

An Act to establish and incorporate a Company  
to be called "The Waratah Coal Company"  
and to authorize the making of a Railway for  
the purposes of the said Company. [8th  
October, 1863.]

WARATAH  
COAL COMPANY'S  
INCORPORATION.

WHEREAS the several persons hereinafter mentioned being possessed of or entitled to certain large tracts of land situated in the Parish of Newcastle in the County of Northumberland in the Colony of New South Wales on which there are extensive fields of valuable coal have recently formed themselves into a Company for the purpose of working the same and have expended a large sum of money in making preparations for efficiently working the said coal fields and for conveniently and advantageously disposing of the coals to be obtained therefrom And whereas the said several persons are desirous of extending their operations and have agreed to form a Joint Stock Company under the name of "The Waratah Coal Company" having a capital of sixty thousand pounds in ten thousand shares of six pounds each for the purpose of working the said coal fields and any other coal mines that the Company may hereafter acquire and they are desirous that the said Company should be established and incorporated under the provisions herein contained And whereas it has been further agreed that the said lands shall be transferred to and become the property of the Company to be formed under this Act in consideration of the first five thousand shares of the capital of the said Company being allotted to and vested in the said several parties as paid-up shares in the proportion in which they are now respectively interested in the said lands And that the rolling stock machinery and all other property now belonging to the said several persons or which has been contracted for or ordered by them for the working of the said coal fields shall

*Waratah Coal Company's Incorporation.*

shall be transferred to and taken by the said Company at or for the price or sums paid or contracted to be paid for the same respectively and that the amount thereof shall be paid out of the funds of the said Company to the said persons. And whereas it is expedient that the said Company should be established and incorporated for the purpose aforesaid and that such powers rights and privileges should be granted to them as are hereinafter mentioned. 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:—

**Proprietors.**

1. From and after the passing of this Act the following persons that is to say Thomas Sutcliffe Mort Thomas Ware Smart Charles Smith Benjamin Darley Thomas Grove Atkinson Alfred Patrick Tighe and William Steele and all other persons who shall become holders of shares in the said Company and their several and respective successors executors administrators and assigns shall be and hereby are united into a Company for the purpose of working certain coal mines situated at or near Waratah in the Parish of Newcastle in the County of Northumberland in the Colony of New South Wales and any other mines of which the said Company may hereafter become possessed and for the disposal of the coal and any other minerals to be obtained therefrom and for the carrying on of such other business and doing such other matters and things in connection therewith as the said Company may deem expedient according to the rules orders and directions hereinafter mentioned and for that purpose shall be one body corporate by the name and style of "The Waratah Coal Company" and by that name shall have perpetual succession and a Common Seal and shall and may sue and be sued plead and be impleaded answer and be answered unto defend and be defended in all courts and places whatsoever and shall have power and authority from and after the passing of this Act and at all times thereafter to purchase and hold lands to them and their successors and assigns for the use of the said undertaking and generally for the purpose of carrying the provisions of this Act into effect and also to sell and dispose of the said lands again without incurring any penalties or forfeitures.

Incorporated by the  
name of the  
"Waratah Coal  
Company."  
Seal.

Power to sue and be  
sued.  
Hold lands.

Capital to be sixty  
thousand pounds  
divided into ten  
thousand shares of  
six pounds each.

The first five thou-  
sand shares to be  
vested in the persons  
named in Schedule  
A as paid up shares.

Shares to be personal  
estate.

Shareholders.

2. The capital of the Company hereby established shall (until increased as hereinafter provided) be sixty thousand pounds sterling and shall be divided into ten thousand shares of six pounds each and such shares shall be numbered in regular or arithmetical progression beginning with number one and every such share shall be distinguished by its appropriate number. And the said shares shall be and are hereby vested in the persons hereinbefore named and in such other persons as shall take shares in the said Company and their successors and their several and respective executors administrators and assigns.

3. The first five thousand shares in the said capital shall be vested in the several persons respectively abovenamed in the proportions mentioned in the Schedule A to this Act annexed and such shares shall be deemed and taken to have been fully paid up by the holders thereof as if the said persons respectively had subscribed for and paid six pounds for every such share under the provisions of this Act and shall be entered in the Register of Shareholders accordingly.

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

5. Every person who shall by virtue of this Act have subscribed for or shall otherwise have become entitled to a share in the said Company and whose name shall have been entered on the Register of Shareholders hereinafter mentioned shall be deemed a shareholder of the Company and shall be entitled to participate in the profits and dividends

*Waratah Coal Company's Incorporation.*

dividends of the Company in proportion to the amount of capital which he shall have paid up subject to the provisions hereinafter contained.

6. The Directors of the Company shall cause the names additions Registry of share-holders. and addresses of the several persons entitled to shares together with the number of shares to which they shall be respectively entitled distinguishing each share by its proper number and the amount of the subscriptions paid on such shares to be from time to time fairly and distinctly entered in a book to be kept in the office of the said Company for that purpose and to be called the "Register of Shareholders" and the surnames or corporate names of the said shareholders shall be placed in alphabetical order to the end that each shareholder for the time being and his interest in the Company may be known.

7. On demand by the holder of any shares the Directors of the Company shall cause a certificate of the proprietorship of such shares to be delivered to such shareholder and such certificate shall have the common seal of the Company affixed thereto and shall specify the shares to which such shareholder is entitled and the same may be according to the form in the Schedule B to this Act annexed or to the like effect and for every such certificate the Directors may demand a sum not exceeding two shillings and sixpence and such certificate shall be admitted in all courts as *prima facie* evidence of the title of such shareholder to the shares therein specified but the want of such certificate shall not prevent the holder of any share from disposing thereof or receiving his share of the profits in respect thereof. Certificates of shares to be issued to the shareholders. Certificates to be evidence of property in shares.

8. If any such certificate be worn out or damaged then upon the same being produced at some meeting of the Directors such Directors may order the same to be cancelled and another similar certificate to be given to the party in whom the property of such certificate and of the shares therein mentioned shall be at the time vested or if such certificate be lost or destroyed then upon proof thereof to the satisfaction of the Directors a similar certificate shall be given to the party entitled to the certificate so lost or destroyed and to the shares therein mentioned and in either case a due entry of the substituted certificate shall be made by the Secretary in the Register of Shareholders and for every such certificate so given or exchanged the Directors may demand a sum not exceeding two shillings and sixpence. Certificate to be renewed when destroyed.

9. It shall be lawful for any shareholder with the consent of Shares may be sold. the Directors to sell and transfer all or any of his shares subject to the provisions herein contained Provided that every such transfer shall be by deed in which the consideration shall be truly stated and such deed may be according to the form in the Schedule C to this Act annexed or to the like effect And provided also that if any certificate of the proprietorship of the shares to be transferred shall have been issued the same shall upon such transfer be delivered up to the Directors to be cancelled or to be endorsed by the Secretary to the Company with a memorandum of the transfer unless it be shown to the satisfaction of the Directors that the same has been lost or destroyed.

10. The said Deed of Transfer (when duly executed) shall be delivered to the Secretary and be kept by him and he shall enter a Transfer of shares to be registered &c. memorial thereof in a book to be called the "Register of Transfers" and shall endorse such entry on the deed of transfer and shall on demand deliver a new certificate to the purchaser and for every such entry together with such endorsement and certificate the Directors may demand a sum not exceeding two shillings and sixpence and on the request of the purchaser of any shares an endorsement of such transfer

*Waratah Coal Company's Incorporation.*

transfer shall be made on the existing certificate of such shares instead of a new certificate being granted and upon such endorsement being signed by the Secretary such certificate shall be considered in every respect the same as a new certificate and until such deed of transfer has been so delivered to the Secretary as aforesaid the vendor of the shares shall continue liable to the Company for any calls that may be made upon such shares and the purchaser shall not be entitled to receive any share of the profits of the Company or to vote in respect of such shares.

Closing of transfer books.

11. It shall be lawful for the Directors to close the register of transfers for a period not exceeding fourteen days previous to each half-yearly meeting and they may fix a day for the closing of the same of which seven days notice shall be given by advertisement in one or more newspapers and any transfer made during the time when the transfer books are so closed shall as between the Company and the party claiming under the same but not otherwise be considered as made subsequently to such half-yearly meeting.

Transmission of shares by other means than transfer to be authenticated by a declaration.

12. If the interest in any shares have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder or in consequence of the marriage of a female shareholder or by any other lawful means than by a transfer according to the provisions of this Act such transmission shall be authenticated by a declaration in writing as hereinafter mentioned or in such other manner as the Directors shall require and every such declaration or other authentication shall state and show the manner in which and the party to whom such shares shall have been so transmitted and shall be made and signed by some credible person before a justice of the peace or notary public and such declaration or other authentication shall be left with the Secretary and upon the same being deemed satisfactory by the Directors he shall enter the name of the person entitled under such transmission in the Register of Shareholders and for every such entry and certificate the Directors may demand a sum not exceeding five shillings and until such transmission has been so authenticated and such entry made no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the Company nor to vote in respect of any such share as the holder thereof.

Proof of transmission by marriage will &c.

13. If such transmission be by virtue of the marriage of a female shareholder the said declaration or other authentication shall contain a copy of the register of such marriage or other particulars of the celebration thereof and shall declare or show the identity of the wife with the holder of such shares and if such transmission have taken place by virtue of any testamentary instrument or by intestacy the probate of the will or the letters of administration or an official extract therefrom shall together with such declaration or other authentication be produced to the Secretary and upon such production in either of the cases aforesaid the Secretary shall make an entry of the declaration or other authentication in the said Register of Transfers.

Company not bound to see to execution of trusts in respect of shares.

14. The Company shall not be bound in any manner by any trusts or equitable interests or demands affecting any share 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 receipt of the person in whose name the shares shall stand in the books of the Company shall notwithstanding such trust 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 shares 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

*Waratah Coal Company's Incorporation.*

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 to 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 an alleged trust or equitable interest or demand and when such claim shall appear to the Directors to be well founded And provided also that nothing herein contained shall be deemed or taken to interfere with or abridge the right and power of a 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 thereafter of any such shares or to direct the payment of such dividends or other money not already paid by the Company or the transfer of such shares to such person as such Court may think fit.

Directors may withhold dividends and refuse to transfer in cases where they shall have had notice of trusts &c.

15. The several persons who have accepted or who shall hereafter accept or hold shares in the Company shall pay the amount of the said shares in manner following that is to say upon subscribing for or taking any share every subscriber shall forthwith pay to the Secretary or other proper officer of the Company the sum of two pounds sterling for every such share which shall be so taken and the remaining four pounds due on every such share or such portions thereof as shall from time to time be called for at such times and places as shall be appointed by the Directors and with respect to the provisions in this Act contained for enforcing the payment of calls the word "Shareholder" shall extend to and include the legal personal representatives of the late holder of any share or any other person to whom the interest therein shall have come by transmission as aforesaid.

Subscriptions to be paid.

Term "Shareholder" to include representatives.

16. It shall be lawful for the Directors from time to time to make such calls of money upon the several shareholders in respect of the amount due upon or for their respective shares as the Directors shall deem necessary Provided that thirty days notice at least be given of each call by a notice in one or more of the daily newspapers published in Sydney and that successive calls be not made at a less interval than three months and that no call exceed the sum of one pound for or in respect of any one share.

Power to make calls.

17. If before or on the day appointed for payment any shareholder shall not pay the amount of any call to which he is liable he shall pay interest thereon at the rate of eight per centum per annum from the day appointed for the payment thereof to the time of the actual payment and no shareholder shall be entitled to transfer any of his shares after any call shall have been made in respect thereof until he shall have paid such call nor until he shall have paid all calls for the time being due on every share held by him.

Interest to be paid on overdue calls.

18. It shall be lawful for the Directors if they think fit to receive from any of the shareholders who shall be willing to advance the same all or any part of the moneys due upon their respective shares beyond the sums actually called for and such shareholder shall thereupon be entitled to participate in the profits of the Company in proportion to the amount of capital they shall thereupon have paid up or if it shall be so arranged between the Directors and any such shareholder the Company may pay interest at such a rate not exceeding the rate aforesaid upon the amount of capital which such shareholder may have paid up in excess of the calls for the time being made upon his shares as the shareholder paying such sum in advance and the Directors shall agree upon.

Power to receive advances from shareholders on interest.

19. If at the time appointed for the payment of any call any shareholder shall fail to pay the amount of such call it shall be lawful for the Company to sue such shareholder for the amount thereof in any

Enforcement of calls by action.

## Waratah Coal Company's Incorporation.

Declaration in suits to recover calls.

Matter to be proved in action for calls.

Proof of proprietorship.

Shares in arrear may be declared forfeited.

Notice to be given of intention to declare share forfeited.

Forfeited shares may be sold.

No more shares to be sold than are sufficient to pay off arrears and expenses.

On payment of arrears before sale shares to revert to the party.

Evidence of proprietorship in purchases of forfeited shares.

any Court of law or equity having competent jurisdiction and to recover the same with interest as aforesaid and in any action or suit for the recovery thereof it shall be sufficient for the Company to declare that the defendant is the holder of so many shares (stating the number) and is indebted to the Company in such sum of money as the calls in arrear shall amount to in respect thereof (stating the number and amount of each of such calls) whereby an action or suit hath accrued to the Company and on the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of so many shares in the Company and that such call was in fact made by persons acting as Directors of the Company and such notice thereof given as is directed by this Act 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 such call and interest thereon and the production of the register of shareholders shall be *prima facie* evidence of such defendant being a shareholder and of the number and amount of his shares.

20. If any shareholder shall fail to pay any call payable by him together with the interest due thereon the Directors at any time after the expiration of two months from the day appointed for payment of such call may if they shall think fit declare the shares in respect of which such call was payable forfeited and that whether the said Company have sued for the amount of such call or not Provided that before declaring any share forfeited the Directors shall cause notice of their intention to declare such share to be forfeited to be left at or transmitted by the post to the usual or last place of abode of the person appearing by the Register of Shareholders to be the proprietor of such share and if the holder of any such share shall be beyond the limits of this Colony or if his or their usual or last place of abode be not known to the Directors by reason of its being imperfectly described in the Register of Shareholders or otherwise or if the interest in any such share shall be known by the Directors to have become transmitted otherwise than by transfer as hereinbefore mentioned but a declaration of such transmission shall not have been registered as aforesaid and so the address of the party to whom the said share may have been transmitted or may for the time being belong shall not be known to the Directors the Directors shall give public notice of such intention in one or more of the daily newspapers published in the City of Sydney and the several notices aforesaid shall be given twenty-one days at least before the Directors shall make such declaration of forfeiture.

21. After such forfeiture it shall be lawful for the Directors to sell the forfeited share either by public auction or private contract and if there be more than one forfeited share then either separately or together as to them shall seem fit Provided that the Company shall not sell or transfer more of the shares of any such defaulter than shall be sufficient as nearly as can be ascertained at the time of such sale to pay the arrears then due from such defaulter on account of any calls together with the interest and the expenses attending or occasioned by such forfeiture and sale and if the money produced by the sale of any such forfeited share be more than sufficient to pay all such arrears of calls and interest and expenses the surplus shall on demand be paid to the defaulter And provided also that if payment of such arrears of calls and interest and expenses be made before any share so forfeited shall have been sold as aforesaid such share shall revert to the party to whom the same belonged before such forfeiture in such manner as if such call had been duly paid.

22. A solemn declaration in writing by some credible person not interested in the matter made in conformity with the provisions of the Act of Council the ninth Victoria number nine that the call in respect

*Waratah Coal Company's Incorporation.*

respect of a share was made and notice thereof given and that default in payment of the call was made and that the forfeiture of the share was declared in manner hereinbefore required shall be sufficient evidence of the facts therein stated and such declaration and the receipt of the Treasurer or other officer of the Company authorized by the Directors to receive payment of the price of such share shall constitute a good title to such share and a certificate of proprietorship shall be delivered to such purchaser and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase and he shall not be bound to see to the application of the purchase money nor shall his title to such share be affected by any irregularity in the proceedings in reference to such forfeiture or sale.

23. The first general meeting of the shareholders of the Company shall be held at some convenient place within the City of Sydney within one month after the passing of this Act between the hours of ten in the forenoon and four in the afternoon and the future general meetings of the Company shall be held on the first Monday in the months of April and October or at such other stated periods as shall be appointed for that purpose by an order of a general meeting and the meetings so appointed shall be called "Half-yearly General Meetings" and all meetings whether half-yearly or extraordinary shall be held at such place in Sydney as the shareholders shall at any general meeting direct and appoint and if no such direction be given then at such place in Sydney as the Directors shall from time to time appoint.

24. No matters except such as are appointed by this Act to be done at a half-yearly general meeting shall be transacted at any such meeting unless special notice of such matters have been given in the advertisement convening such meeting and no extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

25. Every general meeting of the shareholders other than a half-yearly meeting shall be called an "Extraordinary Meeting" and such meetings may be convened by the Directors as they think fit and any number of shareholders not being less than ten and holding in the aggregate one thousand shares may by writing under their hands at any time require the Directors to call an extraordinary meeting of the Company and such requisition shall fully express the object of the meeting required to be called and shall be left at the office of the Company or given to at least three Directors or left at their last or usual places of abode and forthwith upon the receipt of such requisition the Directors shall convene a meeting of the shareholders and if for fourteen days after such notice the Directors shall fail to call such meeting the number of shareholders aforesaid qualified as aforesaid may themselves call such meeting.

26. Ten days public notice at the least of all meetings whether half-yearly or extraordinary shall be given by advertisement in one or more of the daily newspapers published in the City of Sydney which shall specify the place day and the hour of meeting and every notice of an extraordinary meeting or of a half-yearly meeting if any special business is to be done thereat shall specify the purpose for which the meeting is called or the special business to be done thereat.

27. In order to constitute a general meeting there shall be present either personally or by proxy shareholders holding in the aggregate not less than one-tenth of the capital of the Company and being in number not less than ten and such shareholders shall be a quorum and if within one hour from the time appointed for such meeting the said quorum be not present no business shall be transacted at the meeting other than the declaring of a dividend in case that

*First and other general meetings.*

*Business of half-yearly general meetings.*

*Business at extraordinary meetings.*

*Extraordinary meeting.*

*Extraordinary meeting of the Company may be required by shareholders.*

*Quorum of shareholders for a general meeting.*

*Waratah Coal Company's Incorporation.*

that shall be one of the objects of the meeting but such meeting shall except in respect of the election of Directors as hereinafter mentioned be held to be adjourned *sine die*.

**Chairman at general meetings.**

28. At every general meeting one or other of the following persons shall preside as Chairman that is to say the Chairman of the Company or in his absence some one of the Directors of the Company to be chosen by the meeting or in the absence of the Chairman and of all the Directors any shareholder to be chosen for that purpose by the meeting and such Chairman shall be entitled to vote not only as a principal and proxy but also to give a casting vote if there be otherwise an equality of votes and every such general meeting may be

**Business at adjournments.**

adjourned from time to time and from place to place and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

**Votes of shareholders**

29. At all general meetings every shareholder who shall be possessed of ten or more shares shall for the first ten shares be entitled to one vote for the next ten shares to one other vote and for every additional number of ten shares to one additional vote up to the number of one hundred shares and after the number of one hundred shares every shareholder shall be entitled to one vote for every additional twenty shares up to the number of two hundred shares and after the number of two hundred shares he shall be entitled to one vote for every additional fifty shares Provided always that no shareholder shall be entitled to more than twenty votes altogether.

**Manner of voting.**

30. The votes of shareholders may be given at any general meeting either personally or by proxies being shareholders authorized in writing according to the form in the Schedule D to this Act annexed or in a form to the like effect under the hand of the shareholder nominating such proxy or of his agent duly empowered by letter of attorney or if such shareholder be a corporation then under their common seal and every proposition at any such meeting shall be determined by the majority of votes of the parties present including proxies but no person shall be entitled to vote as a proxy unless the instrument appointing such proxy shall have been transmitted to the Secretary of the Company not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

**Votes of joint share-holders.**

31. If several persons be jointly entitled to any shares the person whose name stands first in the Register of Shareholders as one of the holders of such shares shall for the purpose of voting at any meeting be deemed the sole proprietor thereof unless such joint shareholders shall mutually agree that one or other of themselves shall so vote and shall so inform the Secretary of the Company by writing under their hands and on all occasions the vote of such first-named shareholder either in person or by proxy shall be allowed as the vote in respect of such shares without proof of the concurrence of the other holders thereof unless in case of such agreement and notice thereof as aforesaid and if any shareholder be a lunatic or idiot such lunatic or idiot may vote by his Committee and if any shareholder be a minor he may vote by his guardian or any one of his guardians and every such vote may be given either in person or by proxy.

**Votes of lunatics minors &c.**

**Proof of a particular majority of votes only required in the event of a poll being demanded.**

32. Whenever in this Act the consent of any particular majority of votes at any meeting of the Company is required in order to authorize any proceeding of the Company such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting and if such poll be not demanded then a declaration by the Chairman that the resolution authorizing such proceeding has been carried and an entry to that effect in the book of

*Waratah Coal Company's Incorporation.*

of proceedings of the Company shall be sufficient authority for such proceeding without proof of the number or proportion of votes recorded in favor of or against the same.

33. There shall be five Directors of the Company and Thomas Sutcliffe Mort Joseph Scaife Willis Benjamin Darley Charles Smith and Thomas Grove shall be the first Directors and shall continue in office until they shall have retired or ceased to be Directors in manner hereinafter mentioned and at the half-yearly general meeting to be held in pursuance of this Act in the month of October in the year one thousand eight hundred and sixty-three and at the half-yearly meeting which shall be held in October in every subsequent year one of such Directors shall retire from office such retirement to be decided by lot between themselves until all the first set of Directors hereby appointed shall have retired and then at the half-yearly meeting to be held in October in every year thereafter the Director who shall have been longest in office shall retire and every such retiring Director shall be immediately re-eligible and at every such half-yearly meeting in October in every year the shareholders then present personally or by proxy shall elect a new Director in the place of the Director then retiring from office agreeably to the provision herein contained and the persons hereby appointed or who shall be elected at any such meeting being neither removed nor disqualified nor having resigned shall continue to be Directors until others are elected in their stead as hereinafter mentioned

34. If at any meeting at which an election of Directors ought to take place the prescribed quorum of shareholders shall not be present within one hour from the time appointed for the meeting no election of Directors shall be made but such meeting shall stand adjourned to the following day at the same time and place and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting or if from any cause there shall not in fact be an election of a Director in the place of the retiring Director either at such meeting or such adjournment thereof the existing Directors shall continue to act and retain their powers until new Directors be appointed at the first half-yearly meeting of the following year.

35. No person shall be capable of being a Director unless he be a shareholder and possessed of one hundred shares and no person holding an office or place of trust or profit under the Company or interested in any contract with the Company or who shall be a partner with any person being a Director in any other Company carrying on a similar business shall be capable of being a Director and no Director shall be capable of accepting any other office or place of trust or profit under the Company or of being interested in any contract with the Company during the time he shall be a Director. Provided always that nothing in this Act contained shall prevent the Directors from accepting from the Company such remuneration for their services as such Directors as shall be awarded at any general meeting.

36. If any of the Directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the Company or be either directly or indirectly concerned in any contract with the Company or participate in any manner in the profits of any work to be done for the Company or if such Director at any time cease to be a holder of the prescribed number of shares in the Company then in any of the cases aforesaid the office of such Director shall become vacant and thenceforth he shall cease from voting or acting as a Director.

37. Provided always that no person being a shareholder of any Joint Stock Company shall be disqualified or prevented from acting

Five Directors.

Retirement of Directors.

Existing Directors continued on failure of meeting for election of Directors.

Qualification of Directors.

Cases in which office of Director shall become vacant.

Shareholders of an Incorporated Joint Stock Company not

*Waratah Coal Company's Incorporation.*

disqualified by reason of contracts.

as a Director by reason of any contract entered into between such Joint Stock Company and the Company hereby incorporated but no such Director being a shareholder of such Joint Stock Company shall vote on any question as to any contract therewith or in relation thereto.

Power to remove Directors.

38. In case the conduct or position of any Director shall be such that his continuance in office shall appear to the Board of Directors to be prejudicial to the interests of the Company it shall be lawful for the Board of Directors at a special meeting called for that purpose by a resolution in which not less than three Directors shall concur to suspend such Director from his office until the next general meeting and the shareholders present at such meeting may if they think fit confirm such suspension and remove such Director or may annul such suspension and reinstate such Director in his office.

Supply of occasional vacancies in office of Directors.

39. If any Director die or resign or become disqualified or incompetent to act as a Director or be removed or cease to be a Director by any other cause than that of going out of office by rotation as aforesaid the remaining Directors if they think proper so to do may elect in his place some other shareholder duly qualified to be a Director and the shareholder so elected shall continue in office until the next half-yearly meeting when a Director shall be elected by the shareholders present in person or by proxy in the place of the Director so having died resigned or been removed or become disqualified or incompetent to be a Director or having ceased to be a Director.

Powers of the Company to be exercised by the Directors.

40. The Directors shall have the management and superintendence of the affairs of the Company and may appoint all officers and servants required for conducting the undertaking of the Company and may purchase or rent lands houses or offices or mines or veins of coals or other minerals machinery boats and all other property that may be requisite for any of the purposes for which the Company is hereby incorporated and shall exercise all other the powers of the Company except as to such matters as are directed by this Act to be transacted by a general meeting of the shareholders but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this Act and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose but not so as to render invalid any act done by the Directors prior to any resolution passed by such general meeting and any three of such Directors being present at a duly convened Board meeting shall form a quorum and shall be competent to exercise the powers hereby given to the Directors generally.

Quorum of Directors.

Certain powers of the Company not to be exercised by the Directors.

41. Except as otherwise provided by this Act the following powers of the Company (that is to say) the choice and removal of the Directors the choice of Auditors the determination as to the amount of remuneration to be paid to the Directors the determination as to the amount of money to be borrowed on mortgage the determination as to the augmentation of capital and the declaration of dividends shall be exercised only at a general meeting of the shareholders.

Meetings of Directors.

42. The Directors shall hold their meetings in the City of Sydney at such times as they shall appoint for the purpose and they may meet and adjourn as they think proper from time to time and from place to place and at any time any two of the Directors may require the Secretary to call a meeting of the Directors and all questions at any such meeting shall be determined by the majority of votes of the Directors present and in case of an equal division of votes the Chairman shall have a casting vote in addition to his vote as one of the Directors.

Appointment of Chairman of Company.

43. At the first meeting of Directors held after the passing of this Act and at the first or some other early meeting of the Directors held

*Waratah Coal Company's Incorporation.*

held after the half-yearly general meeting held in October of each year the Directors present at such meeting shall choose one of the Directors to be Chairman of the Company and to act as Chairman of the Directors for the year following such choice and if the Chairman die or resign or cease to be a Director or otherwise become disqualified to act the Directors present at the meeting next after the occurrence of such vacancy or some other early meeting thereafter shall choose some other of the Directors to fill such vacancy during the residue of the current year and such Chairman if present shall preside at all meetings of the Directors but if the Chairman be absent the Directors present shall choose some one of their number to be Chairman of such meeting.

Chairmanship at  
meetings of  
Directors.

44. The power of the Directors to make contracts on behalf of the Company may lawfully be exercised as follows (that is to say)—

Contracts by  
Directors how to  
be entered into.

With respect to any contract which if made between private persons would be by law required to be in writing and under seal the Directors may make such contract on behalf of the Company in writing and under the common seal of the Company and in the same manner may vary or discharge the same.

With respect to any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith the Directors may make such contract on behalf of the Company in writing signed by any two of the Directors and in the same manner may vary or discharge the same.

With respect to any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing the Directors may make such contract on behalf of the Company by parol only without writing and in the same manner may vary or discharge the same.

And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Company and their successors and all other parties thereto their heirs executors or administrators as the case may be and on any default in the execution of any such contract either by the Company or any other party thereto such action or suit may be brought either by or against the Company as might be brought had the same contracts been made between private parties only.

45. The Directors shall cause notes minutes or copies as the case may require of all appointments made or contracts entered into by them and of the orders and proceedings of all meetings of the shareholders and of the Directors and Committees of Directors to be duly entered in books to be from time to time provided for the purpose which shall be kept under the superintendence of the Directors and every such entry shall be signed by the Chairman of the meeting at which such appointments and contracts were made or entered into or authorized or at which such proceedings and orders were respectively had or made and such entry so signed shall be received as evidence in all Courts and before all judges justices and others without proof of such respective meetings having been duly convened or held or of the persons making or entering such orders or proceedings being shareholders or Directors or of the signature of the Chairman or of the fact of his having been Chairman all of which last mentioned matters shall be presumed until the contrary be proved.

Proceedings to be  
entered in a book  
and to be evidence.

46. All acts done by any meeting of the Directors or by any person acting as a Director shall notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such

Informalities in ap-  
pointment of Direc-  
tors not to invalidate  
proceedings.

Directors

*Waratah Coal Company's Incorporation.*

Directors or persons acting as aforesaid or that they or any of them were or was disqualified be as valid as if every such person had been duly appointed and was qualified to be a Director.

Directors not to be personally liable.

47. No Director by being party to or executing in his capacity of a Director any contract or other instrument on behalf of the Company or otherwise lawfully executing any of the powers given to the Directors shall be subject to be sued or prosecuted individually by any person whomsoever and the bodies or goods or lands of the Directors shall not be liable to execution by any legal process by reason of any contract or other instrument so entered into signed or executed by them or by reason of any other lawful act done by them in the execution of any of their powers as Directors and the Directors their heirs executors and administrators shall be indemnified out of the capital of the Company for all payments made or liability incurred in respect of any act done by them and for all losses costs and damages which they may incur in the execution of the powers granted to them and the Directors for the time being of the Company may apply the existing funds and capital of the Company for the purposes of such indemnity and may if necessary for that purpose make calls of the capital remaining unpaid (if any).

Election of auditors.

48. At the first general meeting of the Company to be held after the passing of this Act the shareholders then present either personally or by proxy shall elect two auditors and at the half-yearly meeting in October in each year thereafter the shareholders shall in like manner elect an auditor to supply the place of the auditor then retiring from office according to the provision hereinafter contained and every auditor elected as hereinbefore provided being neither removed nor disqualified nor having resigned shall continue to be an auditor until another be elected in his stead and every auditor shall have at least ten shares in the Company and he shall not hold any other office in the Company nor be in any other manner interested in its concerns except as a shareholder.

Rotation of auditors.

49. One of such auditors (to be determined in the first instance by lot between themselves unless they shall otherwise agree and afterwards by seniority) shall go out of office at the half-yearly meeting in October in each year but the auditor so going out shall be immediately re-eligible.

Vacancies in the office of auditor.

50. If any vacancy take place among the auditors in the course of the current year then at any general meeting the vacancy may be supplied by election and the provision in this Act contained respecting the failure of a half-yearly meeting at which Directors ought to be chosen shall apply *mutatis mutandis* to any meeting at which an auditor ought to be appointed.

Failure to elect auditor.

51. The auditors shall have full authority at all reasonable times to examine the accounts and affairs of the Company and to inspect the books and to call for the production to them at the principal office of the Company of all books vouchers writings and documents concerning the same and to call in the aid of the officers clerks and servants of the Company or any other person competent to give information as to the Company's affairs.

Power of auditors for examination of affairs.

52. The Directors shall deliver to such auditors the half-yearly or other periodical accounts and balance-sheet fourteen days at the least before the ensuing half-yearly meeting at which the same are required to be produced to the shareholders as hereinafter provided and such auditors shall receive and examine the same and shall examine into the state of the Company's affairs and shall be at liberty to employ such accountants and other persons in such examinations as they may think proper at the expense of the Company and they shall make a just true and faithful report on the said accounts and affairs and

Delivery of balance-sheet &c. by Directors to auditors.

Duty of auditors.

Powers of auditors.

*Waratah Coal Company's Incorporation.*

and such report shall be read together with the report of the Directors at the half-yearly meeting.

53. If it shall appear to such half-yearly meeting desirable that the Company's affairs should be more fully investigated or if at any other general meeting it shall appear desirable to have a special examination into the state of the Company's affairs it shall be lawful for such meeting either to direct the said auditors to enquire into and report on the affairs of the Company generally or in their discretion to appoint any two or more shareholders as special auditors for that purpose.

54. Before any person entrusted with the custody or control of moneys belonging to the Company whether treasurer collector or other officer of the Company shall enter upon his office the Directors shall take sufficient security from him for the faithful execution of his office.

55. Every officer employed by the Company shall from time to time when required by the Directors make out and deliver to them or to any person appointed by them for that purpose a true and perfect account in writing under his hand of all moneys received by him on behalf of the Company and such account shall state how and to whom and for what purpose such moneys shall have been disposed of and together with such account such officer shall deliver the vouchers and receipts for such payments and every such officer shall pay to the Directors or to any person appointed by them to receive the same all moneys which shall appear to be owing from him on the balance of such accounts.

56. If any such officer fail to render such account or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power or to pay the balance thereof when thereunto required or if for three days after being thereunto required he fail to deliver up to the Directors or to any person appointed by them to receive the same all papers and writings property effects matters and things in his possession or power relating to the execution of this Act or belonging to the Company then on complaint thereof being made to a Justice such Justice shall summon such officer to appear before two or more Justices at a time and place to be set forth in such summons to answer such charge and upon the appearance of such officer or in his absence upon proof that such summons was personally served upon him or left at his last known place of abode such Justices may hear and determine the matter in a summary way and may adjust and declare the balance owing by such officer and if it appear either upon the confession of such officer or upon evidence or upon inspection of the account that any moneys of the Company are in the hands of such officer or owing by him to the Company such Justices may order such officer to pay the same and if he fail to pay the amount it shall be lawful for such Justices to grant a warrant to levy the same by distress or in default thereof to commit the offender to gaol for a period not exceeding three months unless the said amount be sooner paid.

57. If any such officer refuse to make out such account in writing or to produce and deliver to the Justices the several vouchers and receipts relating thereto or to deliver up any books papers or writings property effects matters or things in his possession or power belonging to the Company such Justices may lawfully commit such offender to gaol there to remain until he shall have delivered up all the vouchers and receipts (if any) in his possession or power relating to such accounts and have delivered up all books papers writings property effects matters things (if any) in his possession or power belonging to the Company.

Officers refusing to deliver up documents &c. to be imprisoned.

*Waratah Coal Company's Incorporation.*

Where officers about to abscond a warrant may be issued in the first instance.

58. If any Director or other person acting on behalf of the Company shall make oath that he has good reason to believe upon grounds to be stated in his deposition and does believe that it is the intention of any such officer as aforesaid to abscond or that he has absconded it shall be lawful for the justice before whom the complaint is made if he shall think fit to issue a warrant in the first instance for the bringing such officer before such two justices as aforesaid but no person executing such warrants shall keep such officer in custody longer than twenty-four hours or such longer period as may be rendered necessary by the distance of the place of apprehension from the residence of the nearest or most convenient magistrate without bringing him before some justice and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer if he think there is no sufficient ground for his detention or to order such officer to be detained in custody so as to be brought before two justices at a time and place to be named in such order unless such officer give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the Company. Provided nevertheless that no such proceeding against or dealing with any such officer as aforesaid shall deprive the Company of any remedy which they might otherwise have against such officer or any surety of such officer.

Sureties not to be discharged.

Accounts to be kept.

59. The Directors shall cause full and true accounts to be kept of all sums of money received or expended on account of the Company by them and all persons employed by or under them and of the matters and things for which such sums of money shall have been received or disbursed or paid.

Books to be balanced.

60. The books of the Company shall be balanced fifteen days at least before each half-yearly general meeting of shareholders and forthwith on the books being so balanced an exact balance sheet shall be made up which shall exhibit a true statement of the capital stock credits and property of every description belonging to the Company and the debts due by the Company at the date of making such balance-sheet and a distinct view of the profit or loss which shall have arisen on the transactions of the Company in the course of the preceding half-year and previously to each half-yearly meeting such balance sheet shall be examined by the Directors or any three of their number and shall be signed by the Chairman of the Directors.

Balance-sheet to be produced at the meeting.

61. The Directors shall produce to the shareholders assembled at such half-yearly meeting the said balance-sheet applicable to the period immediately preceding such meeting together with the report of the auditors thereon as hereinbefore provided.

Previously to declaration of dividend a scheme to be prepared.

62. Previously to every half-yearly meeting at which a dividend is intended to be declared the Directors shall cause a scheme to be prepared showing the profits (if any) of the Company for a period current since the preceding half-yearly meeting at which a dividend was declared and apportioning the same and any surplus remaining undivided from any former period or so much thereof as they may consider applicable to the purposes of dividend among the shareholders according to the shares held by them respectively the amount paid thereon and the periods during which the same may have been paid and shall exhibit such scheme at such half-yearly meeting and at such meeting a dividend may be declared according to such scheme or of any such less amount as the meeting shall think fit but the Company shall not make any dividend whereby their capital stock will be in any degree reduced. Provided always that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock.

Dividend not to be made so as to reduce capital.

*Waratah Coal Company's Incorporation.*

63. Before apportioning the profits to be divided among the shareholders the Directors may if they think fit set aside thereout such sum as they may think proper to meet contingencies or for enlarging repairing or improving the works connected with the Company's undertakings or any part thereof and may divide the balance only among the shareholders. Provided always that if for any half-year the divisible profits of the Company after making such reserve as aforesaid shall not be sufficient to pay a dividend at the rate of five pounds per centum per annum upon the entire paid-up capital the holders of the shares numbered respectively from five thousand and one to ten thousand which shall have been subscribed for under the provisions of this Act shall be entitled to receive out of the divisible profits of the Company for such half-year a dividend at the rate of five per centum per annum or at such less rate as the divisible profits after such reserve as aforesaid shall amount to on the capital paid up on their said shares respectively before any dividend shall be paid to the holders of the shares mentioned in the Schedule A to this Act annexed and the residue of such divisible profits (if any) after paying such dividend shall be paid to the holders of the last mentioned shares according to the number of shares held by them respectively.

64. Any summons or notice or any writ or other proceeding at law or in equity requiring to be served upon the Company may be served by the same being left at or transmitted through the post directed to the principal officer of the Company or being given personally to the Secretary or in case there be no Secretary then by being given to any one Director of the Company.

65. Notices requiring to be served by the Company upon the shareholders may unless expressly required to be served personally be served by the same being transmitted through the post directed according to the registered address or other known address of the shareholder within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice and in proving such service it shall be sufficient to prove that such notice was properly directed and that it was so put into the post office. Provided that this enactment as to the time of transmission shall not apply to shareholders resident out of the Colony but in every such case such notice may be given to any person who may be the duly authorized agent of any such shareholder as last mentioned and shall have been recognized as such by the Directors or such notice may be given by fourteen days notice by advertisement in one or more daily newspapers published in the City of Sydney.

66. All notices directed to be given to the shareholders shall with respect to any share to which persons are jointly entitled be given to whichever of the said persons shall be named first in the Register of Shareholders and notice so given shall be sufficient notice to all the proprietors of such share.

67. Every summons notice or other such document requiring authentication by the Company may be signed by two Directors or by the Secretary of the Company and need not be under the common seal of the Company.

68. If any person against whom the Company shall have any claim or demand become bankrupt or take the benefit of any Act for the relief of insolvent debtors it shall be lawful for the Secretary or Treasurer of the Company in all proceedings against the estate of such bankrupt or insolvent or under any fiat sequestration or act of insolvency against such bankrupt or insolvent to represent the Company and act in their behalf in all respects.

69. For the purpose of regulating the conduct of the officers and servants of the Company and for providing for the due management

*Waratah Coal Company's Incorporation.*

ment of the affairs of the Company in all respects whatsoever it shall be lawful for the Company subject to the provisions herein mentioned from time to time to make such by-laws and regulations as they think fit. Provided that such by-laws be not repugnant to the laws of the Colony or to the provisions of this Act or to any resolution of any general meeting of shareholders and such by-laws shall be reduced into writing and shall have affixed thereto the common seal of the Company and a copy of such by-laws shall be given to every officer and servant of the Company affected thereby.

By-laws to be so framed as that penalties may be mitigated.

70. It shall be lawful for the Company by such by-laws to impose such reasonable penalties upon all persons being officers and servants of the Company offending against such by-laws as the Company think fit not exceeding five pounds for any one offence. Provided that the same shall be so framed as to allow the justice or justices before whom any penalties imposed thereby may be sought to be recovered to order a part only of such penalty to be paid if such justice think fit.

Evidence of by-laws.

71. The production of a printed or written 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 proceedings under the same.

Power to raise a further sum amongst shareholders or by the admission of new subscribers.

72. It shall be lawful for the Company by the order of any general meeting to increase the capital of the said Company to any amount not exceeding altogether one hundred thousand pounds and the Company are hereby authorized and empowered to raise any such further sum or sums as may be required in addition to the present capital of sixty thousand pounds by creating and issuing new shares of six pounds each.

New shares to be considered as part of the general capital.

73. The capital so to be raised by the creation of new shares shall be considered as part of the general capital and shall be subject to the same provisions in all respects whether with reference to the payments of calls or the forfeiture of shares on the non-payment of calls or otherwise as if it had been part of the original capital except as to the times of making calls for such additional capital and the amount of such calls which respectively it shall be lawful for the Company from time to time to fix as they shall think fit.

Pre-emption to proprietors of original shares.

74. Provided always that when the Company shall determine to issue new shares under the provisions of this Act the Directors shall by a circular letter to be sent by post or otherwise and addressed to each of the then proprietors signify the number of new shares to be issued and the price thereof and the said proprietors shall within a period to be stated in such circular letter but not less than thirty days from the sending thereof be entitled to the option of taking all or any of such new shares in preference to any other persons and such of the said proprietors who within such period may signify in writing to the Directors their desire to partake in the distribution of such new shares shall as between themselves be entitled to have so many of such new shares as shall be in proportion to the number of their then present shares.

After pre-emption had by original proprietors new shares to be disposed of by the Directors.

75. In case any person who shall agree to take any new shares shall not within the period to be fixed for such purpose by the Directors (and which shall not be less than thirty days) pay the price or deposit to be required on any new shares allotted to him then and without prejudice to the remedies of the Company against him for enforcing such payment it shall be lawful for the Directors to allot any such shares to any other proprietor or person whomsoever at such price for each share as they may think proper but not less than six pounds for the same respectively.

*Waratah Coal Company's Incorporation.*

76. In case at any time it shall be thought expedient by the Proprietors may raise an additional sum if necessary by mortgage.

Company to raise any sum or sums of money by way of loan it shall be lawful for the Company by any order of any general meeting of the Company to borrow and take up at interest any sum or sums not exceeding in the whole at any one time one-third of the amount of the capital of the Company then actually paid up and the Company after an order shall have been made for that purpose by any general meeting are hereby empowered to mortgage or assign the property of the Company or any part thereof as a security for any such sum with interest to such person as shall advance the same all which said mortgages or assignments shall be made under the common seal of the Company and shall operate to charge the then future as well as the then present property of the Company any rule of law to the contrary thereof notwithstanding and all persons to whom such mortgages or assignments shall be made shall be equally entitled one with the other to their proportions of the said premises according to the respective sums in such mortgages or assignments mentioned to be advanced without any preference by reason of the priority of date of any such mortgage or assignment or on any other account whatsoever.

77. No such mortgage although it should comprise future calls on the shareholders shall unless expressly so provided preclude the Company from receiving and applying to the purposes of the Company any calls to be made by the Company.

78. If any execution either at law or in equity shall have been issued against the property or effects of the Company and if there cannot be found sufficient whereon to levy such execution then such execution may be issued against any of the shareholders to an amount equal to the amount of their shares respectively in the capital of the Company in addition to the amount of the said shares. Provided always that no such execution shall issue against any shareholder except upon an order of the Court in which the action suit or other proceeding shall have been brought or instituted made upon motion in open Court after sufficient notice in writing to the persons sought to be charged and upon such motion such Court may order execution to issue accordingly and for the purpose of ascertaining the names of the shareholders and the amount of capital remaining to be paid upon their respective shares it shall be lawful for any person entitled to any such execution at all reasonable times to inspect the Register of Shareholders required to be kept in the office of the Company as aforesaid without fee. Provided further that nothing herein contained shall extend to charge or make liable any shareholder of the Company or his real or personal estate with or for any debt or demand whatever due or to become due from or by the Company or in anywise relating to the said undertaking for any of the matters or things authorized by this Act to be made done or completed to a greater extent than the amount of their subscribed shares and a further amount equal to their said subscribed shares any law to the contrary thereof in anywise notwithstanding.

79. If by means of any such execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls he shall forthwith be reimbursed such additional sum by the Directors out of the funds of the Company.

80. The Directors shall have the custody of the common seal 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 meeting shall have power to use the common seal for the affairs and concerns of the Company and under such seal to authorize and empower any person without such seal to execute any deed and do all or any other such matters and things as may be required to

Custody and use of corporate seal.

Shareholders not liable beyond the amount of their subscribed shares and on an amount equal to such shares.

Shareholders to be reimbursed amount paid beyond calls due.

Mortgages not to prevent the Company from applying calls.

Execution against shareholders.

*Waratah Coal Company's Incorporation.*

to be executed and done on behalf of the Company but it shall not be necessary to use the corporate 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 proceedings 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 such person so appointed and in case any conveyance or other instrument under seal shall be executed wherein it appears that such conveyance or other instrument is executed in consideration of a money payment therein stated to have been made to the Company such execution shall have no operation in law or shall operate only as an escrow (according as may be indicated in the attestation aforesaid) until the Treasurer or other officer charged with the receipt of moneys on behalf of the Company shall have certified under his hand at the foot thereof that such consideration money has been duly paid.

Power to Company to make a railway.

81. It shall be lawful for the said Company to make construct and maintain a railway with all proper works and conveniences connected therewith across and over the lands and in the direction delineated and described in the Schedule E hereunto annexed commencing at a point on a parcel of three hundred and twenty acres of land situated at or near Waratah in the Parish of Newcastle in the County of Northumberland in the said Colony selected by Thomas Grove and continuing to and terminating at or upon the southern boundary of a parcel of one hundred and eighty-four acres of land selected by Thomas Sutcliffe Mort near to the waters of the Hunter River and it shall be lawful for the said Company to effect a junction between the said line of railway and the Great Northern Railway at or near the point where the said line crosses such Great Northern Railway in accordance with section ninety-nine of the Government Railway Act of one thousand eight hundred and fifty-eight and for the more conveniently effecting such junction it shall be lawful for the said Company with the consent of Robert Archibald Alison Morehead and Matthew Young to divert and alter the course of the railway now being constructed by them so far only as may be necessary for the said Company to form a junction with the said Great Northern Railway by a curve of approach of twenty chains radius provided that in such alteration the curve of approach of the railway so diverted or altered shall be of no less radius and the altered line shall be vested in the said Robert Archibald Alison Morehead and Matthew Young and they shall have the same rights and powers in respect thereto as if the land had been taken and the railway made under the authority of the Act passed to enable them to make their said railway Provided also that such railway shall be constructed and brought into use within the term of five years from the passing of this Act and that the said Company in constructing the same and in forming the junction with and crossing over the Great Northern Railway as aforesaid shall do so in a proper and workmanlike manner to the satisfaction of the Engineer in Chief for Railways and shall repair all damages caused by so doing.

Power to enter upon and take lands.

82. All such lands as shall be taken under the provisions of this Act for the purposes of the said railway shall by virtue of this Act be vested in the said Company and it shall be lawful for the said Company their agents servants and workmen and all other persons by them authorized to enter into and upon the said land or any land adjoining or contiguous thereto and there to bore dig cut trench embank and sough remove or lay take carry away and use any earth soil or other material or thing which may be dug

*Waratah Coal Company's Incorporation.*

dug raised or obtained therein or otherwise in making the said railway and other works and which may be proper or necessary for making maintaining altering repairing or using any such railway and other works by this Act authorized or which may hinder obstruct or prevent the making maintaining altering repairing or using the same respectively And also to make build erect or construct bank excavate cut and set up in across under or over any lands or any street hill valley road river canal brooks streams or other waters adjoining the same such temporary or permanent inclined planes tunnels embankments aqueducts bridges roads ways passages conduits drains piers arches cuttings and fences as the Company shall think proper And also to alter the course of any rivers not navigable brooks streams or watercourses during such time as may be necessary for constructing tunnels bridges or passages or other works over or under the same or for any other necessary purpose and to divert or alter as well temporarily as permanently the course of any such rivers or streams of water roads or ways or to raise or sink the level of any such rivers or streams roads or ways in order the more conveniently to carry the same over or under or by the side of such railway as they may think proper 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 houses offices and other buildings yards stations wharfs engines machinery and other works and conveniences connected with such railway as the said Company shall think expedient And also from time to time to alter and repair and amend the before-mentioned works or any of them and to substitute others in their stead And generally to do all other acts and things that may be necessary or convenient for making maintaining altering or repairing and using such railway and other works by this Act authorized 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 if required so to do making full satisfaction to the owners or proprietors of and to all persons interested in the lands or hereditaments which shall have been taken for the railway as aforesaid or used or injured for all damages to be by them sustained in or by the execution of any of the powers hereby granted.

Company to make full compensation for all damages.

83. Nothing herein contained shall prevent the present owners of the said land required for the purpose of the said railway from carrying on any mining operations beneath the said railway which shall not interfere with the safety of the said railway and the traffic thereon and the said Company shall have no further right to the soil beneath the surface of such parts of the said lands as are vested in them only by virtue of this Act than shall be requisite for the formation and repair of the said railway by cutting embanking or otherwise as hereinbefore authorized 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 carriage road or horse road so as to render it impassable for or dangerous or inconvenient to the persons entitled to the use thereof the said Company shall before the commencement of any such operations cause a sufficient road to be made instead of any road interfered with and shall at their own expense maintain such substituted road in a state as convenient as the road interfered with or as nearly as may be.

Owners of land may carry on mining operations.

Roads to be made before present roads interfered with.

84. If the said Company do not cause another sufficient road to be made before they interfere with any such existing road as aforesaid they shall forfeit five pounds for every day during which such substituted road shall not be made after the existing road shall have been

Penalty for not substituting a road.

*Waratah Coal Company's Incorporation.*

been interrupted and such penalty shall be paid to the trustees commissioners or other persons having the management of such road if a public road and shall be applied for the purposes thereof or in case of a private road the same shall be paid to the owner thereof and every such penalty shall be recoverable with costs by action in the Supreme Court or in the Metropolitan and Coast District Court holden in Sydney.

**Company to separate lands before using them.**

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

**Company to repair roads used by them.**

86. If in the course of making the railway the Company shall use or interfere with any road they shall from time to time make good all damage by them to such road and if any question shall arise as to the damage done to any such road by the said Company or as to the repair thereof by them such question shall be referred to the determination of two justices and such justices may direct such repairs to be made in the state of such road in respect of the damage done by the Company and within such period as they may think reasonable and may impose on the said Company for not carrying into effect such repairs any penalty not exceeding five pounds per day as to such Justices shall seem just and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the Company if a public road and be applied for the purposes of such road or if a private road the same shall be paid to the owner thereof.

**Provisions in cases where roads are crossed on a level.**

87. If the railway cross any public highway on a level the said Company shall erect and at all times maintain good and sufficient gates across such road on each side of the railway where the same shall communicate therewith and shall employ proper persons to open and shut such gates and such gates shall be kept constantly closed across such roads on both sides of the railway except during the time when horses cattle carts or carriages passing along the same shall have to cross such railway and such gates shall be of such dimensions and so constructed as when closed to fence in the railway and prevent cattle or horses passing along the road from entering upon the railway and the person entrusted with the care of such gates shall cause the same to be closed as soon as such horses cattle carts or carriages shall have passed through the same under a penalty of forty shillings for every default therein Provided always that it shall be lawful for the Secretary for Public Works in case he shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over such road should be kept closed across the railway to order that such gates shall be kept so closed instead of across the road and in such case such gates shall be kept constantly closed across the railway except when engines or carriages passing along the railway shall have occasion to cross such road in such manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

**Power to enter upon adjoining lands to repair accidents.**

88. In case of accidents or slips happening or being apprehended to the cuttings embankments or other works of the said railway it

*Waratah Coal Company's Incorporation.*

it shall be lawful for the said 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. Provided 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 owner and occupier of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works the amount of which compensation in case of any dispute about the same shall be settled by arbitrators in the manner hereinafter mentioned. And provided also that no land shall be taken permanently for any such works otherwise than is herein provided with respect to the land originally taken for the purpose of making the said railway.

89. The said 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 Gates bridges &c.

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

All sufficient posts rails hedges ditches mounds or other Fences. 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 the 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 Drains. 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 proper watering places for cattle or compensation in Watering places. lieu thereof where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places and such watering places shall be so made as to be at all times sufficiently supplied with water as theretofore and as if the railway 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 said Company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

*Waratah Coal Company's Incorporation.*

Penalty on persons  
omitting to fasten  
gates.

90. If any person omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands so soon as he and the carriage cattle or other animals under his care have passed through the same he shall forfeit for every such offence any sum not exceeding ten pounds.

Minerals not to pass.

91. The said Company shall not be entitled to any mines coal iron stone slate or other minerals under any land whereof the surface is vested in them by virtue of this Act except only such parts thereof as shall be necessary to be dug or carried away in the construction of the works hereby authorized and such mines shall not be deemed to vest in the said Company.

Railway open to the  
public.

92. The railway hereby authorized to be made and the locomotives shall be open to public use upon payment of a toll to the Company of three-pence per ton per mile for such carriage the party seeking transit supplying and loading his own trucks or waggons and all trucks when emptied shall be conveyed on their return free of cost.

Branch railways.

93. And be it enacted that it shall be lawful for the owners or occupiers of the land 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 Company shall if required at the expense of such owners or occupiers make openings in the rails and such additional lines of railway as may be necessary for effecting such communication in places where the communication can be made with safety to the public and without injury to the said railway and without inconvenience to the traffic thereupon and the 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 Company under the direction of their engineer.

Compensation  
clause.

94. If within twenty-eight days after the passing of this Act the persons through whose lands the railway shall pass or any of them and the said Company shall not agree as to the amount of compensation to be paid by them for the said lands belonging to the said parties or any of them or for any damage that may be sustained by them or him by reason of the execution of the works or if any other question as to compensation shall arise under this Act the amount of such compensation shall be settled by arbitrators in manner hereinafter mentioned (that is to say)—

Appointment of  
arbitrators.

Unless both parties shall concur in the appointment of a single arbitrator each party on the request of the other party shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred and every appointment of an arbitrator shall be under the hand of such party and such appointment shall be delivered to the arbitrator

*Waratah Coal Company's Incorporation.*

arbitrator or arbitrators and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other nor shall the death of either party operate as a revocation and if for the space of fourteen days after any such dispute or other matter shall have arisen and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator such last mentioned party fail to appoint such arbitrator then upon such failure it shall be lawful for the Attorney General for the time being of the said Colony on the application of the party who has himself appointed an arbitrator to appoint such arbitrator to act on behalf of both parties and such arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single arbitrator shall be final and conclusive.

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

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

97. If in either of the cases aforesaid the arbitrators shall refuse or for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for the Attorney General for the time being on the application of either party to such arbitration to appoint an umpire and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Act shall be final.

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

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

100. If where more than one arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such arbitrators shall fail to make their award within twenty-one days the matter to go to the umpire.

*Waratah Coal Company's Incorporation.*

one days after the day on which the last of such arbitrators shall have been appointed or within such extended time (if any) as shall have been appointed for that purpose by both of such arbitrators under their hands the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

**Powers of arbitrators to call for books &c.**

101. 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 and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

**Arbitrator or umpire to make a declaration for faithful discharge of duty.**

102. 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 will faithfully and honestly and to the best of my skill and ability hear and determine the matter referred to me under the provisions of "The Waratah Coal Company's Act."

**Penalty for misconduct.**

Made and subscribed in the presence of A. B. and such declaration shall be annexed to the award when made and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

**Costs of arbitration how to be borne.**

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

**Award to be delivered to the said Company.**

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

~~...sovereignty may be made a rule of Court.~~

<sup>105. The arbitration may be made a rule of the Supreme Court on the application of either of the parties.</sup>

**Award not void through error in form.**

106. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

**Compensation for temporary permanent or recurring injuries.**

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

**Compensation to be made for temporary occupation.**

108. In every case where the said Company shall take temporary possession of lands by virtue of the powers hereby granted it shall be incumbent on them within one month after their entry upon such lands upon being required so to do to pay to the occupier of the said lands the value of any crop or dressing that may be thereon as well

*Waratah Coal Company's Incorporation.*

well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of their lands and they shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands as the case may require a rent to be fixed by two Justices in case the parties differ and shall also within six months after the completion of the railway pay to such owner and occupier or deposit in the bank for the benefit of all parties interested as the case may require compensation for all permanent or other loss damage or injury that may have been sustained by them by reason of the exercise as regards the said lands of the powers hereby granted including the full value of all clay stone gravel sand and other things taken from such lands.

109. Nothing herein contained shall alter annul or anywise affect any of the provisions of the Government Railways Act of 1858 excepting as provided in clause eighty-one of this Act and the Schedule E therein referred to.

110. The Company shall be at liberty upon an order made by three-fourths of the shareholders present in person or by proxy at any general meeting to lease the lands mines railway and other works of the Company or any part thereof to any Company or person upon and subject to all the usual and proper obligations on the part of the lessee for maintaining the property and works comprised in such lease in good and efficient repair and working condition during the continuance therof and for so leaving the same at the expiration of the term thereby granted and such other provisions conditions obligations and agreements as are usually inserted in leases of a like nature and the lessees their officers servants and agents shall during the continuance of such lease have the same rights powers and privileges and be subject to the same regulations restrictions and liabilities as are by this Act granted to or imposed on the said Company their officers servants and agents.

111. In case a majority of proprietors present in person or by proxy at any general meeting shall resolve that it is expedient to dissolve the Company and to sell or dispose of the mines and other property works and effects of the Company or to amalgamate the said Company with any other Company and to transfer such mines and other property works and effects to the amalgamated Company an extraordinary general meeting shall be called for the purpose of reconsidering such resolution and of affirming or disaffirming the same and if at such last mentioned meeting the same or any modification thereof substantially in accordance therewith shall be adopted by a resolution agreed to by proprietors present in person or by proxy holding three-fourths of the votes of the Company then such dissolution sale amalgamation or transfer shall take place or be made accordingly Provided always that until all necessary arrangements shall be made by the Directors (who are hereby empowered to make the same) for carrying such last mentioned resolution into complete effect and until all claims and demands upon the Company shall have been satisfied and all acts remaining to be done by the Company shall have been completed the several provisions herein contained and all powers privileges rights and duties of the Directors and of the shareholders respectively shall notwithstanding such resolution as last aforesaid remain and continue in full force so far as the same may be necessary for winding up the concerns of the Company and making all such necessary arrangements for carrying such resolution into complete effect and for enabling the Directors to pay and satisfy all claims and demands upon the Company or to make a division amongst the shareholders of the remaining assets of the Company.

Not to affect Government Railways Act of 1858.

Provisions for dissolution of Company sales of effects or amalgamation with another Company.

*Waratah Coal Company's Incorporation.*

## SCHEDULES referred to in the foregoing Act.

## SCHEDULE A.

*Names of Persons in whom the first five thousand shares are vested under the third Section of this Act with the number of shares to which they are respectively entitled.*

Names of Shareholders.	No. of Shares held.	No. by which each Share distinguished.
1. Thomas Sutcliffe Mort .....	714 .....	From 1 to 714
2. Thomas Ware Smart .....	714 .....	," 715 to 1428
3. Charles Smith.....	714 .....	," 1429 to 2142
4. Benjamin Darley .....	714 .....	," 2143 to 2856
5. Thomas Grove.....	715 .....	," 2857 to 3571
6. Atkinson Alfred Patrick Tighe...	715 .....	," 3572 to 4286
7. William Steele .....	714 .....	," 4287 to 5000

## SCHEDULE B.

*Form of Certificate of Shares.*

## THE WARATAH COAL COMPANY.

## Number

THIS is to certify that of is the proprietor of the share numbered of "The Waratah Coal Company" subject to the regulations of the said Company.

Given under the common seal of the Company the day of in the year of our Lord one thousand eight hundred and sixty-

## SCHEDULE C.

*Form of Transfer of Shares.*

I of in consideration of the sum of paid to me by of share numbered do hereby transfer to the said share numbered in the undertaking called "The Waratah Coal Company" standing in my name in the books of the Company to hold unto the said his executors administrators and assigns ("or successors and assigns") subject to the several conditions on which I held the same at the time of the execution hereof and I the said do hereby agree to take the said share subject to the same conditions.

As witness our hands and seals the day of

## SCHEDULE D.

*Form of Proxy.*

I one of the proprietors of "The Waratah Coal Company" do hereby appoint of to be my proxy in my absence to vote in my name upon any matter relating to the undertaking proposed at the meeting of proprietors to be held on the day of next or at any adjournment thereof in such manner as he shall think proper.

In witness whereof I the said have hereunto set my hand (or if a Corporation say "the common seal of the Corporation") the day of one thousand eight hundred and sixty-

## SCHEDULE

*Commercial Banking Company.*

## SCHEDULE E.

COMMENCING at a point on land comprising three hundred and twenty acres situated at or near Waratah in the Parish of Newcastle in the County of Northumberland in the Colony of New South Wales selected by Thomas Grove and running in a south-easterly direction to the southern boundary thereof thence continuing across three hundred and twenty acres of land selected by G. R. Dibbs to a point about ten chains east from the north-east corner of one hundred and sixty acres of land leased and selected by Messrs. Morehead and Young and continuing by a curved line through two hundred and eighty acres of land leased or selected by Messrs. J. and A. Brown to the western boundary of forty-two acres selected by Thomas Ware Smart thence continuing the curve through the last mentioned selection and a line bearing north-easterly to its northern boundary across thirty-eight acres also selected by the said Thomas Ware Smart to or near the north-east corner thereof and across the south-east corner of Joseph Moate's thirty-nine acres thence continuing north-easterly across a reserved road and two parcels of land known as Henry Dangar's thirty-nine acres and Henry Dangar's thirty-three acres two rods and sixteen perches to a point on the Great Northern Railway about three miles from the City of Newcastle and across the said railway to the eastern boundary of the said thirty-three acres two rods sixteen perches thence continuing north-easterly through the north-west corner of the Australian Agricultural Company's two thousand acres to the Maitland road and across said road thence through a parcel of three hundred and twenty acres selected by Charles Smith to a reserved road on the eastern boundary thereof and across said road to Tully's or R. R. S. Bowker's twenty-two acres crossing the north-west corner thereof and proceeding north-easterly across Livingstone's twenty-four acres to the northern boundary being also the southern boundary of one hundred and eighty-four acres selected by the said Thomas Sutcliffe Mort near to the water of the River Hunter the width of the said railway to be about seventy-five links on each side of its centre line and the total length thereof about three miles.

---