

An Act to authorize the construction of a BENNETT'S RAILWAY Railway from and connecting the line of Railway from Sydney to Parramatta near the Clyde Railway Station to and with the Parramatta River at a point opposite Old Redbank. [5th October, 1886.]

WHEREAS John Bennett of Sydney in the Colony of New South Wales Esquire is desirous of constructing a railway from and connecting the line of railway from Sydney to Parramatta at a point near the Clyde Railway Station to and with the Parramatta River at a point on the southern side of the said river opposite Old Redbank such railway to run through certain private lands and certain streets described in the Schedule annexed hereto And whereas it is desired to construct such railway for the purpose of giving better access to the public to the Parramatta River and to the Racecourse and Recreation Ground near thereto known as the Roschill Racecourse and Recreation Ground And whereas the increased facilities of communication and traffic which would result from the construction of the said proposed railway would be for the public convenience and benefit And it is desirable to authorize by Legislative enactments the construction and maintenance of the said proposed railway subject to the provisions hereinafter contained Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. It shall be lawful for the said John Bennett his heirs executors administrators or assigns upon the terms and conditions and subject to the provisions hereinafter contained to make and construct a railway for conveying passengers and their luggage and other goods and merchandize from a point on the line of railway from Sydney to Parramatta near the Clyde Station and thence by the lines described in the Schedule to this Act and to effect a junction between the said line of railway from Sydney to Parramatta and the Parramatta River at a point opposite Old Redbank in accordance with section ninety-nine of the "Government Railways Act of 1858" and to take and use so much of the streets or lands referred to in the said Schedule as may be required for the purposes of such railway but so that the same shall not occupy in any part thereof a greater space in breadth than sixty-six feet including the support and foundations thereof provided that the said railway shall be completely constructed between the points above indicated and brought into use within two years from the passing of this Act And the same shall be constructed in a proper and workmanlike manner Provided further that this authority shall not extend beyond thirty years from the passing of this Act.

2. The said John Bennett his heirs executors administrators or assigns shall at his or their cost forthwith upon the request in writing of the Secretary for Public Works or Commissioner for Railways efficiently construct and thereafter maintain such sidings upon the said railway as the said Secretary for Public Works or Commissioner for Railways shall consider necessary for the proper and convenient working of the said railway.

3. The said John Bennett his heirs executors administrators or assigns shall have all necessary rights of ingress and egress to and over the surface of the streets and lands before referred to and all such other rights as are required for the construction repair completion and use

Authority to construct railway.

Sidings.

Entry upon streets &c.

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use of the said railway. Provided that nothing herein contained shall impair or be held to impair the lawful authority of the Municipal District of Granville or of any other corporation company or person to make all entries and exercise all other powers necessary for the construction maintenance and preservation of gas works water works sewerage works and other works lawfully constructed under ground.

Gauge. 4. The gauge of the said railway shall be same gauge as the Government Railways.

Level. 5. The railway shall throughout its course be laid at or about the general level of the said streets and lands and throughout the whole extent of the said railway shall be laid with rails subject to the approval of the Commissioner for Railways.

Crossings. 6. Where the railway shall cross any public highway parish road on a level the said John Bennett his heirs executors administrators or assigns shall erect and at all times maintain good and sufficient gates across such road on each side of the railway where the same shall communicate therewith and shall employ proper persons to open and shut such gates and such gates shall be kept constantly closed across such roads on both sides of the railway except during the time when horses cattle carts or carriages passing along the same shall have to cross such railway and such gates shall be of such dimensions and so constructed as when closed to fence in the railway and to prevent cattle or horses passing along the road from entering upon the railway and the persons 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 or Commissioner for Railways 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 railway to order that such gates shall be kept so closed instead of across the road. And in such case such gates shall be kept constantly closed across the railway except when engines or carriages passing along the railway shall have occasion to cross such road or railway in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

Railway to be open to public. 7. The said railway shall be open to public use upon payment of the tolls or charges following that is to say—

For passengers a sum not exceeding sixpence per head each way
For goods the same rates per mile as are charged on the Government Railways and for this purpose such railway shall be deemed to be a continuation of the Government Railway between Sydney and Parramatta.

Works for benefit of owners. 8. The said John Bennett his heirs executors administrators and assigns shall make and at all times thereafter maintain for the accommodation of the owners and occupiers of lands adjoining the said railway 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 railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed or during the formation thereof

Fences. Also sufficient posts rails hedges ditches mounds or other fences for separating the land taken for the use of the railway from the adjoining lands not taken and protecting such lands from trespass or the horses or cattle of the owners or occupiers thereof

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thereof from straying thereout by reason of the railway together with all necessary gates made to open towards such adjoining lands and not towards the railway and all necessary stiles and such posts rails and other fences shall be made forthwith after the taking of any such lands if the owners thereof shall so require and the said other works as soon as conveniently may be

Also all necessary arches tunnels culverts drains or other 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 railway or as nearly so as may be and such works shall be made from time to time as the railway works proceed.

Provided always that the said John Bennett his heirs executors administrators or assigns shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of making them.

9. If any person omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or ^{Penalty on person omitting to fasten gates.} occupiers of the adjoining lands so soon as he and the carriages 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.

10. The said John Bennett his heirs executors administrators ^{Maintenance of roads.} and assigns shall maintain in perfect order and repair the said railway and the pavements of the same between the rails of the said railway where crossing any roads and for the space of one foot six inches on each side of such rails.

11. The said John Bennett his heirs executors administrators and ^{Repair of damage to sewers &c.} assigns shall immediately repair any damage which may during or by reason of the construction of the said railway be occasioned to any sewer or drain or gas or water main or other property and shall also repair all damages which may be occasioned by the working of the said railway.

12. It shall be lawful for and incumbent upon the said John Bennett his heirs executors administrators and assigns subject as aforesaid to provide use and employ locomotive engines or other moving power and carriages and waggons to be drawn or propelled thereby and to carry and convey upon the said railway all such passengers and goods as shall be offered for that purpose and to charge the tolls and charges in respect thereof as above specified Provided that all such tolls and charges be at all times charged equally to all persons and after the same rate in respect of all passengers and of all goods of the same description and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular Company or person travelling upon or using the said railway.

13. The Commissioner for Railways shall at all times hereafter upon twelve hours notice in writing to the said John Bennett his heirs executors administrators and assigns have the right to run such locomotives carriages and trucks whether loaded or unloaded on and along the said railway and for such period or periods or at such time or times as the said Commissioner for Railways shall in the said notice specify Provided always that the said Commissioner for Railways shall pay to the said John Bennett his heirs executors administrators or assigns such rates or tolls for the exercise of such right as aforesaid as the Governor with the advice of the Executive Council shall from time to time determine.

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Liability of Carriers.

14. Nothing in this Act contained shall extend to charge or make liable the said John Bennett his heirs executors administrators and assigns 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 John Bennett his heirs executors administrators and assigns of any protection or privilege which common carriers or stage-coach proprietors may be entitled to but on the contrary the said John Bennett his heirs executors administrators and assigns shall at all times be entitled to the benefit of every such protection and privilege.

Tolls to be paid as directed.

15. The tolls shall be paid to such persons and at such places upon or near to the railway and in such manner and under such regulations as the said John Bennett his heirs executors administrators or assigns shall appoint subject to approval of the Commissioner for Railways.

Regulations for use of railway.

16. It shall be lawful for the said John Bennett his heirs executors administrators or assigns from time to time subject to the approval of the Commissioner for Railways and subject to the provisions and restrictions in this Act contained to make regulations for the following purposes that is to say—

For regulating the times of the arrival and departure of the carriages and trains and the number of persons to be carried therein.

For regulating the loading or unloading of carriages.

For preventing the smoking of tobacco and the commission of any nuisance in or upon such carriages or any of the railway stations waiting-rooms or premises.

And generally for regulating the travelling upon or issuing and working the said railway and the maintenance of good order and for regulating the conduct of the railway officers and servants and for providing for the due management of the said railway and the protection thereof and the carriages and waiting-rooms offices and premises from trespass and injury.

But no such regulation shall authorize the closing of the said railway between sunrise and sunset except at any time when in consequence of any of the works being out of repair or from any other sufficient cause it shall be necessary to close the said railway or any part thereof.

Provided that such by-laws be not repugnant to the laws of the Colony or to the provisions of this Act and a copy of such by-laws shall be given to every officer and servant of the said John Bennett his heirs executors administrators or assigns employed on the said railway or affected by such by-laws and such by-laws shall specify penalties which shall in no case exceed the sum of ten pounds.

Provided always that such by-laws must be first approved of by the Attorney-General of the Colony for the time being.

Provided always that the said John Bennett his heirs executors administrators or assigns or his or their employees or servants shall when using or when upon the premises of the said railway be liable and subject to the Government Railway By-laws.

Evidence of by-laws.

17. The production of a copy of the New South Wales *Government Gazette* containing such by-laws shall be sufficient evidence of such by-laws in all proceedings under the same.

Compensation clause.

18. If within twenty-eight days after the passing of this Act the persons through whose lands the railway shall pass or any of them and the said John Bennett his heirs executors administrators or assigns shall not agree as to the amount of compensation to be paid by the said John Bennett his heirs executors administrators or assigns

assigns 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—

Unless both parties shall concur in the appointment of a single ^{Appointment of} arbitrator each party on the request of the other party shall ^{arbitrators.} nominate and appoint an arbitrator to whom such dispute or other matter shall be referred and every appointment of an arbitrator shall be executed by such party and such 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 the award of such arbitrators or umpire if appointed as hereinafter provided shall be final and if for the space of fourteen days after any such dispute or other matter shall have arisen and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator such last-mentioned party fail to appoint such arbitrator then upon such failure it shall be lawful for the Attorney-General for the time being of the said Colony on the application of the party who has himself appointed an arbitrator to appoint such arbitrator to act on behalf of both parties and such arbitrator may proceed to hear and determine the matter which shall be in dispute and in such case the award or determination of such single arbitrator shall be final and conclusive.

19. 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 the 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 powers and authorities as were vested in the former arbitrator at the time of such his death refusal neglect or disability as aforesaid.

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

21. If in either of the cases aforesaid the arbitrator or arbitrators ^{Attorney-General to} shall refuse or for seven days after request of either party to such ^{appoint umpire on} _{neglect.} 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.

In case of death of
single arbitrator the
matter to begin *de
novo*.

If either arbitrator
refuse to act the
other to proceed
ex parte.

If arbitrators fail to
make their award
within twenty-one
days the matter to go
to the umpire.

Powers of arbitrators
to call for books &c.

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

Penalty for
misconduct.

Cost of arbitration
how to be borne.

Award to be
delivered to John
Bennett.

Submission may be
made a rule of Court.

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

23. If where more than one arbitrator shall have been appointed either of the arbitrators shall refuse or for fourteen 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.

24. If where more than one arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed for that purpose by both of such arbitrators under their hands the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

25. 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.

26. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice of the Peace make and subscribe the following declaration that is to say—

I A. B. do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of "Bennett's Railway Act."

Made and subscribed in the presence of

A.B.

and such declaration shall be annexed to the award when made and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanour.

27. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by John Bennett his heirs executors administrators or assigns unless the arbitrators shall award the same or a less sum than shall have been offered by the said John Bennett his heirs executors administrators or assigns in which case each party shall bear his own costs incident to the arbitration and the cost 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.

28. The arbitrators shall deliver their award in writing to the said John Bennett his heirs executors administrators or assigns 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.

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

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30. 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. Award not void through error in form.

31. The said John Bennett his heirs executors administrators or assigns shall make compensation and satisfaction to be ascertained and recovered in case of difference in the manner hereby provided for temporary permanent or recurring injuries. Compensation for temporary permanent or recurring injuries.

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 John Bennett his heirs executors administrators or assigns of any of the matters or things hereby required to be performed by them or otherwise.

32. It shall be lawful for the Secretary for Public Works on behalf of the Government at any time by notice in writing to require the said John Bennett his heirs executors administrators or assigns to sell and thereupon the said John Bennett his heirs executors administrators or assigns shall sell to the Government as the case may be the said railway upon the terms of paying the then value (exclusive of any allowance for past or future profits of the said railway or any compensation for compulsory sale or other consideration whatsoever) of the said railway and all lands buildings works materials and plant of the said John Bennett his heirs executors administrators or assigns suitable to and used by him or them for the purposes of the said railway such value in case of difference to be ascertained by arbitration in the manner provided by the twenty-seventh and other sections subsequent thereto of the "Government Railways Act of 1858" twenty-two Victoria number nineteen for settling cases of disputed compensation and subject to the terms and conditions therein contained. And when any such sale shall have been made to the said Government the said railway lands buildings works materials plant and premises shall vest in the Commissioner of Railways who shall have all the rights powers and authorities of the said John Bennett his heirs executors administrators and assigns in respect to the said railway so sold.

33. All penalties imposed under this Act or under any by-laws made in pursuance thereof shall be recoverable in a summary way before any two Justices of the Peace. Recovery of penalties.

34. This Act may be cited for all purposes as "Bennett's Short title. Railway Act of 1886."

THE SCHEDULE.

Commencing on the Great Southern and Western Railway at a point about one hundred and twenty-four links westerly from the western end of Clyde Platform thence across the land the property of the Government enclosed for the said railway bearing north-westerly to the southern boundary of land believed to belong to G. S. Caird and a street called George-street thence across said lands and street bearing north-westerly by a curved line to a street called Clyde-street thence across said street bearing north-westerly to its north-western boundary thence through lands believed to belong to Marsh Brothers I. Herford and R. M'Auley bearing northerly on a curved line to the northern boundary of said M'Auley's land thence through lands believed to belong to S. S. Milgate bearing northerly to its north boundary thence bearing in the same direction across lands believed to belong to Mrs. H. E. Hall to their northern boundary thence in the same direction through lands believed to belong to H. Carney to their northern boundary thence in a northerly direction across lands believed to belong to A. H. Maxwell to their northern boundary thence across lands believed to belong to W. Watson bearing north-easterly to their northern boundary thence across lands believed to belong to A. H. Maxwell bearing north-easterly to the southern boundary of the Great Western Road thence across said road bearing north-easterly to its northern boundary thence in the same direction across lands believed to belong to W. Rovency and W. Constable to their eastern boundary thence across lands believed to belong to John Taylor bearing in the same direction to Duck Creek thence across Duck Creek bearing in the same direction to the south boundary of lands believed to belong to W. H. Berry and J. Thomas and A. Williams and R. Macadam and J. Richardson thence across said lands bearing north-easterly to the south side of a street called Duck-street thence across said street

Inverell Church of England Land Sale.

street and a street called Park-street bearing north-easterly to land believed to belong to L. Grimwood thence across said land bearing in the same direction to its northern boundary thence across lands believed to belong to B. Bevan to its north and east boundary thence across lands believed to belong to Sherwood and Grimwood bearing in the same direction to their northern boundaries thence across lands believed to belong to J. R. Martin and J. B. Masters thence across that land bearing north-easterly to A'Beckett's Creek thence across that creek north-easterly to lands believed to belong to the Land Company of Australasia (Limited) thence across said lands belonging to said Company bearing north-easterly to west side of a street called Aston-street thence across the said street bearing in the same direction to western boundary of lands believed to belong to S. A. Stephen thence across said lands belonging to S. A. Stephen bearing north-easterly to the south boundary of that part of the lands belonging to the said S. A. Stephen leased to John Bennett thence across that land bearing northerly and north-easterly to a road called South Avenue thence across that road bearing north-easterly to the southern boundary of land believed to belong to S. A. Stephen and believed to be leased to C. E. Jeancrett for a tramway line thence across said leased land bearing north-easterly to a road called North Avenue thence across said road bearing north-easterly to a reserved road thence across said reserved road bearing easterly to lands believed to belong to Robert Hudson thence across said lands of Robert Hudson bearing easterly to their eastern boundary thence across lands believed to belong to the Australian Kerosene and Oil Company bearing north-easterly and easterly to a reserved road dividing said property belonging to said Australian Kerosene and Oil Company and lands believed to belong to John Bennett thence across said reserved road bearing easterly to said lands belonging to said John Bennett thence across said lands bearing in the same direction to another reserved road thence across said reserved road bearing in the same direction to other lands believed to belong to the said Australian Kerosene and Oil Company thence across said lands belonging to said Australian Kerosene and Oil Company bearing easterly to the terminus at the Parramatta River.
