

VICTORIAN COAL-
MINING COMPANY'S
(No. 2).

**An Act to authorize the construction and
maintenance of a line of railway from land
at Mount Kembla to the sea-coast at Port
Kembla near Red Point near Wollongong.
[29th August, 1884.]**

Preamble.

WHEREAS Thomas Saywell merchant of Sydney New South Wales his heirs and assigns trading as the Victorian Coal-mining Company hereinafter designated the Company is about to open coal-mines on land situate near Mount Kembla in the County of Camden and is desirous of constructing a railway from the said coal-mines to the sea-coast at Red Point through certain private lands referred to in the Schedule to this Act but such railway 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 railway it is therefore desirable to authorize by Legislative enactment the construction of the said railway 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

Victorian Coal-mining Company's (No. 2).

Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. It shall be lawful for the Company to make and construct a railway from lands belonging to the Company through lands belonging to Messrs. Matthew Reen M'Loy Farraher Blackman O'Brien G. Waples Nicolle Cummins Jenkins Darcy Wentworth and the Mount Kembla Coal and Oil Company to the waters of the Pacific Ocean more particularly described in the First Schedule hereto and to take and use so much of the said lands as the said Company may require for the purpose of such railway in the line described in the First Schedule hereto not exceeding in any part thereof a greater space in breadth than sixty-six feet including the supports abutments and foundations of the said railway but as to the lands specified in the agreement in the Second Schedule hereto (parcel of the lands in the First Schedule only upon the terms and conditions therein contained) Provided that the said railway shall be constructed and brought into use within the term of three years from the passing of this Act and that in default thereof or if after its completion the said railway shall cease to be used for three years continuously all the said lands and all the said Company's interest and estate therein shall revert without any conveyance to the original owners thereof their heirs and assigns.

2. 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 said Company may think necessary for the purpose of shipping the products of the said mines Provided that no part of any such wharf or jetty shall approach within one thousand two hundred feet of any part of the existing pier belonging to the "Mount Kembla Coal and Oil Company (Limited)."

3. So much of the lands of the said owners or other persons (other than those lands mentioned and referred to in the said agreement in the said Second Schedule hereto) as shall be taken or used by the Company under the provisions of this Act for the purpose of the said railway with such right of ingress egress and regress upon the adjacent lands as may be necessary for the making and repair of the said railway 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 road whether carriage road or horse road so as to render it impassable 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.

Victorian Coal-mining Company's (No. 2).

Railway open to the public.

4. The railway shall be at all times open to the public upon payment of a toll to the Company of twopence per ton per mile in respect of every ton of goods for every transit the party seeking transit supplying and loading 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 one 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 empty shall be conveyed on their return free of cost The railway shall be at all times open to the public upon payment of a toll to the Company of one penny 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 railway shall be damaged by parties who shall themselves use the railway 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 or otherwise After the railway 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 railway or supplying the necessary locomotive power thereon whereupon it shall be lawful for any person entitled to use the railway 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 railway upon giving to the Company three calendar months 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 to create a new scale applicable to the traffic on the said railway 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 railway shall be annually made good to the Company by the persons using the said railway 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 railway after debiting the railway with the cost of maintaining the line in proper working order and crediting the railway with the carriage obtained by the Company at the rate aforesaid.

Branch railways.

5. It shall be lawful for the owners or occupiers of the lands traversed by the said railway to lay down upon their own lands any collateral branches of railways 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 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 railway and without inconvenience to the traffic thereupon

thereupon 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)—

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 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 slates and switches according to the most approved plan adopted by the Company under the direction of their engineer.

6. 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 authorized to make such by-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 Executive Council to reduce the said rates tolls or dues and to revise them in such manner as may seem most proper and advisable. And it is hereby provided that nothing in this Act contained shall extend to charge or make liable the said Company further or in any other case than where according to the laws of this Colony stage-coach proprietors and common carriers would be liable nor shall extend in any degree to deprive the said Company of any protection or privilege which common carriers or stage-coach proprietors may be entitled to but on the contrary the Company shall at all times be entitled to the benefit of every such protection and privilege.

7. 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 roadway or water-course crossing the railways or either of them or to raise sink or divert any roadway 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.

8. 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

Power to divert or alter roads or water-courses.

Penalty for not substituting roads or watercourses.

Victorian Coal-mining Company's (No. 2).

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.

Repairs of roads.

9. 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 repair 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.

Bridges to be constructed where the railways cross highway.

10. 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.

Owners and occupiers crossing.

11. 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 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.

Provision in cases where Government railways are crossed on a level.

12. The Company shall subject to regulations to be made from time to time by the Commissioner for Railways and approved by the Governor and Executive Council have power to cross the Illawarra railway line on the level in such manner as shall be approved by the Commissioner for Railways. And the rails for such crossing shall be laid down at the expense of the said Company under and subject to the direction and approval of the Commissioner for Railways and for that purpose to lay down such rails and execute such other works as shall be necessary for the purpose of such crossing. Provided that the said Company shall before they shall be at liberty to cross the said railway erect upon their own land and at all times thereafter maintain a suitable station or lodge at the place where the said Company's railway shall cross the Illawarra railway on the level and shall also erect and maintain all necessary signals that is to say all junction or crossing signals

Victorian Coal-mining Company's (No. 2).

signals and two distance signals at the said crossing. And the said Company shall employ and constantly keep employed at their own expense at the said crossings fit and proper persons to attend to such signals and the person so employed shall act under and in accordance with the regulations to be made by the Commissioner for Railways and approved by the Governor and Executive Council as aforesaid.

13. If the railway cross any private railway or public highway or parish road on a level the Company shall 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 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. And the Company shall either by themselves or jointly with any other Company employ proper persons to look after such gates and signals as may be ordered by and to the satisfaction of the Commissioner for Railways.

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 despatch 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.

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

Power to enter upon adjoining lands to repair accidents subject to certain restrictions.

The

Victorian Coal-mining Company's (No. 2).

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 main 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.

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

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

The width of the bridges need not exceed the width of the road in certain cases.

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 or the maximum width herein prescribed for a bridge in the like case over or under the railways.

Existing inclination of roads crossed or diverted need not be improved.

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 mean inclination of the road so to be crossed or of the road so requiring to be altered or for which another road shall be substituted.

Works for benefit of owners.

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—

Gates bridges &c.

Such and so many convenient gates bridges arches culverts and passages over under or by the sides of or leading to or from the

the railways as shall be necessary for the purpose of making 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.

All sufficient posts rails hedges ditches mounds or other fences 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.

Also all necessary arches tunnels culverts drains or other passages Drains. 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.

Also proper watering-places for cattle or compensation in lieu Watering-places. 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 land shall have agreed to receive and shall have been paid compensation instead of themaking them.

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 if any under his care have passed through the same he shall forfeit for every such offence any sum not exceeding ten pounds. Penalty on persons omitting to fasten gates.

21. The Company shall not be entitled to any mines of coal Minerals not to pass. ironstone 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.

22. If within twenty-eight days after the passing of this Act Arbitrations. the said persons through whose lands the railroad shall pass or any of them and the promoters 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 the amount of such compensation shall be settled by two arbitrators one to be appointed by the party or parties complaining and the other by the Company in accordance with the provisions of the Act thirty-first Victoria number fifteen "An Act to make Arbitrations more effectual."

Compensation for temporary permanent or recurring injuries.

Compensation to be made for temporary occupation.

Company may make by-laws.

Evidence of by-laws.

Interpretation clause.

Agreement shall not be affected.

Short title.

23. The 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. 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 so taking possession of his 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.

24. For the purpose of regulating the conduct of the officers and servants of the Company and for providing for the due management of the affairs of the Company in all respects 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 shall 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 resolutions 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 and such by-laws may specify a maximum and minimum penalty for any breach thereof such penalty to be proceeded for and recovered under the provisions of the Act eleventh and twelfth Victoria chapter forty-three. Provided always that any by-laws of the said Company relating to penalties must be first approved of by the Attorney-General of the Colony for the time being.

25. 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.

26. In this Act the said "Justices" shall mean Justices 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 the word "owner" shall mean any person or corporation who under the provisions of this Act would be able to sell land to the Company.

27. Nothing in this Act contained shall derogate from or prejudice the said agreement in the Second Schedule hereto nor shall anything in this Act contained be deemed or operate to confer wider or greater powers or title on the said Thomas Saywell or the said Company with respect to the lands in the said agreement more particularly described than in and by the said agreement are conferred.

28. This Act shall be deemed to be a public Act and shall be styled and may be cited as the "Victorian Coal-mining Company's Act of 1884."

Victorian Coal-mining Company's (No. 2).

FIRST SCHEDULE HEREINBEFORE REFERRED TO.

Description of the Victorian Coal-mining Company's Railway from their Estate Mount Kembla to Port Kembla.

Commencing on the south boundary of Cunningham Atchison's one hundred and seventy-nine acres two roods grant at a point about one chain westerly from the south-east corner of said land thence south-easterly about two chains passing through Matthew Reen's property (being a grant of fifty-two acres two roods and five perches to William Shone) also crossing reserved roads to Mr. M'Loy's property thence again south-easterly partly by a curved line about thirty-seven chains passing through that property (being grants of fifty-two acres one rood and five perches to Daniel Healy and seventy-one acres and twenty-two perches to John Lindsay respectively) and crossing all reserved roads to Mr. Blackman's property thence through that property partly by a curved and straight line easterly about thirty-four chains fifty links to a reserved road thence in the same direction across that road about fifty-five links to Mr. Blackman's land aforesaid thence south-easterly by curved lines about thirty-one chains through that land (being in all grants to Robert Martin Cole of one hundred and twenty-three acres Robert Martin Cole of forty-eight acres and Robert Martin Cole of one hundred acres) and crossing reserved roads to Mr. O'Brien's land thence passing through that property north-easterly and northerly by curved lines about thirty-seven chains (being part of John Wyllie's two thousand acres also the whole of Robert Martin Cole's forty-seven-acre grant and crossing reserved roads to Mr. G. Waple's land thence passing through that land north-easterly by a curved line about thirty-three chains (being grant to George Waple's of seventy-seven acres one rood and twenty-four perches) and crossing reserved roads to Mr. Nicolle's property thence passing through that property easterly by curved lines about thirty-seven chains (being grant of seventy-eight acres to John Head) and crossing reserved roads to Mr. Cummins' land thence passing through that land easterly by curved and straight lines about twenty-five chains (being grant of one hundred acres to James Cummins) and crossing all reserved roads to Mr. Jenkins' estate thence passing through that estate by curved and straight lines north-easterly about sixty-four chains to the Mount Kembla Coal and Oil Company's Railway thence easterly across that railway at a point about three hundred and sixty-two chains from the Mount Kembla Coal and Oil Company's jetty at Port Kembla about seventy links to Mr. Jenkins' property thence south-easterly by curved lines through that property about twenty-eight chains to the South Coast Road thence across that road at a point on a level and adjoining the crossing of the Mount Kembla Coal and Oil Company's Railway aforesaid south-easterly about one chain to Mr. Jenkins' land aforesaid thence through that land south-easterly by a curved line about thirteen chains fifty links to the Illawarra Railway thence across that railway at a level and at a point about fifty-one miles fifty-three chains along the Illawarra Railway starting from Sydney south-easterly about two chains to Mr. Jenkins' land thence passing through that land by straight and curved lines south-easterly about one hundred and thirty-six chains fifty links (being in all grants to Jemima Jenkins of two thousand acres and one thousand acres) and crossing all reserved roads to Mr. Wentworth's land thence passing through that property south-easterly and north-easterly by straight and curved lines about one hundred and fifty-three chains and crossing reserved roads (being original grant of two thousand two hundred acres to David Allen) to Port Kembla being the waters of the South Pacific Ocean exclusive of an area of about six acres for shunting purposes as shown on plan and being a point about two thousand feet in a straight line westerly from the base of the Mount Kembla Coal Company's jetty being the proposed site of the Victorian Coal Company's proposed new jetty the north-eastern end of which is to be one thousand two hundred feet from the said Mount Kembla Coal and Oil Company's jetty. Also a railway siding starting from about where the above-described line crosses the South Coast Road and passing through Mr. Jenkins' land aforesaid by a curved line north-easterly about twenty-five chains to the Illawarra Railway be the said dimensions a little more or less. The above line to run parallel with and adjoining the Mount Kembla Company's railway from a point near where it crosses the Illawarra Railway to a point about twenty chains south-westerly from Port Kembla where the said terminus is to be.

SECOND SCHEDULE HEREINBEFORE REFERRED TO.

An agreement entered into this twenty-ninth day of April in the year of our Lord one thousand eight hundred and eighty-four between D'Arcy Wentworth of England Esquire of the first part Fitzwilliam Wentworth of Vaucluse near Sydney but at present out of the Colony of New South Wales Esquire of the second part and Thomas Saywell of Sydney aforesaid merchant trading as the Victorian Coal-mining Company of the third part witnesseth that the parties of the first and second parts (hereinafter called the lessors) agree to give and the said Thomas Saywell for himself his executors administrators and assigns (hereinafter called the lessee) agrees to accept a lease of all those pieces or parcels of land and hereditaments described and comprised in the Schedule hereto with liberty and power to make and construct a line of railway in through and over the said demised premises and to make build and construct such roads tramways wharves jetties piers and buildings in through over and on the piece of land

Victorian Coal-mining Company's (No. 2).

land described in the first part of the said Schedule as the said lessee may think necessary and for the purposes aforesaid to dig for search work quarry and use all stone sand gravel and other building or road material and to cut and use the timber on the said demised premises (but excepting coal and other minerals thereon or thereunder which are reserved to the lessors). The term of the said lease is to be for fifty years from the date hereof at the nominal rent of one peppercorn if demanded for the first one and a half years of the said term and for the next fifteen years of the said term that is from the twenty-ninth day of October one thousand eight hundred and eighty-five the rent or royalty of one half-penny and for the residue of thirty-three and a half years of the said term that is from the twenty-ninth day of October one thousand nine hundred the rent or royalty of one penny for every ton of coal or shale or other goods carried by the said lessee his heirs executors administrators or assigns or his or their licensees over to or from the railway line to be constructed on the said demised lands and in the event of the said term being determined after the said twenty-ninth day of October one thousand eight hundred and eighty-five between two of the said half-yearly days by re-entry under the proviso in that behalf to be contained in the lease a proportionate part of the rent or royalty for the fraction of the current half-year up to the day of such determination. And it is agreed that such rent or royalty shall never be less after the said first year and a half (that is from the said twenty-ninth day of October one thousand eight hundred and eighty-five) than the sum of seventy-five pounds for each half-year and that if at any time or times the rent or royalty of one half-penny or penny per ton for any half-year after the period aforesaid shall not amount to the sum of seventy-five pounds then the lessees will for every such half-year pay the sum of seventy-five pounds clear of all deductions. The said rents and royalties may be recoverable by distress or otherwise by the person or persons for the time being entitled to receive the same or his attorney or agent. All rates taxes charges assessments port or harbour dues and outgoings whatsoever which are now or may be at any time hereafter during the said term assessed charged or imposed upon the said demised land or the owner or occupier in respect thereof shall be borne by the said lessee. The said lessee on each of the half-yearly days appointed for payment of rents is to deliver to the said lessors or their agent a true account showing the total amount of coal and shale and other goods during the preceding half-year subject to rent or royalty and to verify such accounts by the statutory declaration of the clerk or book-keeper of the said lessee or by the said lessee or otherwise to the satisfaction of the said lessors. The said lessee to properly and securely fence off within the space of three months from the date of the obtaining and passing of an Act of Parliament authorizing the construction of the said railway and during the said term keep securely fenced from the adjoining lands by means of a substantial post and rail cattle-proof fence (at least four feet in height) the piece or parcel of land described in the said Schedule hereto. Also to keep open the roads and paths over and across the said piece or parcel of land described in the second part of the said Schedule by proper bridges and passages where the railway to be constructed thereon as aforesaid shall interfere with the roads or paths now existing or hereafter to be made and to make and maintain proper gates across the said railway at such openings and places as the lessors shall reasonably require. To use and occupy the said lands described in the first part of the said Schedule for the purpose only of the said railway roads trainways wharves jetties piers or buildings sheds offices and conveniences to be used in connection with and for the purposes of the said railway or for yards or shoots or standing room or sidings for waggons or goods but not for cottages or dwelling-houses of any kind whatever and generally to use the whole of the land hereby demised only for such purposes as relate solely to the business of the said railway and for no other purpose and not to assign or sublet the same or any portion thereof for settlement or other purposes. The lessors and their under-tenants to have right of access at proper places to the said jetty and railway for carriage and shipping goods. Farm produce stock (live or dead) and materials to and from the said lessee charging fair and reasonable wharfage freights and carriage and provided that the said lessee is not thereby unreasonably inconvenienced in the ordinary working of the said railway it being intended that the said lessee may derive the full benefit of his works and improvements in the business of transit of minerals from his mines and that the lessors shall derive the full benefit of settlement in and about the Company's works on the adjoining lands. A lease to be prepared by the lessors and executed by both parties on the basis of this agreement but at the expense of the said lessee who is also to pay the costs of and incident to this agreement and to contain a proviso for re-entry on non-payment of rent or non-performance by the said lessee of any of the covenants and stipulations and to contain all usual covenants and clauses in leases of this nature and a counterpart of the said lease is to be duly and properly executed by the said Thomas Saywell (at his expense) within a reasonable time after the preparation thereof and handed to lessors and this agreement is entered into subject to the above conditions and stipulations being duly performed.

THE SCHEDULE.

PART I.

All that piece or parcel of land situated at Port Kembla near Wollongong county of Camden and Colony of New South Wales be the hereinafter mentioned several dimensions a little more or less containing by admeasurement five acres. Commencing at the waters of the South Pacific Ocean being the north-eastern boundary of the Five Islands

Victorian Coal-mining Company's (No. 2).

Islands Estate at a point about twenty-seven chains thirty links westerly from the base of the Mount Kembla Coal and Oil Company's jetty at Port Kembla aforesaid thence on the north-east by the said waters of the South Pacific Ocean bearing north-westerly four chains thence south-westerly fifteen chains fifty links and eight chains fifty links thence south-easterly one chain thence north-easterly by a curved line twenty-three chains to the point of commencement the whole being part of Mr. D. Wentworth's property being original grant of two thousand two hundred acres to Mr. D. Allen.

This description is subject to verification or survey and correction (if necessary) by lessor before lease drawn.

PART 2.

All that piece or parcel of land situated near Port Kembla near Wollongong in the parish of Wollongong county of Camden and Colony of New South Wales be the hereinafter mentioned several dimensions a little more or less containing by admeasurement thirteen acres Commenceing at the western boundary of the Five Islands Estate (Mr. D. Wentworth's property) at a point where the northern boundary of the Mount Kembla Coal and Oil Company's railway crosses the western boundary of the Five Islands Estate aforesaid thence south-easterly easterly and south-easterly by straight and curved lines and parallel to the Mount Kembla Coal and Oil Company's railway one hundred and thirty-one chains to the five acres reserve for shunting purposes et cetera in connection with the shipping of coal et cetera by the Victorian Coal Company at their proposed new jetty the whole being part of Mr. D. Wentworth's property being original grant of two thousand two hundred acres to Mr. D. Allen.

This description to be verified and surveyed and corrected (if necessary) by lessor before lease drawn.

As witness the hands of the said parties the day and year first before written—

F. WENTWORTH

By his attorney

J. R. HILL.

Signed by the said Fitzwilliam Wentworth by his attorney James Richard Hill in the presence of—

JOHN PARKINSON

Solicitor 58 Hunter-street Sydney

D'ARCY WENTWORTH

By his attorney

J. R. HILL.

Signed by the said D'Arcy Wentworth by James Richard Hill his attorney in the presence of—

JOHN PARKINSON

Solicitor.

THOMAS SAYWELL.

Signed by the said Thomas Saywell in the presence of—

C. A. ATCHISON.

I James Richard Hill of Sydney in the Colony of New South Wales do solemnly and sincerely declare that I have not received any notice of the revocation by death or otherwise of the power of attorney granted to me by Fitzwilliam Wentworth dated the twenty-first day of March one thousand eight hundred and eighty-three or of the power of attorney granted by D'Arcy Wentworth to me dated the thirteenth day of June one thousand eight hundred and eighty-one. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act made and passed in the ninth year of the reign of Her present Majesty intituled "An Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the Government of New South Wales and to substitute Declarations in lieu thereof and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

J. R. HILL.

Declared and subscribed at Sydney this fifth day of May A.D. one thousand eight hundred and eighty-four before me—

T. SALTER

A Commissioner for Affidavits.

We the undersigned hereby certify that we have examined the writing contained on this and the six preceding pages with the original agreement and that the same is a true copy thereof.—Dated at Sydney this eighth day of May A.D. one thousand eight hundred and eighty-four.

JOHN PARKINSON

Solicitor Sydney.

L. GIBSON

Solicitor Sydney.