs of such transfer and delivery but excluding any costs which may be occasioned by litigation between adverse claimants. Orders as to other costs.

16. Any order authorized by this Act may be made by the said Court or Judge upon petition or motion. Orders on petition or motion.

17. Any petition or motion may be presented or made and any state of facts may be left by any person or persons who would have been entitled to the rents and profits of the lands in respect of which the said money shall have been paid or by any other person or persons who may appear to be in anywise interested in the said money or by the said James Brown and Alexander Brown their heirs or assigns. Who may petition &c.

18. If any person shall wilfully or maliciously and to the prejudice of the said James Brown and Alexander Brown or either of them or the heirs or assigns of them or either of them break injure damage throw down destroy steal carry or take away any part of any railway or any building or other work or shall to the danger of life wilfully or maliciously throw cast or place anything across or upon any line of railway every person so offending shall or lawfully may be apprehended and detained by any person or persons whomsoever until such offender can be conveniently taken before a Magistrate and every such offender being lawfully convicted shall be liable at the discretion of the Court to be punished by fine or imprisonment with or without hard labor. Malicious injuries &c.

19. If any person shall wilfully obstruct or impede any officer or agent of the said James Brown and Alexander Brown or either of them or the heirs or assigns of them or either of them in the execution of his duty upon any railway or upon or in any of the stations or other works or premises connected therewith or if any person shall wilfully trespass upon any railway or any of the stations or other works or premises connected therewith and shall refuse or neglect to quit the same upon request to him made by any such officer or agent as aforesaid every person so offending and all others aiding or assisting therein shall and may be seized and detained by any such officer or agent or any person whom he may call to his assistance until such offender or offenders can be conveniently taken before some Justice of the Peace in the district or place wherein such offence shall be committed and when convicted before such Justice as aforesaid (who is hereby authorized and required upon complaint to him to take cognizance thereof and to act summarily in the premises) shall according to the discretion of such Justice forfeit to Her Majesty any sum not exceeding five pounds nor less than one pound. Wilful obstructions &c.

20. The several provisions of the Minmi and Hexham Railway Act having reference to the construction of bridges over roads and to the works by the said Act required to be done for the accommodation of owners and occupiers of land adjoining the railway and to diverting altering and crossing roads shall be observed by the said James Brown and Alexander Brown their heirs and assigns in making and continuing to the River Hunter such new branches of the Minmi and Hexham Railway. Works for benefit of owners &c.

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Railway as they may find expedient and in proceeding with their other works and shall be incorporated in this Act and shall apply to the future works of the said James Brown and Alexander Brown their heirs and assigns.

Limitation of actions
and suits.

21. No action or suit at law or in equity shall be brought or prosecuted against the said James Brown and Alexander Brown or either of them nor the heirs or assigns of them or either of them or any of their or his officers agents deputies assistants or servants for any act matter or thing which shall be done under or by colour of the Minmi and Hexham Railway Act or this Act unless such suit or action shall be commenced within six months next after the offence shall have been committed or cause of action accrued and notice in writing of such action and the cause thereof shall be given to the defendant or defendants one calendar month at least before the commencement of the action and the defendant or defendants in every such action may plead the general issue and give this Act with or without the Minmi and Hexham Railway Act and the special matter in evidence.

Public Act and short
title.

22. This Act shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by all Judges Justices and others without being specially pleaded and may be cited as "The Minmi and Hexham Railway Act Amendment Act."

SCHEDULE.

THE undermentioned lands respectively situate in the parish of Hexham in the county of Northumberland in the Colony of New South Wales namely—

Lot No. 1.

Commencing at the junction of the north side line of the Minmi and Hexham Railway with the east side line of the Government road from Newcastle to Maitland and bounded on the west by the east side line of said Government road for a distance of five chains seventy links or thereabouts bounded on the north by a line bearing north forty-six degrees east for a distance of five links to the western bank of the river Hunter bounded on the east by the west bank of the said river for a distance of seven chains sixty links or thereabouts to the north boundary line of the said Minmi and Hexham Railway and bounded on the south by the north boundary line of the said railway for a distance of three chains or thereabouts to the point of commencement and containing three roods thirty perches more or less.

Lot No. 2.

Commencing at a point nine chains fifty links easterly from the junction of the east side line of the Great Northern Railway with the northern side line of the Minmi and Hexham Railway and bounded on the west by a line bearing north forty-six degrees east for a distance of ten chains seventy-five links or thereabouts to the west side line of the Government road from Newcastle to Maitland bounded on the east by the west side line of the said Government road for a distance southerly of six chains twenty links or thereabouts to the north side line of the Minmi and Hexham Railway and bounded on the south by the north side line of the said Minmi and Hexham Railway to the point of commencement a distance of twelve chains thirty links or thereabouts and containing three acres one rood one perch more or less.

Lot No. 3.

Commencing at the junction of the southern side line of the Minmi and Hexham Railway with the northern side line of Messrs. James and Alexander Brown's fifty acres bounded on the north by the southern side line of the Minmi and Hexham Railway for a distance easterly of nine chains or thereabouts bounded on the east by a line bearing south fifteen degrees east for a distance of two chains eighty-five links or thereabouts to the northern side line of said fifty acres bounded on the south by the northern boundary line of said fifty acres to the point of commencement for a distance westerly of nine chains fifty links or thereabouts and containing one acre one rood five perches more or less.