

NEW SOUTH WALES
CO-OPERATIVE COAL
MINING COMPANY.

An Act to incorporate “The New South Wales Co-operative Coal Mining Company” and to enable the said Company to connect a Railway proposed to be constructed over land belonging to them with a certain Railway belonging to the “Newcastle Wallsend Coal Company.”
[9th December, 1862.]

Preamble.

WHEREAS a joint stock Company called “The New South Wales Co-operative Coal Mining Company” has been lately established at Newcastle in the Colony of New South Wales under and subject to the rules regulations and provisions contained in a certain deed of settlement bearing date the twenty-fifth day of November one thousand eight hundred and sixty-one purporting to be a deed of settlement of the said Company And whereas by the said deed of settlement the several parties thereto have respectively and mutually covenanted and agreed that they should whilst holding shares

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shares in the capital of the said Company be and continue until dissolved under the provisions in that behalf therein contained a joint stock Company or partnership under the name and title of "The New South Wales Co-operative Coal Mining Company" for working or contracting for the working of the coal or other mines in or upon any lands of which the said Company might from time to time be owners or lessees for the purchase or leasing of coal or other mineral lands for following up or acting upon any trade or purpose mentioned in any regulations for the management or conduct of coal or other mines in the said Colony then promulgated or thereafter to be promulgated for purchasing the necessary machinery for working the said mines or for testing the mining capabilities of any land purchased or intended to be purchased by the Company or for draining any mines or any other purpose in connection therewith for exporting selling or otherwise disposing of all coal or other minerals to be raised from any land belonging to or leased by the said Company for leasing or selling any such lands and for constructing railways roads wharfs and other matters necessary for the promotion of the object of the said Company and it was by the same deed of settlement agreed that the capital of the said Company should consist of thirty thousand pounds sterling to be contributed in six thousand shares of five pounds each and of such sum or sums of money as might thereafter be raised by the creation and sale of new shares of the like amount as therein provided And whereas by the said deed of settlement provision has been made for the due management of the affairs of the Company by certain directors already appointed and by other directors to be from time to time elected and appointed as their successors by the proprietors of the shares of the said Company And whereas the said Company is desirous of being incorporated and it is expedient that the said Company should be incorporated accordingly 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. All persons who have already or at any time hereafter shall in the manner provided by the said deed of settlement become pro-^{Company}
^{incorporated.} prietors of shares in the capital for the time being of the said Company shall (subject nevertheless to the provisions hereinafter contained) be one body corporate by the name of the "New South Wales Co-operative Coal Mining 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 may prefer lay and prosecute any indictment information and prosecution against any person whomsoever for any crime or offence whatsoever and in all indictments informations and prosecutions it shall be lawful to state that any property of the Company relative to which such indictment information or prosecution is preferred laid or prosecuted is the property of the Company and generally to designate the Company by its corporate name whenever for any purpose whatsoever such designation shall be necessary.

2. The several laws rules regulations clauses and agreements contained in the said deed of settlement or to be made in pursuance of the provisions thereof shall be the by-laws for the time being of the said Company save and except in so far as any of them may be altered varied or repealed by or may be inconsistent or incompatible with or may be repugnant to any of the provisions of this Act or of any of the laws or statutes now or hereafter to be in force in the Colony.

Deed of settlement
to be the by-laws of
the Company.

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Evidence of by-laws.

3. The production of a written or printed copy of the by-laws of the Company having the common seal of the Company affixed thereto shall be sufficient evidence of such by-laws in all Courts whatsoever at law and in equity.

Increase of capital.

4. It shall be lawful for the Company from time to time to extend or increase its capital for the time being by the creation and disposal of new shares in the manner specified by the by-laws.

Shares to be personal estate.

5. All shares in the capital of the Company shall be personal estate and transferable as such and shall not be of the nature of real estate.

Proprietors may transfer shares.

6. Subject to the regulations in the by-laws contained every proprietor may sell and transfer all or any of his shares in the capital of the Company and every such transfer shall be by deed in which the consideration shall be duly stated.

Transmission of shares by other means than transfer.

7. If the interest in any shares shall have become transmitted in consequence of the death or bankruptcy or insolvency of any proprietor or in consequence of the marriage of a female proprietor or by any other lawful means than by a transfer according to the provisions of this Act and the by-laws such transmission shall be subject to the provisions for that purpose in the by-laws contained.

Company not bound to regard trust.

8. The Company shall not be bound to see to the execution of any trust whether express implied or constructive to which any of the said shares may be subject and the receipt of the party in whose name any such share shall stand in the books of the Company or if it stands in the names of more parties than one the receipt of one of the parties named in the register of proprietors shall from time to time be a sufficient discharge to the Company for any dividend or other sum of money payable in respect of such share notwithstanding any trust to which such share may be subject and whether or not the Company have had notice of such trust and the Company shall not be bound to see to the application of the money paid upon such receipt.

Power to purchase lands &c.

9. It shall be lawful for the Company to purchase and to hold to them and their successors any coal or other mineral lands and all such houses offices and buildings and other lands and hereditaments as may be necessary for the purpose of carrying on the business of the Company for any estate term of years or interest and to sell demise or otherwise dispose of the same as occasion shall require.

Power to sell to Company.

10. It shall be lawful for any person who is competent so to do to sell or demise to the Company any such coal or mineral lands houses offices buildings lands and hereditaments.

Dividend to be paid from profit only.

11. In all cases dividends or bonuses shall be declared and paid out of the net gains and profits of the Company and not out of the capital for the time being of the Company or any portion thereof.

Matters to be proved in action for calls.

12. On the trial or hearing of any action or suit that may be brought by the Company against any proprietor of any shares in the capital of the Company for the recovery of any sum of money due to the Company for any call made by virtue of this Act or of the by-laws it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the capital of the Company and that such call was in fact made and such notice thereof given as is required by the by-laws and it shall not be necessary to prove the appointment of the directors who made such call nor any other matter whatsoever and thereupon the Company shall be entitled to recover what shall be due upon each call with interest thereon unless it shall appear that any such call exceeds the amount prescribed by the by-laws or that due notice of the call was not given.

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13. The production of the register of proprietors shall be *prima facie* evidence of such defendant being a proprietor and the number and amount of his shares. Proof of proprietorship.

14. It shall be lawful for the Company from time to time to borrow upon mortgage or upon debentures such sums of money as shall by a resolution of a special general meeting of the Company from time to time be authorized to be borrowed not exceeding in the whole an amount equal to one-half the paid up capital of the Company and for securing the repayment of the money so borrowed with interest to mortgage the property of the Company or to issue debentures chargeable upon such property under the hands of any two of the directors named in such resolution. Provided always that the persons present at any such meeting either in person or by proxy specially given for the occasion shall hold shares representing not less than one-third of the paid up capital of the Company. Power to borrow on mortgage or debentures.

15. The directors for the time being shall have the custody of the common seal of the Company and the form thereof and of 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 or 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. Custody and use of corporate seal.

16. The directors and auditors of the Company appointed by the deed of settlement shall go out of office at the general meeting of the proprietors of the Company to be held in the month of January one thousand eight hundred and sixty-three and thereupon new directors and new auditors shall be selected of the members and in the manner provided by the by-laws and thereafter the directors shall be changed and all vacancies therein filled up at the times and in manner provided by the by-laws. Retirement and election of directors.

17. Every call made and every contract act deed matter or thing entered into or done by the Company under the provisions of the deed of settlement prior to the passing of this Act shall be as valid and effectual to and for all intents and purposes and may be enforced in like manner as if the Company had been incorporated before such call contract deed matter or thing had been made entered into or done. Calls made and contracts entered into before Act valid.

18. In the event of the assets of the Company being insufficient to meet its engagements each proprietor shall only be responsible to the amount of his shares in the capital of the Company as appearing from the register of proprietors. Limitation of liability.

19. And whereas an Act of Council was passed in the twenty-third year of Her Majesty's reign entitled the "Newcastle Wallsend Coal Mining Company's Railway Act 1859" by the fourth section whereof it is enacted as follows and in the words following "that it shall be lawful for the owners and occupiers of the lands traversed by the said railway to lay down upon their own lands any collateral branch 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

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“ 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 inconve-
 “ nience 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 the 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 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 plates and switches according to the most
 “ approved plan adopted by the promoters under the
 “ directions of their engineer.”

Recital of intention
 of Company to make
 a railway over land
 in their occupation.

Recital that doubts
 had arisen as to the
 construction of the
 Newcastle Wallsend
 Coal Company's Act.

The Newcastle
 Wallsend Coal Com-
 pany to make open-
 ings in their rails.

And whereas the Company are the occupiers of lands traversed by the railway of the said Newcastle Wallsend Coal Company and are desirous to lay down upon their own lands a collateral branch of railway to communicate with the railway of the Newcastle Wallsend Coal Company for the purpose of bringing carriages to or from or upon the said railway And whereas in consequence of the whole of that portion of the railway of the Newcastle Wallsend Coal Company which traverses the lands in the occupation of the Company being upon an incline doubts have arisen as to whether the said Newcastle Wallsend Coal Company can be compelled to make openings in their rails for the purpose of allowing the railway of the Company to be placed in communication with the railway of the said Newcastle Wallsend Coal Company and inasmuch as the railway of the Company is not intended to be made parallel to the railway of the Newcastle Wallsend Coal Company and such communication can be made with safety to the public without injury to the railway of the said Newcastle Wallsend Coal Company and without inconvenience to the traffic thereupon Be it therefore enacted by the authority and with the advice and consent aforesaid as follows:—

20. The Newcastle Wallsend Coal Company shall immediately upon the request and at the expense of the Company make all fit and proper openings in the rails of the railway of the Newcastle Wallsend Coal Company and such additional lines of railway as may be necessary for the effecting a communication from the railway intended to be constructed by the Company with the railway of the said Newcastle Wallsend Coal Company such openings to be made and additional lines of railway constructed in and upon that portion of the railway of the Newcastle Wallsend Coal Company which traverses the land occupied by the Company at the angle formed by the intersection of the eastern boundary line of the land occupied by the promoters with the north-west side of the Newcastle Wallsend Coal Company's railway notwithstanding that at such place the railway of the said Newcastle Wallsend Coal Company is upon an inclined plane.

Company to be sub-
 ject to by-laws of
 Newcastle Wallsend

21. The Company shall be subject to all by-laws and regula-
 tions of the Newcastle Wallsend Coal Company from time to time
 made

Mount Pleasant Tramroad.

made with respect to passing upon or crossing the railway of the Newcastle Wallsend Coal Company and the Company shall construct and from time to time as need may require renew the off-set plates and switches according to the most approved plan adopted by the Newcastle Wallsend Coal Company under the directions of their engineer.

Coal Company as to opening line &c.

22. The said Company shall have the same powers to cross roads in the line of the said railway as are by the said Newcastle Wallsend Company's recited Act conferred upon the said last-named Company subject nevertheless to the conditions and restrictions in the said recited Act.

Powers to cross roads.

23. In this Act words importing the singular number only shall include the plural number and words importing the plural number only shall include the singular number and words importing the masculine gender only shall include the feminine and the expression "the Company" shall mean the Company intended to be by this Act incorporated and the expression "the by-laws" shall mean the several laws rules regulations clauses and agreements contained in the deed of settlement and all laws rules regulations and agreements to be made in pursuance thereof unless there be something in the subject or the context repugnant to such construction.

Interpretation clause.

24. 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 New South Wales Co-operative Coal Mining Company Incorporation Act 1862."

Act to be deemed a public Act.

Short title of Act.