

WARWICK FARM
RAILWAY.

An Act to authorize the construction of a Railway from and connecting the line of railway from Sydney to Liverpool, at a point between the Liverpool and Cabramatta Railway Stations, to and with the Warwick Farm Race-course. [10th October, 1889.]

Preamble.

WHEREAS Edwin Ernest Allan Oatley, of Sydney, in the Colony of New South Wales, Esquire, and John Thompson, of Sydney aforesaid, in the said Colony, freeholder, are desirous of constructing a railway from and connecting the line of railway from Sydney to Liverpool, at a point between the Liverpool and Cabramatta Railway Stations, to and with the Warwick Farm Race-course, such railway to run through certain private lands and certain roads 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 and from the Warwick Farm Race-course. 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, maintenance, and control 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:—

Authority to construct railway.

1. It shall be lawful for the said Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, or assigns, upon the terms and conditions, and subject to the provisions hereinafter contained, to make, construct, and control a railway for conveying the passengers, their luggage, and other goods, stock, and material, from a point on the line of railway from Sydney to Liverpool, at a point between the Liverpool and Cabramatta Railway Stations

Warwick Farm Railway.

Stations and with the Warwick Farm Race-course, 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 Liverpool and the Warwick Farm Race-course, in accordance with section ninety-nine of the "Government Railways Act of 1858," and to take and use so much of the streets, roads, or land 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 fifty 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 one year 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 twenty-one years from the passing of this Act.

2. The said Edwin Ernest Allan Oatley and John Thompson, ^{Sidings} their heirs, executors, administrators, or assigns, shall, at his or their cost, forthwith, upon the request in writing of the Commissioners for Railways, efficiently construct and thereafter maintain such sidings upon the said railway as the said Commissioners for Railways shall consider necessary for the proper and convenient working of the said railway.

3. The said Edwin Ernest Allan Oatley and John Thompson, ^{Entry upon streets, &c.} their heirs, executors, administrators, or assigns, shall have all necessary rights of ingress and egress to and over the surface of the streets, roads, and lands before referred to, and all such other rights as are required for the construction, repair, completion, and 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 Liverpool or of any other corporation, company, or person to make all entries and exercise all other powers necessary for the construction, maintenance, control, and preservation of gas-works, water-works, sewerage-work, and other works lawfully constructed under ground.

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

5. The railway shall throughout its course be laid at the ^{Level.} general level of the said streets, roads, and lands, and throughout, the whole extent of the said railway, shall be laid with rails, subject to the approval of the Commissioners for Railways.

6. Where the railway shall cross any public highway, parish road, ^{Crossings.} on a level, the said Edwin Ernest Allan Oatley and John Thompson, their 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 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 Commissioners for Railways in any case in which they 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

Warwick Farm Railway.

across the road. And in such cases 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 rate 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 Liverpool.

Works for benefit of owners.

8. The said Edwin Ernest Allan Oatley and John Thompson, their 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 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 styles, 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 either over or under or by the sides of the railways of such dimensions as will be sufficient at all times to convey the waters 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.

Drains.

Provided always that the said Edwin Ernest Allan Oatley and John Thompson, their 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.

Penalty on persons omitting to fasten gates.

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 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 forty shillings.

Maintenance of roads.

10. The said Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, 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.

Warwick Farm Railway.

11. The said Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, and 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 property, and shall also repair all damage which may be occasioned by the working of the said railway. Repairs of damage to sewers, &c.

12. It shall be lawful for and incumbent upon the said Edwin Ernest Allan Oatley and John Thompson, their 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. Locomotives to be employed.

13. The Commissioners for Railways shall at all times hereafter upon twelve hours notice in writing to the said Edwin Ernest Allan Oatley and John Thompson, their 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 Commissioners for Railways shall in the said notice specify: Provided always that the said Commissioners for Railways shall pay to the said Edwin Ernest Allan Oatley and John Thompson, their 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. Running powers to the Commissioners for Railways.

14. The said Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators or assigns, shall be responsible for all injuries caused by the improper or negligent construction, maintenance, or working of the said railway, and all claims in respect of such negligence or improper conduct may be enforced against the said Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators or assigns. Provided that the damages which may be recovered against the said Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators or assigns, in respect of any such claim shall in addition to all other remedies for their recovery be a first charge upon the tolls, fares, or charges charged for the carriage of passengers and goods on the said railway and upon all property used in and upon and necessary for the working of the said railway. Liability of Company for injuries.

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 Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, and assigns shall appoint, subject to approval of the Commissioners for Railways. Tolls to be paid as directed.

16. It shall be lawful for the said Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, or assigns, from time to time, subject to the provisions and restrictions in this Act contained, to make regulations or by-laws for the following purposes, that is to say— Regulations for use of railway.

For regulating the times of 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.

f

For

Warwick Farm Railway.

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 Edwin Ernest Allan Oatley and John Thompson, their 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 Governor with the advice of the Executive Council. Provided always that the said Edwin Ernest Allan Oatley and John Thompson, their 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 Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, or assigns shall not agree as to the amount of compensation to be paid by the said Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, or 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—

Appointment of arbitrators.

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

Warwick Farm Railway.

arbitrator, then upon such failure it shall be lawful for the Attorney-General for the time being of the said Colony, on 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 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.

Vacancy of arbitrator to be supplied.

20. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hand, 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 matter so referred to him shall be final.

Appointment of umpire.

21. If, in either of the cases aforesaid, the arbitrator or 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.

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.

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

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.

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

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.

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

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.

Powers of arbitrators to call for books, &c.

Warwick Farm Railway.

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

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 provision of the "Warwick Farm Railway Act."

Made and subscribed in the presence of

A.B.

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 misdemeanour.

Cost of arbitration, how to be borne.

27. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, or assigns, unless the arbitrators shall award the same, or a less sum than shall have been offered by the said Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, or assigns, in which case each party shall bear their 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.

Award to be delivered to Edwin Ernest Allan Oatley and John Thompson.

28. The arbitrators shall deliver their award in writing to the said Edwin Ernest Allan Oatley and John Thompson, their 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.

Submission may be made a rule of Court.

29. 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.

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.

Compensation for temporary, permanent, and recurring injuries.

31. The said Edwin Ernest Allan Oatley and John Thompson, their 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 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 Edwin Ernest Allan Oatley and John Thompson, their heirs, executors, administrators, or assigns of any of the matters or things hereby required to be performed by them or otherwise.

Railway Commissioners may appoint inspectors.

32. The Railway Commissioners may from time to time appoint any person to be inspector, for the purpose of inspecting the railway and of making any inquiry with respect to the condition of the works, or into the cause of any accident, provided that no person so appointed shall exercise any powers of interference in the affairs of the Company.

Warwick Farm Railway.

33. Every Inspector under this Act shall, for the purpose of Powers of inspectors. any inspection or inquiry which he is directed by the Railway Commissioners to make or conduct, have the following powers, that is to say :—

- (I) He may enter and inspect the railway and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto.
- (II) He may, by summons under his hand, require the attendance of any person who is engaged in the management, service, or employment of the Company, and whom he thinks fit to call before him and examine for the said purpose, and may require answers or returns to such inquiries for the said purpose as he thinks fit to make.
- (III) He may require and enforce the production of all books, papers, and documents of the Company which he considers important for the said purpose.

34. Where, in or about the railway, or any of the works or buildings connected with such railway, or any building or place, whether open or enclosed in connection with such railway, any of the following accidents take place in the course of working, that is to say :—

- (I) Any accident attended with loss of life or personal injury to any person whomsoever.
- (II) Any collision where one of the trains is a passenger train.
- (III) Any passenger train, or any part of a passenger train, accidentally leaving the rails.
- (IV) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused, or to be likely to cause, loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Railway Commissioners.

The Company working such railway shall send notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby, to the Railway Commissioners.

35. Such notice shall be in such form and shall contain such particulars as the Railway Commissioners may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place. Form of notice of accident.

36. The Railway Commissioners may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. While such order is in force notice of every accident of the class to which the order relates shall be sent to the Railway Commissioners by telegraph immediately after the accident takes place. Failure to comply with the provisions of this section shall render the Company liable for each offence to a penalty not exceeding twenty pounds. Notice of certain accidents to be sent by telegraph.

37. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such railway upon giving to the said Company three months notice in writing of his intention to do so. If the amount tendered for the purchase of the property be considered inadequate by the Company, the amount shall be ascertained by assessment in terms of the "Public Lands Acquisition Act." Power of purchase of railway by Government.

38. 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.

39. This Act may be cited for all purposes as the "Warwick Farm Railway Act." Short title.

Toronto Tramway.

SCHEDULE.

Commencing on the Great Southern Railway, at a point distant in a southerly direction about one thousand three hundred yards from Cabramatta Station; thence bearing south-easterly in a curved line through land the property of the trustees of the estate of the late Thomas Moore, and now held under lease by the Warwick Farm Racing Company (Limited), to the road from Liverpool to Sydney; thence across that road; thence again in south-easterly direction through other land the property of the trustees of the estate of the late Thomas Moore aforesaid, and also held under lease by the Warwick Farm Racing Club (Limited) to a reserved road sixty-six feet wide along the eastern boundary of the aforesaid land; thence that road; thence again in a south-easterly direction through land the property of the Warwick Farm Racing Company (Limited) aforesaid to the Warwick Farm Race-course.
