

BOWENFELS  
COAL MINING AND  
COPPER SMELTING  
COMPANY'S  
RAILWAY.

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**An Act to enable certain persons carrying on business at Bowenfels and Sydney under the name and style of the "Bowenfels Coal Mining and Copper Smelting Company" to construct a Railway or Tramway from land in Lithgow Valley belonging to them to and to connect the same with the Great Western Railway. [2nd April, 1873.]**

**Preamble.**

WHEREAS certain persons trading in Sydney and Bowenfels under the name and style of the "Bowenfels Coal Mining and Copper Smelting Company" have opened coal mines and established collieries on a parcel of land situate at Lithgow Valley in the county of Cook in the Colony of New South Wales and known as the Hermitage Colliery and are about to erect buildings and works for the purpose of smelting copper ores and in order to facilitate communication between the said coal mines collieries and works and the Great Western Railway the said Company are desirous of constructing a railway from their said coal mines to the said Great Western Railway but as part of such proposed railway is intended to be made upon and pass through lands in the said county the property of Andrew Brown of Cooerwull Esquire across Farmer's Creek and over and along reserved roads over which said lands and road the said railway cannot be made and continued without Legislative authority And whereas the said coal mines and smelting works of the said Company are likely to prove beneficial to the Colony and the public advantage is at present especially concerned in promoting such an increase in and facilities for

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for the supply of coal for local consumption and exportation as would result from the completion of the said railway it is therefore expedient to authorize by Legislative enactment such constructions and continuations of the said railway subject to the provisions hereinafter contained upon payment of reasonable compensation to the said Andrew Brown through whose lands the same shall pass for such portion of the said land as may be required to be occupied thereby. Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. It shall be lawful for the said Company to make and construct a railway or tramway or part tramway or part railway and to run locomotive engines trucks vans and other carriages at a speed not exceeding the rate of eight miles per hour from the Great Western Railway to a point about one chain north of the south-east corner of the one hundred-acre mineral conditional purchase selected by Poole Woolley and Anderson such railway to be in the line described in the Schedule hereunto annexed but so that the same shall not occupy in any part thereof a greater breadth than sixty-six feet including foundations abutments and supports.

2. The ground and soil of so much of the site of the railway as passes over the lands of the said Andrew Brown and over Crown land together with such right of ingress egress and regress as may be necessary for the making repair and working thereof shall be vested by virtue of this Act and without the necessity of any conveyance in the said Company for the purpose of this railway or tramway. Provided that the said tramroad shall be constructed and brought into use within one year after the passing of this Act and that in default thereof or if after its completion the said tramroad shall cease to be used by the said promoters their heirs or assigns for one year continuously all the said lands and all their estate and interest therein shall revert to the said Andrew Brown his heirs and assigns and the Crown respectively and all the rights and powers hereby conferred on the said promoters shall cease and determine. Provided that if in exercise of the powers hereby granted it be found necessary to cross cut through raise sink or use any part of any road the said Company shall cause a sufficient road to be made instead of any road interfered with and shall at their own expense keep the same in a proper state of repair and the said Company before they run any locomotive over the said land of the said Andrew Brown for any of the purposes aforesaid shall if required so to do separate the same by a sufficient fence from the lands adjoining thereto with such gates as may be required for the occupation of such land. And shall make and at all times thereafter maintain all such arches drains and other passages over under or by the sides of the railway as shall at all times convey the water as clearly from the lands lying near to or affected by the railway as before the making of the same or as nearly so as may be and such works shall be made from time to time as the railway works proceed. The said railway shall at all times when not in actual use by the Company be open to the public upon payment of three-pence per ton for every transit the persons seeking transit to supply steam locomotive power trucks waggons &c. and to load and unload the same but the empty trucks to be conveyed on their return free of cost. Provided that if the Company shall employ locomotive engines of their own upon the said railway then in such case the Company shall supply the locomotive power to persons seeking transit and shall be entitled to charge the sum of four-pence per ton for every transit. Provided that if the said railroad shall be damaged in any way

Authority to construct railway and connect same with Great Western Railway.

Site of railway shall be vested in Company without conveyance.

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by parties using the same the Company shall be entitled to compensation for such damage to be recovered in the Supreme or any other competent Court and in estimating such damage the Company shall be entitled not only to compensation for the cost of repairing and restoring such railway but to the consequential damage if any sustained by reason of the suspension of transit.

**Power to divert or alter roads.**

3. For the purposes aforesaid it shall be lawful for the said Company their servants or workmen to divert or alter the course of any road or way crossing the railway or to raise or sink any road or way in order the more conveniently to carry the same over or under or by the side of the railway. Provided that if the said promoters do not cause another sufficient road or way to be made before they interfere with any such existing road or way they shall forfeit five pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted and such penalty shall be paid to the surveyor or other person or persons having the management of such road and shall be applied for the purposes thereof. Provided that any gradient on any road so altered shall not exceed one in thirty. Provided also that when the said railway or tramway runs across or along any public road on a level therewith the rails of such railway or tramway shall not be raised more than two inches above the level of such public road. Provided further that when the same is carried over or along a public road by means of a viaduct there shall be a clear space of at least twelve feet in height with at least seventy feet of roadway consisting of four ten feet two fifteen feet openings and that not any support of the said railway be placed nearer to the said mill race than four feet. And provided further that in the event of the said Company stopping up or doing or suffering any damage to be done or interfering in any way with the mill race of the said Andrew Brown over which the said railway passes the same shall be immediately repaired and placed in as good condition as it was before the said railway was constructed as aforesaid.

**Penalty to persons omitting to fasten gates.**

4. If any person omit to shut and fasten any gate set up at either side or end of the railway or tramway so soon as he and the carriage cattle or other animal under his care have passed through the same he shall forfeit for every such offence any sum not exceeding two pounds which may be recovered in a summary way before any Justice of the Peace.

**Compensation clause.**

5. If within twenty-eight days after the passing of this Act the said Andrew Brown and the Company shall not agree as to the amount of compensation to be paid by them for the said lands belonging to the said Andrew Brown or for any damage that may be sustained by him by reason of the execution of the works of the Company or if any other question of compensation shall arise under this Act the amount of such compensation shall be fixed by arbitration in manner hereinafter mentioned. That is to say each disputant shall under their hand nominate and appoint an arbitrator and such arbitrators shall before proceeding to arbitration appoint an umpire to act in the event of their disagreement to whom such dispute or matter shall be referred and the award of such arbitrators to be final and after such appointment neither party shall have power to revoke his or their appointment without the consent of the other nor shall the death of either party operate as a revocation and after a request in writing shall have been served by one party or the other to appoint an arbitrator and such last party having failed for the space of fourteen days to appoint the same it shall be lawful for the arbitrator who has been appointed 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 cases the award or determination of such arbitrators or single arbitrator shall be final and conclusive.

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6. 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 am not interested in the matters referred to me under the provisions of the "Bowenfels Coal Mining and Copper Smelting Company's Railway Act" and that I will faithfully and honestly and to the best of my skill and ability hear and determine the said matters.

(Signed)

A.B.

Made and subscribed in the presence of

7. 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.

8. All the costs of any such arbitration and incident thereto the amount whereof shall be settled by the arbitrators shall be borne by the Company unless the arbitrators shall award the same amount or less than the amount offered by the Company as compensation in which case the whole costs shall be paid by the claimant.

9. The arbitrators shall deliver their award in writing to the Company who shall retain the same and furnish a copy on demand to the claimant and the amount awarded shall be paid within sixty days after publication of such award.

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

11. 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.

12. The said Company shall not be entitled to any mines of coal iron stone slate or other minerals under any land whereof the surface is vested in them by 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 but not any of the land so taken shall be used for the purpose of erection thereon of any building or for smelting or other manufacturing purposes and it shall be lawful for the said Andrew Brown his heirs and assigns from time to time and at all times hereafter with servants and workmen to enter upon the land so to be vested in the said Company for the purpose of viewing and examining the state and condition of the said mill race and to do all necessary acts for the purpose of cleansing repairing and enlarging the same at his and their pleasure but so that not any such acts shall injure the said railway or the works of the same.

13. The following words and expressions in this Act shall have the meaning hereby assigned to them. The word "Company" shall mean the said "Bowenfels Coal Mining and Copper Smelting Company". The words "railway" or "tramway" shall mean the railway or tramway hereby authorized to be constructed and in citing this Act it shall be sufficient to use the expression "The Bowenfels Coal Mining and Copper Smelting Company's Railway Act". The word "Justice" shall mean Justice of the Peace in and for the Colony of New South Wales.

14. This Act shall be deemed and taken to be a Public Act and shall be judicially taken notice of as such by all Judges Justices and others without being specially pleaded.

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*Prince Alfred Hospital.*

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## SCHEDULE.

A piece or parcel of land Commencing at a point on the Great Western Railway about eighty-three miles eleven chains from the Parramatta Junction curving from the main line in a north-westerly direction with a curve eight chains radius to the railway fence and hence through the land of Andrew Brown Esquire one chain in width with same curve to a distance of eight chains forty-three links and thence by a straight line bearing north twenty-nine degrees forty minutes west to Farmer's Creek being a further distance of five chains one link and thence across Farmer's Creek on to the Company's land across a reserved road and again across the Company's land to a reserved road one chain wide and along the said road terminating at a point one chain north of the south-eastern corner of Poole Woolley and Anderson's mineral conditional purchase.

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