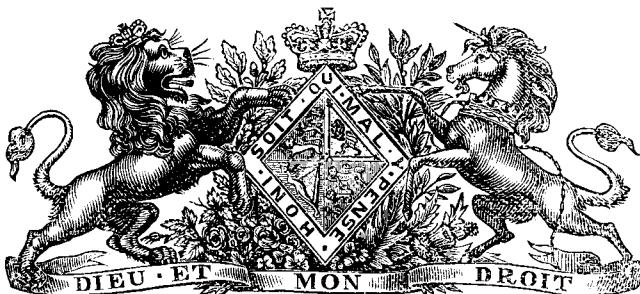


New South Wales.



ANNO QUADRAGESIMO QUARTO

VICTORIA REGINÆ.

An Act to enable the Mount Kembla Coal and Oil Company (Limited) to construct two lines of Railway from land near Mount Kembla belonging to the said Company and to connect the same with the sea-coast at Red Point and Wollongong respectively. [23rd March, 1881.]

MOUNT KEMBLA
COAL AND OIL
COMPANY'S
RAILWAY.
--

WHEREAS the Mount Kembla Coal and Oil Company (Limited) Preamble. a joint stock company duly registered under an Act of the Imperial Parliament made and passed in the twenty-fifth and twenty-sixth years of Her present Majesty Queen Victoria chapter eighty-nine and the Acts amending the same and hereinafter designated the Company have opened coal-mines on land situated near Mount Kembla in the county of Camden and are desirous of constructing railways from the said coal-mines to the sea-coast at Red Point and at Wollongong respectively but as part of such proposed railways are intended to be made upon and pass through lands in the said county not belonging to the said Company but believed to be the property of the representatives of the late William Stafford John Bright Thomas Wilton Eady William Warren Jenkins D'Arcy Wentworth Henry Giles Irvine Thomas John Fuller Mrs. Hubert Waldron Charles Vaughan Waldron Thomas John Fuller the representative of the late

a

Robert

Mount Kembla Coal and Oil Company's Railway.

Robert Owen William Simpson and the Crown being temporary reserves under the control of the Municipal Council of Wollongong and the Trustees of the Wollongong Common John Massey Henry Gilbert Smith William Roemer the Trustees of the Roman Catholic Cemetery and the Roman Catholic Convent and others or some of them respectively the same cannot be made without Legislative authority And whereas the said coal-mines are likely to prove beneficial to the Colony and the public are concerned in promoting such an increase in the facilities for the supply of coal for local consumption steam navigation and export as would result from the construction of the said proposed railways it is therefore desirable to authorize by Legislative enactment the construction of the said railways subject to the provisions hereinafter contained upon payment of compensation to the several parties through whose lands the same shall pass for such portions of their respective lands as may be required to be used or 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:—

Authority to construct railways and to connect the same with the sea-coast.

1. It shall be lawful for the Company to make and construct railways from the land belonging to the Company through lands granted by the Crown to Thompson Henry Gilbert Smith William Roemer John Reilly Thomas Palmer Thomas Evans J. Drummond E. Jones George Tait Jemima Jenkins Buckland David Allace G. Clarke Gregory Blaxland Wm. Stafford Henry Gordon P. Leahy and Robert Benjamin and now believed to be the properties of the several persons mentioned in the preamble of this Act and also through Crown lands and other lands and to take and use so much of the said lands as the said Company may require for the purpose of such railways in the lines described in the Schedule hereto or either of them not exceeding in any part thereof a greater space in breadth than sixty-six feet including the supports abutments and foundations of the said railways Provided that one of the said railways shall be constructed and brought into use within the term of five years from the passing of this Act.

Power to continue railways to dock or harbour works.

2. It shall be lawful for the Company either in substitution for some portion of the railways by the first section of this Act authorized to be made or in addition to the said railways to make and continue railways through the town of Wollongong and any street thereof for the purpose of connecting the railways or one of them and the works of the Company with the public basin or harbour works and to take and use so much of the said lands as the said Company may require not exceeding in any part thereof a greater space in breadth than sixty-six feet including the supports abutments and foundations of the said lines of railway Provided that before such last-mentioned work shall be commenced to be made a plan and section thereof shall be laid before and approved of by the Governor and Executive Council.

Power to construct wharves.

3. It shall be lawful for the said Company to construct at the terminus of the said railway at Red Point aforesaid such wharf or wharves jetty or jetties and pier or piers as the directors of the said Company may think necessary for the purpose of shipping the products of the said mines.

Lands vested in the Company without conveyance.

4. So much of the lands of the said owners or other persons as shall be taken or used by the Company under the provisions of this Act for the purpose of the said railways with such right of ingress egress and regress upon the adjacent lands as may be necessary for the making and repair of the said railways shall by virtue of this Act and without the necessity of any conveyance be vested in the Company Provided that if in the exercise of the powers hereby granted it be found necessary to cross cut through raise sink shut or use any part of any

Mount Kembla Coal and Oil Company's Railway.

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 or to divert the course or direction of any creek or watercourse the Company shall before the commencement of any such operations cause a sufficient road or new creek or watercourse to be made instead of any road or creek or watercourse 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. And the Company before they use the said lands for any of the purposes aforesaid 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 Company as to the necessity for such fences and gates such fences and gates shall be put up by the Company as two Justices of the Peace shall deem necessary for the purposes aforesaid on application being made to them.

5. The railways shall be at all times open to the public upon ~~Railways open to the~~ payment of a toll to the Company of sixpence per ton per mile in respect ~~public.~~

of every ton of goods for every transit the party seeking transit supplying his own trucks or waggons and the Company supplying locomotive power (being thereunto required by the party seeking transit twenty-four hours at least previously) And such supply of locomotive power shall not be compulsory on the Company unless the party seeking transit guarantee and bring two hundred tons at the least during the twelve working hours to be mentioned in such notice But it shall be compulsory on the Company to carry any quantity not less than forty tons if the locomotive be actually at work and all trucks when emptied shall be conveyed on their return free of cost The railways shall be at all times open to the public upon payment of a toll to the Company of fourpence per ton per mile in respect of every ton of goods for every transit if the party seeking transit supply the locomotive power as well as trucks or waggons Provided that so long as the Company shall supply locomotive power no other person shall use locomotive power on the line Provided that if the railways shall be damaged by parties who shall themselves use the railways for transit and supply locomotive power the Company shall be entitled to compensation for such damage to be recovered either by action in the Supreme Court of New South Wales or if such damage do not exceed the sum of twenty pounds summarily before two Justices and in estimating such damage the Company shall be entitled not only to compensation for the cost of repairing and restoring the railway but to the consequential damage (if any) sustained by reason of the suspension of transit After the railways shall have been opened for transit the Company shall continue to provide the locomotive power required for using the same (accidents excepted) until twenty-eight days' notice shall have been given by them by advertisement in the New South Wales *Government Gazette* that they intend after the expiration of a day to be named in such notice to suspend or discontinue working the railways or supplying the necessary locomotive power thereon whereupon it shall be lawful for any person entitled to use the railways to provide locomotive power such person paying the toll hereinbefore mentioned to be payable in such event Provided that any person interested in using the railways upon giving to the Company three calendar months' previous notice in writing of his intention so to do may make application to the Executive Council of New South Wales to reduce the tolls limited by this Act

and

Mount Kembla Coal and Oil Company's Railway.

and to create a new scale applicable to the traffic on the said railways such new scale being below the scale limited by this Act and it shall thereupon be lawful for the said Council to reduce the tolls as in the judgment of the said Council shall be reasonable Provided that the clear divisible profits of the railways shall be annually made good to the Company by the persons using the said railways at the rate of twenty pounds for every one hundred pounds by the year of the capital proved by the Company to have been expended by them in or about the construction of the railways after debiting the railways with the cost of maintaining the line in proper working order and crediting the railways with the carriage obtained by the Company at the rate aforesaid.

Branch railways.

6. It shall be lawful for the owners or occupiers of the lands traversed by the said railways to lay down upon their own lands any collateral branches of railways to communicate with the said railways for the purpose of bringing carriages to or from or upon the said railways and the Company shall if required at the expense of such owners or occupiers make openings in the rails and such additional railways 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 railways and without inconvenience to the traffic thercupon and the Company 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 railways shall run parallel to the said railways the Company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere nor upon any inclined plane or bridge nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company from time to time made with respect to passing upon or crossing the railways 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.

Right to carry passengers.

7. It shall be lawful for but not compulsory upon the said Company from time to time and at any and all times to carry passengers and live stock upon the said railways or any part thereof respectively and to make demand take receive and recover such tolls or dues for carrying the same at such rates per mile or other scale of charges as shall be established from time to time by the Directors of the Company for or in respect of all such passengers and live stock which shall be conveyed or transported upon such railways or either of them or any part thereof respectively And the Directors are hereby authorised to make such bye-laws and regulations not inconsistent with this Act as may be necessary for the regulation of such traffic and such by-laws or regulations shall be binding upon all persons using or travelling upon the said railways and any persons offending against such by-laws or regulations shall be liable to a fine not exceeding ten pounds for each offence to be recovered in a summary way before any two Justices Provided always that if the rates tolls or dues that may be established as aforesaid under and by virtue of this Act shall be found excessive it shall and may be lawful for the Legislature to reduce the said rates tolls or dues and to revise them in such manner as may seem most proper and advisable And it is hereby provided that nothing in this Act contained shall extend to charge or make liable the said

Company

Mount Kembla Coal and Oil Company's Railway.

Company further or in any other case than where according to the laws of this colony stage coach proprietors and common carriers would be liable nor shall extend in any degree to deprive the said Company of any protection or privilege which common carriers or stage coach proprietors may be entitled to but on the contrary the Company shall at all times be entitled to the benefit of every such protection and privilege.

8. For the purposes and subject to the provisions hereinafter contained it shall be lawful for the Company their deputies agents servants and workmen and all other persons by them authorized and empowered to divert or alter the course of any road-way or watercourse crossing the railways or either of them or to raise sink or divert any road-way or watercourse in order the more conveniently to carry the same over or under or by the side of the railways or either of them.

9. If the Company do not cause another sufficient road or new creek or watercourse to be so made before they interfere with any such existing road creek or watercourse as aforesaid they shall forfeit twenty pounds for every day during which such substituted road creek or watercourse shall not be made after the existing road creek or watercourse shall have been interrupted and such penalties shall be paid to the Trustees Commissioners Surveyor 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 any of the superior Courts.

10. If in the course of making the said railways or either of them the Company shall use or interfere with any road they shall from time to time make good all damage done by them to such road and if any question shall arise as to the damage done to any such road by the 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 damage done by the Company and within such period as they may think reasonable and may impose on the Company for not carrying into effect such repairs any penalty not exceeding ten pounds per day as to such Justices shall seem fit and any 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. Provided always the said Justices shall have regard to and shall make full allowance for any tolls that may have been paid by the Company on such road in the course of using thereof.

11. If the railways cross any public highway or parish road then either such road shall be carried over the railways or the railways shall be carried over such road by means of a bridge of the height and width and with the ascent or descent by this Act in that behalf hereinafter provided and such bridge with the immediate approaches and all other necessary works connected therewith shall be executed by and be at all times thereafter maintained at the expense of the Company. Provided that with the consent of two Justices it shall be lawful for the Company to carry the railways across any highway on the level.

12. Until the Company shall have made the bridges or other proper communications which they shall under the provisions herein contained have been required to make between lands intersected by the railways and no longer the owners and occupiers of such lands and any other persons whose right-of-way shall be affected by the want of such communications and their respective servants may at all times freely pass and repass with carriages horses and other animals directly but not otherwise across any part of the railways made in or through their respective

Power to divert or
alter roads or
watercourses.

Penalty for not
substituting roads or
watercourses.

Repairs of roads.

Bridges to be con-
structed where the
railways cross
highway.

Owners and occupiers
crossing.

Mount Kembla Coal and Oil Company's Railway.

respective lands solely for the purpose of occupying the same lands or for the exercise of such right-of-way and so as not to obstruct the passage along the railways or to damage the same nevertheless if the owner or occupier of any such land have in his arrangements with the Company received or agreed to receive compensation for or on account of any such communications instead of the same being formed such owner or occupier or those claiming under him shall not be entitled so to cross the railways.

Provisions in cases where roads or tramways are crossed on a level.

13. If the railways cross any public highway or parish road on a level the Company shall if ordered by two Justices so to do erect and at all times maintain good and sufficient gates across such road on each side of the railways where the same shall communicate therewith and shall if so ordered as aforesaid employ proper persons to open and shut such gates and such gates shall be constantly kept closed across such road on both sides of the railways except during the time when horses cattle carts or carriages passing along the same shall have to cross such railways and such gates shall be of such dimensions and so constructed as when closed to fence in the railways and prevent cattle or horses passing along the road from entering upon the railways 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 any case in which he shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road shall be kept closed across the railways 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 railways shall have occasion to cross such road in the same 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 subject to certain restrictions.

14. In case of accidents or slips happening or being apprehended to the cuttings embankments or other works of the said railways it shall be lawful for the Company and their workmen and servants to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose but in every case the Company shall within forty-eight hours after such entry make a report to the Secretary for Public Works specifying the nature of such accident or apprehended accident and of the works necessary to be done and such powers shall cease and determine if the said Secretary shall after considering the said report certify that their exercise is not necessary for the public safety Provided also that such works shall be as little injurious to the adjoining lands as the nature of accident or apprehended accident will admit of and shall be executed with all possible dispatch and full compensation shall be made to the owners and occupiers 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 lands originally taken for the purpose of making the said railways.

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

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

The

Construction of bridges over roads.

Mount Kembla Coal and Oil Company's Railway.

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

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

16. Every bridge erected for carrying any road over the railways shall be built in conformity with the following regulations that is to say— Construction of bridges over railroad.

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

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

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

17. Provided always that in all cases where the average available width for the passing of carriages of any existing road within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railways the width of such bridges need not be greater than such average available width of such roads but so nevertheless that such bridges be not of less width in case of a public highway or parish road than twenty feet Provided also that if at any time after the construction of the railways the average available width of any such road shall be increased beyond the width of such bridge on either side thereof the Company shall be bound at their own expense to increase the width of the said bridge to such extent as they may be required by the Trustees or Surveyors of such road not exceeding the width of such road as so widened on the maximum width herein prescribed for a bridge in the like case over or under the railways. The width of the bridges need not exceed the width of the road in certain cases.

18. Provided also that if the mean inclination of any road within two hundred and fifty yards of the point of crossing the same or the inclination of such portion of any road as may be required to be altered or for which another road shall be substituted shall be steeper than the inclination hereinbefore required to be preserved by the Company then the Company may carry any such road over or under the railways or may construct such altered or substituted road at any inclination not steeper than the said mesne inclinations of the road so to be crossed or of the road so requiring to be altered or for which another road shall be substituted. Existing inclination of roads crossed or diverted need not be improved.

19. The Company shall make and at all times thereafter maintain the following works for the accommodation of owners and occupiers of lands adjoining the railways that is to say :— Works for benefit of owners.

Such and so many convenient gates bridges arches culverts and passages over under or by the sides of or leading to or from the railways as shall be necessary for the purpose of making good Gates bridges &c.

Mount Kembla Coal and Oil Company's Railway.

good any interruptions caused by the railways to the use of the lands or any streets not diverted under the powers herein contained through which the railways shall be made and such works shall be made forthwith after the part of the railways passing over such lands shall have been laid out or formed or during the formation thereof.

Fences.

All sufficient posts rails hedges ditches mounds or other fences for separating the land taken for the use of the railways from the adjoining lands not taken and protecting such lands from trespass or the cattle of the owners or occupiers thereof from straying thereon by reason of the railways together with all necessary gates made to open towards such adjoining lands and not towards the railways 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.

Drains.

Also all necessary arches tunnels culverts drains or other passages either over or under or by the sides of the railways 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 railways as before the making of the railways or as nearly so as may be and such works shall be made from time to time as the railway works proceed.

Watering-places.

Also proper watering-places for cattle or compensation in lieu thereof where by reason of the railways 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 heretofore and as if the railways had not been made or as nearly so as may be and the said Company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places Provided always that the Company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railways 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.

Penalty on persons omitting to fasten gates.

20. If any person omit to shut and fasten any gate set up at either side of the said railways for the accommodation of the owners or occupiers of the adjoining lands as 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.

21. The Company shall not be entitled to any mines of coal iron-stone slate or other minerals under any land 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.

Compensation clause.

22. If within twenty-eight days after the passing of this Act the person through whose lands the said railways or either of them shall pass or any of them and the Company shall not agree as to the amount of compensation to be paid by the Company 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

Mount Kembla Coal and Oil Company's Railway.

other matter shall be referred and every appointment shall be delivered to the arbitrator or arbitrators and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made. And after any such appointment shall have been made neither party shall have 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 the party who has himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties and such arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single arbitrator shall be final and conclusive.

23. If before the matter so referred shall be determined any ^{Vacancy in arbitration to be supplied.} 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 arbitrator may proceed alone and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such his death refusal neglect or disability as aforesaid.

24. When more than one arbitrator shall have been appointed ^{Appointment of umpire.} such arbitrators shall before they enter into 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.

25. 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. ^{Attorney General to appoint umpire on neglect.}

26. If when a single arbitrator shall have been appointed such ^{In case of death of single arbitrator the matter to begin de novo.} 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.

27. If where more than one arbitrator shall have been appointed ^{If either arbitrator refuse to act the other to proceed ex parte.} 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 a single arbitrator appointed by both parties.

28. If where more than one arbitrator shall have been appointed ^{If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.} 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 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

Mount Kembla Coal and Oil Company's Railway.

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.

29. 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.

30. 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 Notary Public or Commissioner for Affidavits 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 matters referred to me under the provisions of the "Mount Kembla Coal and Oil Company's Railway Act of 1881."

Made and subscribed in } A.B.
the presence of }

Penalty for misconduct.

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.

Cost of arbitration how to be borne.

31. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company unless the arbitrators shall award the same or a less sum than shall have been offered by the Company in which case each party shall bear his own costs incident to the arbitration and 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 Company.

32. The arbitrators shall deliver their award in writing to the 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 but in every such case the party claiming payment shall be bound to make out a title to the said lands or to the interest claimed by him therein to the satisfaction of the said Company.

How compensation to be paid when any of parties under any disability.

33. If the person or persons through whose lands the said railways or either of them shall pass shall be under any disability or incapacity or shall be entitled only to a partial or qualified interest in the said lands or not entitled to dispose of the same absolutely for his or their own benefit or shall be absent from the Colony the amount of compensation to be paid by the Company as aforesaid shall be ascertained and when so ascertained shall be paid and applied in the same manner in all respects as the amount of compensation to be paid by the Commissioner for Railways in like cases under the provisions of the Act made and passed in the twenty-second year of the reign of Her present Majesty number nineteen is to be ascertained paid and applied.

Submission may be made a rule of Court.

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

Award not void through error in form.

35. 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.

Mount Kembla Coal and Oil Company's Railway.

36. The Company shall make 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.

37. In every case where the 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 as full compensation for any other damage of a temporary nature which he may sustain by reason of their 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 railways 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.

38. If in any case in which according to the provisions of this Act the said Company is authorized to enter upon and take possession of any lands required for the purpose of the undertaking the owner or occupier of any such lands or any other person refuse to give up the possession thereof or hinder the said Company from entering upon or taking possession of the same it shall be lawful for the said Company to issue its warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same and upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly and the cost accruing by reason of the issuing and execution of such warrant to be settled by the Sheriff shall be paid by the person refusing to give possession and the amount of such costs shall be deducted and retained by the Company from the compensation if any then payable to such party or if no such compensation shall be payable to such party or if the same be less than the amount of such costs then such costs or the excess thereof beyond such compensation if not paid on demand shall be levied by distress and upon application to any Justice for that purpose he shall issue his warrant accordingly.

39. The following words and expressions in this Act shall have the meaning hereby assigned to them unless there be something either in the subject or context repugnant to such construction. The word "Railways" shall mean the railways hereby authorized to be constructed the word "Justice" shall mean Justice of the Peace in and for the territory of New South Wales and where any matter shall be authorized or required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions and where under the provisions of this Act any notice shall be required to be given to the owner of any land or where any Act shall be authorized or required to be done with the consent of any such owner the word "Owner" shall be understood to mean any person or Corporation who under the provisions of this Act would be able to sell land to the Company.

40. This Act shall be styled and cited as the "Mount Kembla Coal and Oil Company's Railway Act of 1881."

Compensation for temporary or recurring injuries.

Compensation to be made for temporary occupation.

Sheriff authorized to give possession of certain lands.

Interpretation clause.

Mount Kembla Coal and Oil Company's Railway.

SCHEDULE.

LINE No. 1.

THE line commences from a marked rock on the sea-beach at Red Point situated some four miles south of Wollongong Harbour on and through the Five Islands Estate supposed to be the property of D'Arcy Wentworth Esquire being a line bearing north-west one hundred and eighty-six chains thence in a north-west direction on and through the Berkley Estate supposed to be the property of William Warren Jenkins Esquire a distance of about one hundred and fifty-one chains to the Main South Coast Road thence across said road a distance of one chain thence in a north-west direction on and through the Berkley Estate supposed to be the property of William Warren Jenkins Esquire a distance of about forty-four chains to the northern boundary of the estate thence into and through the Keerologues Estate supposed to be the property of Thomas Wilton Eady Esquire in a north-west direction following the south-west side of the American Creek Road as near as may be so far as the creek a distance of about twenty-two chains thence crossing the creek and the road south-west of a large fig-tree and passing on the north of a dilapidated hut crossing the creek a distance of about ten chains thence in a north-west direction diverting the road for a distance of about ten chains thence in a north and north-west direction crossing the creek twice near the number fourteen bench mark a distance of about seventeen chains thence in a north-west direction deviating the road for a distance of about eight chains thence in a north-west direction crossing the creek near Moses Driver's hut and deviating the road to the western boundary of the estate a distance of about fourteen chains and the course of the creek for a distance of about one chain thence into and through the Woodbrook Estate supposed to be the property of John Bright Esquire going in a north-west direction diverting the course of the road and creek to near the six and an eighth mile peg a distance of about twenty-one chains thence in a north-west and west direction crossing the creek to Stone's Road a distance of about twenty-seven chains thence crossing Stone's Road a distance of about half a chain thence in a westerly direction into and through land the property of the representatives of the late William Stafford a distance of about sixteen chains thence in a west and north-west direction into and through land the property of Robert Benjamin a distance of about twelve chains thence in a north-westerly direction into and through land the property of the representatives of the late William Stafford a distance of about six chains thence across a reserved road one chain wide into land the property of the Mount Kembla Coal and Oil Company terminating at the entrance to the said Company's mine.

LINE No. 2.

The line commences at Wollongong Harbour at a point on the Government Railway incline forming a junction with it thence through land the property of the Crown in a southerly direction east of the gaol and the town lagoon for a distance of twenty-three chains and fifty-three links thence southerly through land the property of Henry Gilbert Smith Esquire for a distance of one chain and eight links thence southerly across the eastern extension of Crown-street one chain thence southerly through Government reserve under Municipal control a distance of six chains and seventy-nine links thence southerly through a portion of W. Roemer's land in section fifteen a distance of four chains and thirty-two links thence southerly through Government reserve under Municipal control a distance of eighteen chains and thirty-three links to the eastern side of Harbour-street thence across Harbour-street a distance of one chain and sixty-three links thence across Henry Gilbert Smith's land in section twenty-two for a distance of seventy-nine links thence across Glebe-street in a south-westerly direction a distance of one chain and twenty-six links thence in a south-westerly direction across Henry Gilbert Smith's land being section twenty-five for a distance of twelve chains and forty-two links thence in a south-westerly direction across Beach-street one chain and forty-seven links thence in a south-westerly direction through Henry Gilbert Smith's land being a portion of section thirty for a distance of one chain and thirty-eight links thence in a south-westerly direction across Corrimal-street for a distance of one chain and thirty-nine links thence in a south-westerly direction through land the property of John Massey being section twenty-nine for a distance of thirteen chains and thirty-one links thence in a south-westerly direction across Swan-street for a distance of one chain and thirty-four links thence in a south-westerly direction along the north-west margin of the Tom Thumb Lagoon for a distance of fifty chains and ninety-eight links thence in a south-westerly direction across the property of William Simpson for a distance of two chains and twenty-one links thence in a south-westerly direction across land the property of the representative of the late Hon. R. Owen for a distance of sixteen chains and thirty-seven links thence in a south-westerly direction across land the property of Thomas John Fuller for a distance of ten chains and thirty-six links thence across a public by-way known as Spring Hill Road for a distance of one chain thence in a south-westerly direction across land the property of Charles Vaughan Waldron for a distance of fifteen chains and seventy-eight links thence in a south-westerly direction across land the property of the representatives of the late Hubert Kelly Waldron for a distance of forty-five chains and ninety-one links thence in a south-westerly direction across land the property of Thomas John Fuller for a distance of four chains and twenty links thence in a south-westerly direction across land the property of William Warren Jenkins for a distance of sixty-four chains and forty-two links to the point of junction of the proposed line of railway running to Red Point already set forth and described the said point of junction of the two lines being eighteen chains from the junction of the Red Point and Five Islands Road with the Dapto and Main South Coast Road.