

BOTANY RAILWAY
COMPANY.

**An Act to establish and incorporate a Company
to be called the "Botany Railway Company"
and to enable the said Company to construct
and work a line of Railway from Botany in
the Colony of New South Wales and the Great
Southern Railway at or near Newtown in the
said Colony. [17th December, 1862.]**

Preamble.

WHEREAS it would be of great public advantage that a line of Railway should be constructed and maintained between Botany Bay in the Colony of New South Wales and the Great Southern Railway at or near Newtown in the said Colony for the more regular expeditious and economical conveyance of passengers and goods of the said places and for the better development of the natural resources of the neighbouring districts And whereas a joint stock Company called the "Botany Railway Company" has been lately established in the said Colony And whereas it was agreed that they whilst holding shares in the capital of the said Company should be and continue until dissolved a joint stock Company or partnership under the name and title of the "Botany Railway Company" for the purpose of constructing maintaining and working such railway and all proper works appliances and conveniences connected therewith and for the purpose of carrying on and regulating the business thereof as well and maintaining all such requisites matters and things as are necessary thereto And whereas it was further agreed that the capital of the said Company should consist of twelve thousand five hundred pounds to be contributed in two thousand five hundred shares of five pounds each and also with power in case it shall be deemed expedient at a general meeting of shareholders to raise any further sum of money by way of loan or

Botany Railway Company.

or mortgage for the purposes of the Company so that the same shall not at any time exceed one-third of the amount of the paid up capital of the Company. And whereas the said Company is desirous of being incorporated and of obtaining the authority of Parliament for carrying out the objects aforesaid. And whereas it is expedient that the said Company should be incorporated accordingly and that the said Company should be authorized by Legislative enactment to construct maintain and work the said railway subject to the provisions hereinafter contained. Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. That such and so many persons as have already become and all other persons who shall hereafter become shareholders in the said undertaking and their several and respective successors executors administrators and assigns shall be and hereby are incorporated into a Company for constructing maintaining and working the said railway and such extensions thereof and all other works by this Act authorized subject to the rules regulations and provisions hereinafter mentioned and for these purposes shall be and are one body corporate by the name of the "Botany Railway Company" and by that name shall have perpetual succession and a common seal and shall and may grant and receive and sue and be sued plead and be impleaded in all Courts whatsoever at law and in equity and shall have power and authority from and after the passing of this Act and at all times hereafter to purchase from the owners thereof and from all parties having an interest therein or enabled by this Act to sell and convey the same all the lands by this Act authorized to be taken and to hold such lands to them and to their successors for the use of the said undertaking and works and generally for carrying into effect the provisions of this Act and also to sell dispose and deal with the said lands in manner by this Act directed without incurring any penalty or forfeiture.

2. The capital or joint stock for the time being and all the funds and property of the said Company and the several shares therein and the profits and advantages to be derived therefrom shall be and be deemed personal estate and be transmitted accordingly.

3. The Company shall not be bound in any manner by any trust or equitable interests or demands affecting any shares standing in the name of any person as the ostensible proprietor thereof or be required to take any notice of such trusts or equitable interests or demands but the receipts of the person in whose name the shares shall stand in the books of the Company shall notwithstanding such trusts or equitable interests or demands and notice thereof to the Company be a good valid and conclusive discharge to the Company for or in respect of any dividend or other money payable by the Company in respect of such share and a transfer of the said shares by the person in whose name such shares shall so stand shall notwithstanding as aforesaid be binding and conclusive as far as may concern the said Company against all persons claiming by virtue of such trusts or equitable interests or demands. Provided always that it shall be competent to the Directors of the Company if they shall think fit so to do to withhold payment of the dividends on any such shares and refuse to allow or recognize the transfer of such shares in any case in which the Company shall have had notice of any claims under any alleged trust or equitable interest or demand. And provided also that nothing herein contained shall be deemed or taken to interfere with or abridge the right and power of the Court of Equity to restrain the payment of any such dividend or other money payable by the Company in respect of any such shares or the transfer of any such shares or to direct the payment of any such dividends or other money not already paid by the Company or the transfer of such shares to such person as the said Court may think fit.

Botany Railway Company.

Provisions as to
actions and suits for
calls and instalments.

4. In any action or suit to be brought by the said Corporation against any proprietor or proprietors of any share or shares in the capital of the said Corporation to recover any sum or sums of money due and payable to the said Corporation for or by reason of any instalment or instalments call or calls made by virtue of this Act it shall be sufficient for the said Corporation to declare and allege the defendant or defendants being a proprietor or proprietors of such or so many share or shares in the capital of the said Corporation is or are indebted to the said Corporation in such sum or sums of money as the instalment or instalments call or calls in arrear shall amount to for such and so many instalment or instalments call or calls of such or so many sum or sums of money upon such or so many share or shares belonging to the said defendant or defendants (as the case may be) whereby an action hath accrued to the said Company without setting forth any special matter and on the trial of such action or suit it shall not be necessary to prove how or in what manner such instalment or instalments call or calls became or were made payable or any other matter except that the defendant or defendants was or were a holder or proprietor or holders or proprietors of one or more share or shares in the capital of the said Corporation and that such instalment or instalments call or calls was or were in fact due and that the time fixed for the payment thereof was given and the said Corporation shall be thereupon entitled to recover what shall appear due.

The share register
to be evidence of
ownership.

5. The share register of the said Company shall at all times be *prima facie* evidence to show who are the proprietors for the time being of the capital thereof and the number of shares held by each proprietor.

Contracts &c. under
the deed of settle-
ment before Act.

6. Nothing herein contained shall prejudice or be deemed to prejudice any call made or any contract or other deed matter or thing entered into made or done by the provisional committee of the said Company before this Act shall come into operation but the same call contract act deed matter or thing shall be as valid and effectual to all intents and purposes as if the said Company had been incorporated before the same call contract act deed matter or thing had been entered into or done.

Liability of share-
holders.

7. The shareholders to be liable only for the amount of their subscribed capital.

Use of seal.

8. The directors for the time being shall have the custody of the common seal of the Company and the form thereof and all other matters relating thereto shall from time to time be determined at meetings of directors and the directors present at any such meeting shall have power to use the common seal for the affairs and concerns of the Company and under such seal to empower any person without such seal to execute any deed and to do all or any other such matters and things as may be required to be done and executed in behalf of the Company but it shall not be necessary to use the common seal in respect of any of the ordinary business of the Company or for the appointment of any attorney or solicitor for the prosecution of any action suit or other proceeding or of any officer or servant of the Company and such seal may be affixed to any deed or document by the hand of any person whom the directors shall appoint in that behalf and the affixing thereof shall be attested by one director and the person so appointed and in case any conveyance or other instrument is executed in consideration of a sum of money therein stated to have been paid to the Company such execution shall operate only as an escrow until the treasurer or other officer charged with the receipt of money on behalf of the Company shall have certified under hand at the foot thereof that such consideration money has been duly paid.

Power to borrow
on mortgage.

9. It shall and may be lawful for the said Company from time to time to borrow by way of loan such sum or sums of money and at such rate of interest thereon as may be considered advisable at any general meeting of the shareholders but such sum or sums of money shall not at any time exceed one-third of the amount of the capital of the said Company then

Botany Railway Company.

then actually paid up and for such purpose to mortgage or assign the property of the Company and the rates or tolls arising by virtue of this Act or any part thereof as a security for any sum of money to be borrowed as aforesaid and the interest payable thereon and in case the said interest or any part thereof shall be behind and unpaid for the space of one calendar month next after the same shall have become due and payable as aforesaid and the same shall not be paid within fourteen days next after demand Remedy in case of non-payment. thereof in writing shall have been made to the Company or left at the office of the Company it shall be lawful for two or more Justices of the Peace acting in and for the said Colony and they are hereby required on application made to them by or on behalf of any mortgagee or assignee whose interest shall be so in arrear by an order under their hands to appoint a receiver or receivers to collect the whole or such parts of such rates as are liable to pay such interest so due and unpaid as aforesaid and the money so to be received by such person or persons is hereby declared to be so much money received by or to the use of the person to whom such interest shall then be due until the same together with all costs and charges incurred in collecting and receiving the said rates shall be fully paid and satisfied and after such interest costs and charges shall have been fully paid and discharged the power and authority of such receiver or receivers shall forthwith cease and determine but nothing herein contained shall preclude such mortgagee or assignee as aforesaid from suing for and recovering such interest and costs by an action of debt in the Supreme Court.

10. 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 whatsoever and for the protection of the railway and other works of the Company from trespass and injury and for regulating the travelling upon and using and working of the railways it shall be lawful for the Company subject to the provisions herein mentioned from time to time to make by-laws and regulations Provided that such by-laws be not repugnant to the laws of the Colony or to the provisions of this Act and such by-laws shall be reduced into writing and shall have affixed thereto the common seal of the Company and any person offending against any such by-law or regulation shall Power to make by-laws. Summary conviction of offenders. upon conviction before any two Justices of the Peace forfeit for every such offence any sum not exceeding five pounds to be stated in such by-laws and regulations as a penalty for any such offence and if the infraction or non-observance of any such by-law or regulation as aforesaid be attended with danger or annoyance to the public or hindrance to the Company in the lawful use of the railway it shall be lawful for the Company summarily to interfere to obviate or remove such danger annoyance or hindrance and that without prejudice to any penalty incurred by the infraction of any such by-law and the substance of such by-laws shall be printed or painted By-laws to be exhibited. on boards and placed and continued in a legible state in some conspicuous part of every station and place of business belonging to the Company according to the nature or subject matter of such by-laws so that notice thereof may be given to all parties affected thereby and no penalty imposed by any such by-law shall be recoverable unless the same shall have been published and kept published as aforesaid.

11. Such by-laws when so published and affixed shall be binding Justification of acts under by-laws. upon and be observed by all parties and shall be sufficient to justify all persons acting under the same and for proof of the publication of any such by-laws it shall be sufficient to prove that a printed paper or painted board containing a copy of such by-laws was affixed and continued in the manner by this Act directed and in case of its being displaced or rendered illegible then that such paper or board was replaced or renewed as soon as conveniently could be Provided that all such of the said by-laws and regulations as shall be applicable to other persons than the members of the said Company and its officers agents servants and workmen shall not be

Botany Railway Company.

Approval of Governor necessary.

Railway may be made as soon as £8,000 capital subscribed and £3,000 paid up.

Before commencing railway survey to be made and book of reference.

Map and book of reference to be open to inspection of public.

be binding on such other persons until two months after they shall have been laid before the Governor of the Colony unless the said Governor shall before such period have signified his approbation thereof and that the said Governor shall have power at any time to disallow such by-law or regulation and thereupon the same shall not have and shall cease to have any force or effect in the law.

12. As soon as eight thousand pounds of the capital of the Company shall have been actually subscribed for and three thousand pounds of the said capital shall have been actually paid up but not sooner it shall be lawful for the said Company and they are hereby empowered and authorized by themselves the deputies agents officers workmen and servants to commence construct and maintain a single or double line of railway with all proper works and conveniences connected therewith commencing at such point at or near Botany Bay aforesaid and terminating at such points at the Great Southern Railway in or near to Newtown aforesaid as may appear most suitable and proper to the Board of Directors of the said Company And it shall also be lawful for the said Company and they are hereby empowered to effect a junction with the Great Southern Railway at or near to Newtown as aforesaid and to make and maintain any lateral or branch railway from the railway aforesaid or from such continuation or extension thereof as aforesaid and to procure and own such carriages engines steam-boats vessels and all other such works and conveniences as may be necessary for the purposes of the Company and to carry into effect the provisions of this Act and also to arrange and agree with the Minister for Public Works or with the Commissioner for Railways or other person or persons having the control or direction of the Great Southern Railway for such haulage and traction power and for the use of such trucks waggons and carriages as the said Company may require and on such equitable terms as to hire as may be mutually agreed and to make such other arrangements for the convenience and accommodation of the traffic on either line as circumstances may render necessary.

13. Before commencing the line of railway by this Act authorized to be made or any such branch as aforesaid the Company shall by some qualified engineer by them to be appointed cause to be made and taken levels and surveys of the country and lands through which such line of railway or extension or branch is to be carried together with a map or plan of the said line and of the lands through which it is to pass and also a book of reference in which shall be set forth a description of the said several lands and the names of the proprietors thereof so far as the same shall be known or can with reasonable diligence be ascertained setting forth the bearings of such railway or of such extension or branch as the case may require and the nature and quality state of cultivation and inclosures (if any) and the quantity of such land which may be required for the purpose of making such railway And the said map or plan and book of reference shall be kept in the office of the Company or some convenient office at Sydney and true copies thereof signed by the Chairman of the Directors shall be deposited with the Clerk of Petty Sessions at Sydney aforesaid and in case of the extension of the said railway or the formation of any branches in connection therewith the like copies shall be deposited with the Clerks of the Petty Sessions of any and every other district into or through which any such extension or branch shall be intended to be carried and such map or plan and book of reference and such copies thereof respectively shall be open at all convenient times for public examination from the day of the date on which such notice as aforesaid or notice of such extension or branch railway being about to be made (as the case may require) shall be first published and all persons shall have free liberty and permission at all proper and convenient times to view and examine the said map or plan and book of reference or copies as aforesaid.

Botany Railway Company.

14. The Company shall by advertisement in the *Government Gazette* and in one or more of the Sydney newspapers at least forty days before the commencement of the formation of such railway give notice that they intend to make the said railway between certain places therein specified according to a map or plan to be seen at the office of the said Company or at some other convenient office at Sydney and at the office of the said Clerk of Petty Sessions.

15. No advantage shall be taken of or against the Company or any interruption be given to the making of such railway or other works on account of any omission mis-statement or erroneous description in the book of reference but it shall be lawful for the Company by themselves their deputies agents officers surveyors servants and workmen to enter into and upon and take and use for the purposes of this Act any lands or grounds set out and described in the said map or plan notwithstanding any such omission mis-statement or erroneous description in case it shall appear to any two Justices of the Peace acting for the district or place in which such lands or grounds shall be situated and be certified by writing under their hands that such omission mis-statement or erroneous description proceeded from mistake and not from fraud.

16. For the purposes and subject to the provisions of this Act it shall be lawful for the Company their successors deputies agents servants and workmen and all other persons by them authorized to enter upon and into the lands and grounds of any person whatsoever and to survey and take levels of the same or any part thereof and to ascertain stake or set out take and appropriate for the purposes herein mentioned such parts thereof as may be necessary and proper for the laying out making constructing and the convenient operation of the said railway and any extension or branch thereof and all other works matters and conveniences connected therewith as are hereby authorized to be made and in and upon such lands adjoining or contiguous thereto to bore dig cut trench embank sough remove or lay take carry away and use any earth clay soil stone timber trees roots of trees beds of gravel or sand or any other material or things which may be dug raised or obtained therein or otherwise in making the said railway and other works by this Act authorized or which may hinder prevent or obstruct the making maintaining altering repairing or using the same respectively and it shall not be necessary for the Company to make any previous agreement with or to apply for or obtain the previous consent of the owner or occupier of any such lands for any of the purposes aforesaid and also to make build erect or construct bank excavate cut and set up in upon across under or over any such railway or other works or upon any lands streets hills valleys roads rivers canals brooks streams or other waters adjoining the same such and so many inclined planes tunnels embankments aqueducts bridges roadways passages conduits drains piers arches deep cuttings and fences as the Company shall think proper and also to alter the course of any rivers canals brooks streams or watercourses during such times as may be necessary for constructing tunnels bridges or passages over or under the same or for any other necessary purpose and also to divert and alter the course of any roads or ways or to raise or sink any roads or ways in order the more conveniently to carry the same over or under or by the side of any such railway and to make drains or conduits into through or under any lands adjoining such railway for the purpose of conveying water from or to the same and also in or upon such railway or any lands adjoining or near thereto to erect and make such toll and other houses warehouses yards stations engines and other works and conveniences connected with such railway as the said Company shall think proper and also from time to time to alter repair and amend or discontinue the beforementioned works or any of them and to substitute others in their stead and where any such railway shall pass through any wood land or forest it shall be lawful for the Company

Notice before commencing railway.

Unintentional mistake in book of reference not to vitiate proceeding.

Authority to make railway works &c.

Botany Railway Company.

Company to fell or remove any trees standing thereon within the distance of one hundred yards from either side of such railway which by their liability to be thrown down or from their falling may obstruct or impair the said railway and also to enter upon and use any existing private road being a road gravelled or formed with stones or other hard material and not being an avenue or planted or ornamental or an approach to any mansion house and generally to do and execute all other matters and things necessary or convenient for constructing maintaining altering or repairing and using such railway and other works by this Act authorized they the said Company their agents servants and workmen doing as little damage as may be in the execution of the several powers to them hereby granted and the said Company if required so to do making full satisfaction in manner hereinafter mentioned to the owners and proprietors of and to all persons interested in any lands or hereditaments which shall have been taken used or injured for all damage to be by them sustained in or by the execution of all or any of the powers hereby granted and this Act shall be sufficient to indemnify the Company and all other persons for what they or any of them shall do by virtue of the powers hereby granted subject nevertheless to such provisions and restrictions as are herein contained.

Extent of lands
authorized to be
taken.

17. The lands to be taken or used for the line of railway hereby authorized and all extensions and branches thereof shall not exceed one hundred yards in width except where a greater width shall be judged necessary for an approach to the railway or for waggons and other carriages to turn remain stand in lie or pass each other and for raising embankments for crossing valleys and low grounds or in cutting through high ground or for the erection or establishment of any fixed or permanent machinery toll-house warehouses or other erections and buildings or for excavating removing or depositing earth or other materials Provided always that nothing herein contained shall authorize the Company or any person acting under their authority to take injure or damage for the purposes of this Act any messuage dwelling house or other permanent building or the immediate appurtenance thereof without the consent in writing of the owner and occupier thereof respectively until after the expiration of six calendar months from the time the Company shall have given notice to the owner of the same being required for the purpose of this Act as hereinafter mentioned And if in the exercise of the powers hereby granted it be found necessary to cross cut through raise sink or use any part of any road whether public or private so as to render it impassable for or dangerous to passengers or carriages or to the persons entitled to the use of it the Company shall before the commencement of such operations cause a sufficient road to be made instead of the road to be interfered with and shall at their own expense maintain a substituted road in as good a state for passengers and carriages as the road interfered with as nearly so as possible.

Company may buy
additional lands.

18. It shall be lawful for the Company in addition to the lands authorized to be taken compulsorily by them as aforesaid to contract with any person willing to sell the same for the purchase of any lands for the purpose of making and providing additional stations yards and places for the accommodation of passengers and for receiving depositing and loading and unloading goods or cattle to be conveyed upon the railway or along any canals constructed by the Company and for the erection of weighing machines to the houses and buildings and conveniences and for any other purpose that may be deemed requisite or convenient for the use of the railway or for the general promotion of the objects of the Company in connection with the undertaking or the works hereby authorized and it shall be lawful for all parties who under the provisions hereinbefore contained would be enabled to sell and convey the lands so authorized to be purchased for the last mentioned purposes And it shall be lawful for the

Botany Railway Company.

the Company to sell the lands which they have so acquired for extra-
ordinary purposes aforesaid or any part thereof in such manner and for
such considerations and to such persons as the Company may think fit and
again to purchase other lands for the like purposes and afterwards to sell
the same and from time to time but the total quantity of land to be
held at any one time by the Company for the purposes aforesaid shall
not exceed two hundred acres.

19. It shall be lawful for all parties being seised possessed of or ^{Persons who may} _{convey to Company.} entitled to any such lands or any estate or interest therein to sell and convey and release the same to the Company and to enter into all necessary agreements for that purpose and particularly it shall be lawful for all or any of the following parties so seised possessed or entitled as aforesaid so to sell convey or release (that is to say) all corporations tenants in tail or for life married women seised in their own rights or entitled to dower guardian committees of lunatics and idiots trustees or offees in trust for charitable or other purposes executors and administrators and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower or to any lease for life or for lives and year or for years or any less interest and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties other than married women entitled to dower or lessees for life or lives and years or for years or for any less interest not only on behalf of themselves their respective heirs executors administrators and successors but also for and on behalf of every person entitled in reversion remainder or expectancy after them or in defeasance of the estates of such parties and as to such married women whether they be of full age or not as if they were sole and of full age and as to such guardians on behalf of their wards and as to such committees on behalf of the lunatics and idiots of whom they are committees respectively and that to the same extent as such wives wards lunatics and idiots respectively could have exercised the same power under the authority of this Act as if they had respectively been under no disability and as to such trustees executors or administrators on behalf of their cestuisque trust whether infants issue unborn lunatics *feme couverts* or other persons and that to the same extent as such cestuisque trust could have exercised the same powers under the authority of this Act as if they had respectively been under no disability.

20. When the Company shall have made and completed the map ^{Notice to be given to} _{owners of land} ^{required.} or plan and book of reference hereinbefore required to be made they shall give notice of the lands taken ascertained set out and required for the said railway to all the parties interested in such lands or to the parties enabled by this Act to sell and convey or release the same or such of the said parties as shall after diligent inquiry be known to the Company and by such notice shall demand from such parties the particulars of their estate and interest in such lands and of the claims made by them in respect thereof and every such notice shall state the particulars of the land so taken set out or required as aforesaid and that the Company are willing to treat for the purchase of such of the said lands as the Company are not by this Act authorized to take without the consent of the owners and as to the compensation to be made to all parties for the lands taken and the damage that may be sustained by them by reason of the execution of the works. And all notices required to be served by the Company 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 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 land or if there be no such occupier shall be affixed upon some conspicuous part of such land and if any such party be a corporation aggregate such notice ^{Service of notices.} _{The like on corporations.} shall be left at the principal office of business of such corporation or if no such

Botany Railway Company.

such office can after diligent inquiry be found shall be served on some principal member or officer of such corporation and such notice shall also be left with the occupier of such land or if there be no such occupier shall be fixed upon some conspicuous part of such land.

Settlement of compensation if no agreement.

21. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such lands or to treat with the Company in respect thereof or if such party and the Company shall not agree as to the amount of the compensation to be paid by the Company for the interest in such lands belonging to such party or which he is by this Act enabled to sell or for any damage that may be sustained by him by reason of the execution of the works the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation. Provided always that if no claim shall be made within twelve months after such notice as aforesaid by the party entitled to make such claim the same shall be deemed to have been waived and abandoned.

Waiver of claim.

Arbitration as to compensation.

22. In all cases where any difference shall arise or if no agreement can be come to between the Company and the owners of any lands or of any interest in any such lands taken or required for or injuriously affected by the works of such railways or by the execution of any of the powers hereby granted (including among such owners all parties by this Act enabled to sell or convey lands as to) the value of such lands or any interest therein as to the compensation to be made in respect thereof the amount of compensation to be paid by the Company in every case shall be settled by arbitrators in the manner hereinafter mentioned. Provided always that the said arbitrators in assessing such compensation are authorized and empowered and shall take into consideration the enhancement in value of the adjoining land belonging to the party to whom compensation is to be made by the effect of such railway in reduction of such compensation.

Arbitrators on each side—in what cases.

23. When any question of disputed compensation or any dispute or matter authorized or directed by this Act to be settled by arbitration shall have arisen then 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 made on the part of the Company under their common seal and on the part of any other party under the hand of such party or if such party be a corporation aggregate under the common seal of such corporation 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 the power to revoke the same without the consent of the other nor shall the death of either party to such submission 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 (in which shall be stated the matter so required to be referred to arbitration) shall have been served by the one party on the other party to appoint an arbitrator such last-mentioned party fail to appoint such arbitrator then upon such failure the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties and such arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award of such single arbitrator shall be final and conclusive except as

Submission for arbitration.

Not revocable.

One arbitrator may be appointed for both parties.

New appointment in case of death or refusal.

hereinafter provided. And if before the matters so referred shall be determined any arbitrator appointed by either party 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

Botany Railway Company.

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.

24. When 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 become incapable to act 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 incapacity refusal or neglect appoint another umpire in his place and the decision of every such umpire on a matter so referred to him shall be final And if in either of the cases aforesaid the arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for any Judge of the Supreme Court on the application of either party to such arbitration to appoint an umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Act shall be final And if when a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award or shall refuse or shall for fourteen days neglect to act 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 And if where more than one arbitrator shall have been appointed either of the arbitrators 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 And if where more than one arbitrator shall have been appointed the matters referred shall not be decided within the time appointed or within such extended time if not being greater in the whole than six months 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 appointed aforesaid.

25. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute or may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose but 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:—

I A.B. do solemnly and sincerely declare that I have no interest either directly or indirectly in the property in question and 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 Act entitled the "Botany Railway Company's Act" (Signed) A. B.

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 shall be guilty of a misdemeanor And it is hereby also enacted that 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 award shall be borne by the claimant and the arbitrator shall direct the payment of the same accordingly Provided that

Appointment of umpire by arbitrators.

The like in case of their neglect &c.

Death &c. of sole arbitrator provided for.

Refusal of one of the arbitrators.

Expiry of time without award.

Production of documents to arbitrators.

Declaration to be made by arbitrators and umpire.

Costs how to be borne.

Botany Railway Company.

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 to be paid.

Award to be delivered to Company.

May be made a rule of Court.

Not to be set aside for irregularity.

Compensation how to be ascertained where party absent &c.

Surveyor's declaration.

Payment of compensation when.

Application of purchase money.

Payment into Court.

26. The arbitrators shall deliver their award in writing to the Company and the Company shall retain the same and shall forthwith on demand 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 submission to any such arbitration may be made a rule of the Supreme Court on the application of either of the parties And no award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

27. The purchase money or compensation to be paid for any lands to be purchased or taken by the Company from any party who by reason of his absence or that of his legal representative from the Colony is prevented from treating or who cannot after diligent inquiry be found and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of a surveyor to be nominated and appointed by any two Justices of the Peace upon application made by the Company for such purpose and such surveyor shall determine the same accordingly and shall annex to his valuation a declaration in writing subscribed by himself of the correctness thereof And before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall in the presence of such Justices make and subscribe the declaration following that is to say :—

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.

A. B.

Made and subscribed in the presence of

And if any surveyor shall corruptly make such declaration or having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor and the said nomination and declaration shall be delivered to the Company to be kept for the purpose and in the manner hereinbefore provided in case of awards and all the expenses of and incident to every such valuation shall be borne by the Company.

28. In all cases where compensation shall be determined as aforesaid the Directors shall at the next half-yearly meeting of the Company lay before the meeting the said valuation and the Company is hereby required to pay the amount of the said compensation to the party lawfully entitled thereto or to his agent duly authorized in his behalf within fourteen days next after such half-yearly meeting of the Company and demand of the same And if the purchase money or compensation shall be payable in respect of any lands or any interest therein purchased by the Company from any corporation tenant for life or intail married woman seised in her own right or entitled to dower guardian committee of lunatics or idiot trustee executor or administrator or person having a partial or qualified interest only in such lands and not entitled to sell or convey the same except under the provisions of this Act and the compensation to be paid for any permanent damage to any such lands amount to or exceed the sum of two hundred pounds the same shall be paid into the hands of the Master in Equity to be by him deposited in one of the banks in the city of Sydney to account thereof the Master in Equity *ex parte* the "Botany Railway Company" in the matter of A.B. (the party entitled) pursuant to the method prescribed by any Act or by any rule for the time being in force for regulating moneys paid into the Supreme Court in its equitable

Botany Railway Company.

equitable jurisdiction and such money shall remain so deposited until the same be applied to some one or more of the following purposes that is to say :—

- In the redemption of the quit rent or 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 the purchase of other lands Government debentures or other stock to be conveyed limited or settled upon the like uses trusts and purposes and in the same manner as the lands in respect of which such money shall have been paid stood settled or
- If such money shall be paid in respect of any buildings taken under the authority of this Act or injured by the proximity of the works in removing or replacing such buildings or substituting others in their stead in such manner as the Supreme Court or the Primary Judge in Equity shall direct or
- In payment to any party becoming absolutely entitled to such money.

And such money may be so applied as aforesaid upon an order of the said Court or Judge made on the petition of the party who would have been entitled to the rents and profits of the land in respect of which such money shall have been deposited and until the money can be so applied it may upon the like order be invested by the said Master in Equity in the purchase of shares in the Company hereby incorporated or in the purchase of Government or real securities and the interest dividends and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the land.

29. If the purchase money or compensation shall not amount to the sum of two hundred pounds and shall exceed the sum of twenty pounds the same shall either be paid to the Master in Equity to be by him deposited and applied in manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds or the same may lawfully be paid to two trustees to be nominated by the parties entitled to the rents and profits of the land in respect whereof the same shall be payable such nominations to be signified by writing under the hand of the party so entitled and in case of the coverture in infancy lunacy or other incapacity of the parties entitled to such money such nomination may lawfully be made by their respective husbands guardians committees or trustees but such last-mentioned application of the moneys shall not be made unless the Company approve thereof and of the trustees named for the purpose and the moneys so paid to such trustees and the produce arising therefrom shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank and it shall not be necessary to obtain any order of the Court for that purpose and if such moneys shall not exceed the sum of twenty pounds the same shall be paid to the parties entitled to the rents and profits of the land in respect whereof the same shall be payable for their own use and benefit or in case of coverture infancy lunacy or other incapacity of such parties then such moneys shall be paid for their use to the respective husbands guardians committees or trustees of such persons And all sums of money exceeding twenty pounds which may be payable by the Company in respect of the taking using or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands or the interest therein contracted to be sold by him absolutely for his own benefit shall be paid to the Master in Equity or the trustees in manner aforesaid and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking using or interfering with

Payment out of Court.

To whom purchase money under two hundred pounds to be paid.

The like over twenty pounds under a Contract with Company.

Botany Railway Company.

with any such lands but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands as well in possession as in remainder reversion or expectancy Provided always that it shall be in the discretion of the Judges of the Supreme Court or the Primary Judge in Equity or the said trustees as the case may be to allot to any tenant for life or for any other partial or qualified estate for his own use a portion of the sum so deposited or so paid to such trustees as aforesaid as compensation for any injury inconvenience or annoyance which he may be considered to sustain independently of the actual value of the lands so to be taken and of the damage occasioned to the lands held therewith by reason of the taking of such lands and the making of the works And all payments which shall be made by the Company in any of the cases aforesaid to the parties entitled under this Act to receive the same shall be a good and valid discharge to the Company and they shall not be bound or required to see to the application of any such moneys or to the performance of any trusts.

Payment in accordance with Act to discharge Company.

Form of conveyance.

30. All conveyances of lands to be purchased under the provisions of this Act may be according to the form in the Schedule A to this Act annexed or in any other form which the Company may think fit and all such conveyances shall vest the lands thereby conveyed in the Company and shall bar and destroy all estates tail and all other estates rights titles remainders reversions limitations trusts and interests whatsoever of and in the lands comprised in such conveyance which shall have been purchased or compensated for by the consideration therein mentioned Provided always that after any lands which the Company are by this Act authorized to take shall have been ascertained set out and appropriated for the purposes of this Act such lands and all the right title estate use trust and interest of every person therein shall forthwith be vested in and

But lands to vest in Company when taken.

Costs to be paid by Company.

Costs may be taxed.

Company to fence off their lands.

Company to make and maintain convenient ascents &c.

become the sole property of the Company for ever for the purposes of this Act and it shall not be necessary for the Company to obtain a conveyance from the owner of or any person interested in such lands And the costs of all such conveyances shall be borne by the Company and such costs shall include all charges and expenses of what kind and nature soever incurred on the part of the seller as well as the purchaser in that behalf

But if the Company and the party entitled to any such costs shall not agree as to the amount thereof such costs shall be taxed by the Master in Equity or other proper officer of the Supreme Court upon the application of either party and the Company shall pay what the said Master or other proper officer shall certify to be due in respect of such costs to the party entitled thereto or in default thereof it shall be lawful for any Judge of the Supreme Court to make an order for the payment of the same and the said costs may be recovered in the same way as any other costs payable under an order of the said Court or a Judge thereof and the expense of taxing such costs shall be borne by the Company.

31. Before the Company shall use any such lands for any of the purposes aforesaid they shall separate the same by a sufficient fence from the lands adjoining thereto with such gates as may be required for the convenient occupation of such lands and shall also to all private roads used by them as aforesaid put up fences and gates in the like manner in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads and in case of any difference between the owners or occupiers of such roads and lands and the Company as to the necessity of such fences and gates such fences and gates shall be put up by the Company as any two Justices of the Peace shall deem necessary for the purpose aforesaid on application being made to them.

32. If the railway shall cross any parish or other minor public road on the level the Company shall make and at all times maintain convenient ascents and descents and other convenient approaches with hand-rails

Botany Railway Company.

rails or other fences and shall erect at all times good and sufficient gates on each side of the railway when the parish or other public road communicates therewith.

33. In case of accidents or slips happening or being apprehended to the cuttings embankments or other works of the said railway it shall be lawful for the Company and their workmen and servants to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose but in every such case the Company within forty-eight hours after such entry make a report to the Secretary for Public Works if any and if not to the nearest Bench of Magistrates 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 or Bench of Magistrates 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 land 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 than is herein provided with respect to the lands originally taken for the purpose of making the said railway.

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

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty feet if the arch be over a public highway and of twenty feet if over a parish road and of twelve feet if over a private road.

The clear height of the arch from the surface of the road shall be not less than sixteen feet for a space of twelve feet if the arch be over a turnpike road and fifteen feet for a space of ten feet if over a public carriage road and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet the clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private road.

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a public highway one foot in twenty if over a parish road and one foot in sixteen if over a private road not being a tramroad or if the same be a tramroad or railroad the descent shall not be greater than the ruling gradient of such tramroad or railroad.

And every bridge erected for carrying any road over the railway shall be built in conformity with the following regulations that is to say :—

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

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

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road one foot in twenty feet if a parish road and one foot in sixteen feet if a private road not being a tramroad or railroad or if the same be a tramroad or railroad the ascent shall not be greater than the ruling gradient of such tramroad or railroad.

Botany Railway Company.

Width of bridges
need not exceed
those of roads.

Existing inclinations
of roads need not be
improved.

Works for benefit
of owners.

Gates bridges &c.

Fences.

Drains.

Watering places.

But so as not to
obstruct railway.

Penalty for not
closing gates.

35. 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 the bridges need not be greater than such average available width of such roads but so nevertheless that such bridges be not of less width in case of a public highway or parish road than twenty feet Provided also that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof the Company shall be bound at their own expense to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road not exceeding the width of such road as so widened or the maximum width herein prescribed for a bridge in the like case over or under the railway 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 any such portion of any road as may be required to be altered or for which another road shall be substituted shall be steeper than the inclination hereinbefore required to be preserved by the Company then the Company may carry any such road over or under the railway or may construct such altered or substituted road at 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.

36. The Company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of land adjoining the railway that is to say such and so many convenient gates bridges arches culverts and passages over and under or by the side of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway for 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 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 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 Also all 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 shall be so made as to be at all times sufficiently supplied with water as theretofore and as if the railway had not been made or as nearly 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 any 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 lands shall have agreed to receive and shall have been paid compensation instead of the making them And provided also that if any person omit

Botany Railway Company.

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 said 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 any sum not exceeding forty shillings.

37. And be it enacted that it shall be lawful for the owners or Branch railways. occupiers of the lands 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 to or from or upon the said railway and the promoters 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 promoters shall not take any rate or toll or other moneys for the passing of any passengers goods or other things along any branch so to be made by any such owner or occupier or other person but this enactment shall be subject to the following restrictions and conditions (that is to say)—

No such railway shall run parallel to the said railway the promoters 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 exceeding one in fifty 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 promoters 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 promoters under the direction of their engineer.

38. It shall be lawful for the Company from time to time and Power to take tolls. at all times hereafter to demand take receive and recover to and for the use of the Company such tolls or dues at such rates per mile or other scales of charges as shall be established from time to time by the Directors of the Company for and in respect of all passengers animals goods and property of every description which shall be conveyed or transported upon such railway or any of its branches And such railway and its branches shall be open to and may be used by any person or persons who shall comply with such rules regulations and provisions not inconsistent with this Act as the Directors shall from time to time in that behalf prescribe and direct 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 and may be lawful for the Legislature to reduce the said rates tolls or dues and to revise them in such manner as may seem most proper and advisable And it is hereby provided that nothing in this Act contained shall extend to charge or make liable the said Company further or in any other case than where according to the laws of this Colony stage coach proprietors and common carriers would be liable nor shall extend in any degree to deprive the said Company of any protection or privilege which common carriers or stage coach proprietors may be entitled to but on the contrary the Company shall at all times be entitled to the benefit of every such protection and privilege.

39. In order that the true state of the Company may be known Accounts to be furnished to Colonial Secretary. it shall be the duty of the Chairman and Board of Directors to file in the office of the Colonial Secretary of this Colony for the information of the Legislature thereof at the expiration of seven years after the said railway

Botany Railway Company.

shall have been completed a just and true statement and account of the moneys by them disbursed and laid out in completing the said railway and other works in manner aforesaid and also the amount of tolls and revenues of the said railway and of the annual expenditure and disbursements in working and maintaining the same during the said seven years the said accounts and statements to be signed by the accountant or other officer charged with keeping the accounts of the said Company and countersigned by the Chairman of the Company for the time being and to be by such accountant or other officer as aforesaid verified by solemn declaration to be made before a Justice of the Peace and after the expiration of the said seven years similar account and statement shall once in each and every ensuing year be filed in the office of the Colonial Secretary as aforesaid.

Power to Government to purchase railway.

Terms.

40. Whatever be the rate of divisible profits on the said railway and other works connected therewith it shall be lawful for Her Majesty's Government of the Colony if it shall think fit subject to the provisions hereinafter contained at any time after the expiration of the term of twenty-one years from the passing of this Act to purchase the said railway and other works connected therewith with all its lands hereditaments stock and appurtenances in the name and on behalf of Her Majesty upon giving to the Company three calendar months notice in writing of such intention and upon payment of a sum equal to twenty-five years purchase of the annual divisible profits estimated on the average of the seven next preceding years Provided always that if the average rate of profit for the said seven years shall be less than the rate of fifteen pounds per one hundred pounds it shall be lawful for the Company if they shall be of opinion that the said rate of twenty-five years purchase of the said average profits is not an adequate rate of purchase of such railways and other works and appurtenances reference being had to the future prospects thereof to require that it shall be left to arbitration in case of difference to determine what (if any) additional amount of purchase money shall be paid to the Company Provided always that such option of purchase shall not be exercised except with the consent of the Company while any such reduced scale of tolls fares and charges as aforesaid shall be in force.

Postmaster General may require mails &c. to be carried.

41. It shall be lawful for the Postmaster General of this Colony acting for and on behalf of Her Majesty's Government by notice under his hand delivered to the Company to require that the mails or post bags shall from and after a day to be named in such notice (being not less than twenty-eight days from the delivery thereof) be conveyed and forwarded by the Company on their railway either by the ordinary trains of carriages or by special trains as need may be at such hours or times in the day or night as the Postmaster General shall direct together with the guards appointed and employed by the Postmaster General in charge thereof and any other officers of the Post Office and thereupon the Company shall from and after the day named in such notice at their own cost provide sufficient carriages and engines on the said Railway for the conveyance of such mails and post letter bags to the satisfaction of the Postmaster General and to receive and take up carry and convey by such ordinary or special train of carriages carrying such mails or post letter bags guards in charge thereof and any other officer of the Post Office and shall receive take up and deliver and leave such mails or post letter bags guards and officers at such places in the line of such railway on such days and at such hours or times in the day or night and subject to all such reasonable regulations and restrictions as to speed of travelling places times and duration of stoppages and times of arrival as the Postmaster General shall in that behalf from time to time order and direct Provided always that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the Directors for the conveyance of passengers by the first class trains nor shall the Company be responsible for the safe custody or delivery of any mail bags so sent And also that the Company shall be entitled

Rate of payment for carrying mails.

Botany Railway Company.

entitled to such reasonable remuneration to be paid by the Postmaster General for the conveyance of such mails post letter bags mail guards and other officers of the Post Office in manner required by such Postmaster General as shall (either prior to or after the commencement of such service) be fixed and agreed on between the Postmaster General and the Company or in case of difference of opinion between them the question of remuneration shall be referred to arbitration as hereinbefore provided for.

42. Whenever it shall be necessary for the public service to move any of the officers or soldiers of Her Majesty's forces of the line ^{Conveyance of} troops. ^{corps marines volunteers militia or police force by the said railway or any of the branches thereof the Directors shall and are hereby required to permit such forces respectively with their baggage stores arms ammunition and other necessaries and things to be conveyed at any time at such reasonable prices and upon such conditions as may from time to time be contracted for between the Colonial Secretary or any officer duly authorized for that purpose and the Company for the conveyance of such forces on the production of a note or order for their conveyance signed by the proper authorities.}

43. The Company on being required so to do by Her Majesty's Colonial Government shall be bound to allow every person or persons duly authorized in that behalf with servants and workmen at all reasonable times to enter into and upon such land adjoining the line of the said railway or any branches thereof and establish and lay down upon such lands adjoining the line of the said railway or any branch thereof a line of Electric Telegraph for Her Majesty's service and to give to him and them every reasonable facility for laying down the same and for using the same for the purpose of receiving and sending messages on Her Majesty's service subject to such reasonable remuneration to the Company as may be agreed upon between the Company and the said Government or in case of disagreement as may be settled by arbitration as aforesaid. Provided always that subject to a prior right of use thereof for the purposes of Her Majesty's service such Telegraph may be used by the Company for the purposes of the railway upon such terms as may be agreed upon between the parties or in the event of a difference as may be settled by arbitration as aforesaid.

44. It shall be lawful for the Governor of the Colony from time to time to appoint any proper person to inspect and report upon the railway stations works and buildings of the Company and the engines and carriages belonging thereto and such inspector shall together with such persons as he may bring to his assistance have free access to such railway stations works buildings engines and carriages and shall be permitted to examine the same as fully as may be required for the purposes of the said inspection and report and if the Company or any of its Directors officers agents servants or workmen shall refuse to allow or shall hinder or obstruct any such inspection or examination by the same person so appointed the Company or any such Director officer agent servant or workman shall for every such offence forfeit on conviction before any two Justices of the Peace a sum not exceeding twenty pounds.

45. If any person wilfully obstruct any officer agent servant or workman in the lawful exercise of his power in setting out or in making the railway or any of the works connected therewith or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the railway or deface or destroy any marks made for that purpose or shall wilfully obstruct or impede any officer agent or servant of the Company in the execution of his duty upon the railway or upon or in any of the stations or other works or premises connected therewith or if any person shall wilfully trespass upon the railway or any of the stations or other works or premises every such person so offending and all other persons aiding and assisting therein shall forfeit and pay to the Company for every such offence a sum not exceeding twenty pounds.

Botany Railway Company.

**Penalty for damage
trespass &c.**

46. If any person shall throw gravel stones or rubbish or any matter or things upon any part of the railway or shall drive or permit to wander stray or be driven upon the railway or the approaches thereto any horse sheep swine or other beast or cattle of any kind or shall do any other act matter or thing to obstruct the free passage of the railway or any part thereof every person so offending in any of the cases aforesaid shall forfeit and pay to the Company for every such offence a sum not exceeding fifty pounds and in default of payment shall be imprisoned with or without hard labor for such period not exceeding six months as such Justices of the Peace as aforesaid shall appoint unless the said penalty shall be sooner paid and such penalty may be recovered before any two such Justices of the Peace on complaint to them for that purpose exhibited by any person on behalf of the Company. And if any person shall wilfully and maliciously and to the prejudice of the Company break injure damage throw down destroy steal or carry away any part of the railway or other works connected therewith every such person shall be judged guilty of a misdemeanor and every person so offending and being thereof lawfully convicted shall be liable at the discretion of the Court to be sentenced to hard labor on the roads or any public works of this Colony for any term not exceeding ten years or to be imprisoned with or without hard labor in any gaol or house of correction for any period not exceeding three years.

**Penalty for wilful
damage to works.**

**Servants of the
Company may be
apprehended for
misconduct &c.**

47. It shall be lawful for any officer or agent of the Company or for any special constable duly appointed and all such persons as they may call to their assistance to seize and detain any engine-driver waggon-driver guard porter servant or other person employed by the Company hereby incorporated or by any other Company or person in conducting traffic upon the railway belonging to the Company hereby incorporated or in repairing and maintaining the works of the said railway who shall be found drunk while so employed upon the said railway or who shall commit any offence against any of the regulations or by-laws of the Company or who shall wilfully maliciously or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such railway or other works thereof respectively shall be or might be injured or endangered or whereby the passage of any engine carriage or trains shall be or might be impeded or obstructed and to convey such engine-driver guard porter servant or other person so offending or any person counselling aiding or assisting in such offence with all convenient despatch before some Justice of the Peace without any other warrant or authority than this Act and every such person so offending and every person counselling aiding or assisting therein as aforesaid shall upon conviction before such Justice (upon a complaint without information in writing) in the discretion of such Justice be imprisoned with or without hard labor for any term not exceeding two months or shall in the like discretion forfeit any sum not exceeding ten pounds and in default of payment thereof shall be imprisoned with or without hard labor for such period not exceeding two months as such Justice shall appoint unless the penalty shall be sooner paid.

**Actions against
Company.**

48. No action at law or suit in Equity shall be brought or prosecuted against the Company or any of its officers or members for any act matter or thing done under the authority of 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 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 and the special matter in evidence at any trial to be had thereupon. And if any party shall have committed any irregularity trespass or other wrongful proceeding in the execution of this Act or by virtue of any authority or power hereby given and if before action brought in

Tender of amends.

Botany Railway Company.

in respect thereof such party shall make tender of sufficient amends to the party injured such last-mentioned party shall not recover in any such action and if no such tender shall have been made it shall be lawful for the defendant at any time before issue joined to pay into Court such sum of money as he shall think fit and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

49. Wherever the word "railway" is used in this Act it shall be construed to extend to any railway or tramway parts or portions extension or branch of any railway or tramway constructed or worked under the provisions of this Act and intended for the conveyance of passengers and goods in or upon carriages drawn or impelled by engines or other locomotive power.

The word "toll" shall include any rate or charge or other payment payable for any passenger animal carriage goods merchandise articles matters or things conveyed on the railway.

The word "goods" shall include things of every kind conveyed on the railway.

Words importing the plural number shall include the singular number and *vice versa* and words importing the masculine gender shall include female and bodies corporate unless there be something in the subject or context repugnant to such construction.

Where under the provisions of this Act any notice shall be required to be given to the owner of any lands or where any act shall be authorized or required to be done with the consent of any such owner the word "owner" shall be understood to mean any person or corporation who under the provisions of this Act would be enabled to sell and convey lands to the Company.

50. It shall be lawful for the Company to lease the said railway or any part thereof to any person who may be willing to accept the same at such rate and for such period not exceeding seven years as shall be agreed on between the contracting parties.

51. This Act shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by the Judges of the Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its dependencies without being specially pleaded and the same whenever cited shall be sufficiently described as "The Botany Railway Company Act."

Short title.

SCHEDULE A.*Form of Conveyance.*

I A. B. of C. D. in consideration of the sum of paid to me
(or "into the hands of the Master in Equity of the Supreme Court" or "to E. F. of G. A. and I. J. of R. L. two trustees appointed to receive the same pursuant to the Act of Parliament intituled 'The Botany Railway Act'") by the said Botany Railway Company do hereby convey to the said Company their successors and assigns all &c. (describing the premises to be conveyed) together with all ways rights and appurtenances thereto belonging and all such estate right title and interest in and to the same as I am or shall become seised or possessed of or am by the said Act empowered to convey to hold the premises to the said Company their successors and assigns for ever according to the true intent and meaning of the said Act.

In witness whereof I have hereunto set my hand and seal the
day of in the year of our Lord one thousand eight hundred and .

SCHEDULE B.

Botany Railway Company.

SCHEDULE B.

Commencing at a point about fifty feet north-westerly from the Great Southern Railway crossed by the viaduct of a road &c. thence across land the property of Government enclosed for said railway bearing about north twenty-eight degrees west eighty-five feet or thereabouts to the eastern boundary of lands believed to belong to John Dunohoe thence bearing north-westerly about two hundred and ninety-five feet through lands the said property of John Dunohoe to their western boundaries thence across pasture land bearing north-westerly about forty-five feet thence bearing about north eighty-six degrees west two hundred and seventeen feet or thereabouts to the western boundary thereof thence across lands believed to belong to Ebsworth and Company bearing north about eighty-six degrees west three hundred and thirty-five feet or thereabouts to their western boundaries thence across lands believed to belong to Joseph Bayliss bearing in the same direction about one hundred and fifty feet to their western boundaries thence from a point about fifteen feet from the south-western angle of said lands across lands believed to belong to Thomas Holt Esq. bearing south-westerly a distance of about six hundred and ten feet to a street called Angel-street thence across the said street bearing south-westerly about fifty feet to its southern boundary thence through lands believed to belong to Iredale or —— Fairfax bearing south about fifty-five degrees west a distance of seven hundred and ninety feet or thereabouts to land said to belong to Henry Knight bearing in a south-westerly direction about one hundred and sixty-one feet to a point about three feet from its south-west angle thence bearing south about sixty-three degrees west about ten feet across the south-east angle of lands believed to belong to —— Johnson to a street called Rochford-street thence across said street bearing south-westerly about forty-two feet to the northern boundary of land believed to belong to —— Pritchard thence commencing from this point about twenty-eight feet from the angle formed of said land by the junction of Devlin-street with Rochford-street across said land bearing south-westerly about seventy feet thence bearing south sixty-four degrees west a distance of one hundred feet or thereabouts to a point about fifteen feet from the north-west angle of lands said to belong to —— Thurlow thence from this point bearing in the same direction across lands believed to belong to Mrs. Bray about two hundred and fifty feet thence continued south six hundred and fifty degrees west about seventy-nine feet crossing house and yard also known as the property of Mrs. Bray thence south-westerly to the western boundary of the said Mrs. Bray's lands two hundred and fifty-four feet or thereabouts also to a road commencing on the boundary of said land at a point about seventy-four feet southerly from the Cook's River Road and running across a road bearing south about seventy-three degrees west sixty-six feet or thereabouts thence from this point across lands said to be the property of Sir Daniel Cooper bearing south-westerly five hundred and twelve feet thence continued through said lands eight hundred feet to a reserved road belonging to the said Sir Daniel Cooper thence continued through the said reserved road in the same direction one hundred and twenty-nine feet or thereabouts thence continued through said road bearing south-westerly about four hundred and fifty-one feet thence bearing south about seventy-eight degrees west three hundred and seventy-one feet to the boundary formed by this road with another part of Sir Daniel Cooper's land thence in the same direction through lands belonging to the said Sir Daniel Cooper one hundred and twenty-five feet or thereabouts to land said to belong to Mrs. Lee distant about seven feet from the south-western angle of said reserved road also commencing from this point across said lands the property of the said Mrs. Lee bearing in the same direction namely south about seventy-eight degrees west two hundred and fifty-five feet or thereabouts to the southern boundary of said lands thence through lands believed to belong to Sir Daniel Cooper bearing in the same direction one hundred and fifteen feet also continued from thence in a south-westerly direction through said lands about four hundred and thirty-five feet thence bearing south sixty-five degrees west crossing three watercourses through the said lands of Sir Daniel Cooper to a reserved public road sixty-six feet wide a distance of two furlongs and one hundred and eighty-eight feet or thereabouts thence in the same direction crossing said reserved public road and Rickety-street through lands believed to belong to William Walker eight hundred and fifty feet or thereabouts thence bearing in the same direction crossing two watercourses through lands believed to belong to Edward Flood Esq. a distance of three hundred and forty-eight feet to Gardener's Road at a point distant from south-west angle of Edward Flood's land about thirty feet also from this point in the same direction across Gardener's Road one hundred and forty-five feet or thereabouts thence through lands believed to belong to Mrs. T. Hughes two hundred and ninety feet to a reserved road sixty-six feet wide thence in the same direction a distance of two hundred and seventy feet or thereabouts crossing pasture land and said reserved road believed to belong to —— thence in the same direction a distance of six hundred and twenty-four feet or thereabouts through lands believed to belong to —— Broughton thence through the said lands bearing south-westerly three hundred and fifteen feet to lands believed to belong to McIntosh thence in a south-westerly direction a distance of three hundred and eighty-eight feet to a reserved road sixty-six feet wide thence in a south-westerly direction about seventy feet crossing said road to lands believed to belong to Edward Flood Esq. at a point about seven feet southerly from the north-east angle thereof thence through said lands bearing south-westerly to a point distant about thirty-four feet thence through said lands bearing south about eighty-seven degrees west to a reserved road a distance of four hundred and eighty feet or thereabouts to a point distant southerly about six feet from the north-west angle thereof being also the south-east angle formed by the

United Fire and Life Insurance Company.

the intersection of two reserved private roads thence also from this point crossing aforesaid reserved road bearing in the same direction a distance of three hundred and ten feet or thereabouts along a reserved road about thirty-three feet wide and forming the northern boundary of land believed to belong to —— Carey thence through said lands in a south-westerly direction a distance of two hundred and fifty feet or thereabouts to a point on its western boundary distant southerly from the western termination of the reserved road aforesaid about ten feet thence bearing in a south-westerly direction a distance of two hundred and forty-three feet or thereabouts through lands believed to belong to Lewis Routledge thence continued through the same bearing south about seventy-six degrees west four hundred and twelve feet to the eastern boundary of lands believed to belong to executors of the late Robert Lord commencing from this point distant northerly from an angle formed by the old Botany Road one hundred and forty-seven feet and continued in the same direction through the said lands of Robert Lord one thousand and sixty-four feet to a reserved road about thirty-three feet wide the property of Messrs. R. and G. Lord thence in the same direction a distance of nine hundred and eighty feet crossing said road also lands believed to belong to the executors of the late Robert Lord to a reserved road sixty-six feet wide thence crossing said reserved road in the same direction namely south about seventy-six degrees west two hundred and seventy feet or thereabouts to its southern side and thence in a south-westerly direction through lands of the said Robert Lord to the terminus at Botany Bay.
