

An Act to authorize Robert Stewart, of Broken Hill, in the Colony of New South Wales, mine owner, his heirs, executors, administrators, and assigns, to construct and maintain a Tramway from his Flux Quarries, in the parish of Robe, county of Yancowinna, in the Colony of New South Wales, and to use horse, steam, or other motive power upon the said Tramway, and to carry all flux, fuel, and other material to and from his said Quarries, in the parish of Robe aforesaid, to a point near Broken Hill, in the Colony aforesaid, connecting with the Tramway system of the Broken Hill Mines. [20th February, 1892.]

RUTLAND FLUX
TRAMWAY.

WHEREAS large quantities of flux, fuel, and other material exist Preamble.
at the aforesaid flux quarries, in the parish of Robe, as also along the line of tramway: And whereas for the purpose of facilitating the carriage of the said flux, fuel, and other material from the said localities the said Robert Stewart is desirous of constructing a single or double tramway, for horse, steam, or other traction, over, across, and along the lands described in the Schedule hereto, from the said localities to a point near Broken Hill, in the said Colony: And whereas such tramway cannot be made without Legislative authority: And whereas the construction of the said proposed tramway would be largely for the benefit of the mining public by materially assisting to lessen the expense of developing the great silver and lead mining industry in the Barrier Ranges, and it is therefore advisable to authorize, by Legislative enactment, the construction of the said proposed tramway, 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 Robert Stewart, his heirs, executors, administrators, and assigns, upon the terms and conditions and subject to the provisions hereinafter contained, to make and construct a tramway for the carrying of the said flux, fuel, and other material obtained from the said quarries in the said parish of Robe aforesaid, as also along the line of tramway by the route, and along and over the roads, streets, lands, and reserves, both public and private, described in the Schedule hereto, and to take and use so much of the said roads, streets, lands, and reserves, both public and private, as may be required for the purposes of such tramway, but so that the same shall not occupy in part thereof on private lands a greater space in breadth than sixteen feet, and on public lands in breadth sixty-six feet, including the support and foundations thereof: Provided that it shall be lawful to deviate from the line of tramway described in the Schedule to this Act, on either side thereof, at any part thereof to a distance not exceeding one mile.

Authority to
construct tramway.

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Levels of line.

2. The gauge of the said tramway shall be three feet six inches, and where it traverses public thoroughfares shall be laid at about the general level of such thoroughfares and so that the rails shall not project above the surface thereof; and the said Robert Stewart, his heirs, executors, administrators, or assigns shall maintain in perfect order and repair the said tramway, and the pavements of the same between the rails of the said tramway, and for the space of one foot six inches on each side of the said rails, and furthermore shall erect and maintain all necessary causeways in connection with the said tram.

Tramway to remain property of Robert Stewart, his heirs, executors, administrators, and assigns.

Authorized persons to have rights over streets.

3. The tramway and the material thereof shall not cease to be the property of the said Robert Stewart, his heirs, executors, administrators, and assigns by reason of the same being laid as aforesaid.

4. The said Robert Stewart, his heirs, executors, administrators, and assigns, and all other persons duly authorized, shall have all necessary rights over the roads, streets, and lands described in the Schedule to this Act as are required for the construction, repair, completion, and use of the said tramway: Provided that there shall be no interference with ordinary traffic beyond what is reasonable and necessary for such purpose.

Carriage.

5. The tramway shall be for the use of persons engaged in the said industry only, and shall be confined to the conveyance of such flux, fuel, and other material as aforesaid from the quarries of the said Robert Stewart aforesaid, as also along the line of tramway, and of stores and material required in connection with the said quarries and tramway.

To employ horse, steam, or other motive power.

6. It shall be lawful for the persons using the said tramway to employ horses, steam, or other motive power, and carriages, waggons, or trucks to be drawn thereby, and to carry flux, fuel, stores, and other material upon the said tramway.

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

7. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the said tramway, it shall be lawful for the said Robert Stewart, his heirs, executors, administrators, and assigns, and his or their workmen and servants, to enter upon the lands 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 such case the said Robert Stewart, his heirs, executors, administrators, or assigns, shall, within fourteen days 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 said adjoining lands as the nature of the 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 tramway.

Robert Stewart, his heirs, executors, administrators, and assigns not entitled to minerals.

8. The said Robert Stewart, his heirs, executors, administrators, and assigns shall not be entitled to any mines of coal, iron, slate or other minerals under any land whereof the surface is vested in him or 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, and such mines shall not be deemed to vest in the said

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said Robert Stewart, his heirs, executors, administrators, and assigns : Provided that where such tramway passes over Crown Lands, the said Robert Stewart, his heirs, executors, administrators, and assigns shall pay to the Crown such annual rent, not exceeding two shillings per acre, for such Crown Lands passed over by such tramway, as the Minister for Lands may direct.

9. If within sixty days of the passing of this Act the said persons through whose land the tramway shall pass, or any of them, and the said Robert Stewart, his heirs, executors, administrators, and assigns shall not agree as to the amount of compensation to be paid by him or 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, 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 concur in the appointment of a single arbitrator, each party on the request of the other shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred ; and any appointment of an arbitrator shall be under the hand and seal of such person or persons respectively ; 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 if for the space of fourteen days after 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 shall 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 matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final and conclusive.

Compensation to be settled by arbitration.

10. 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 that purpose he fail to do so, the remaining or other arbitrator may proceed alone ; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, neglect, or disability as aforesaid.

Proceedings in case of disability of arbitrator.

11. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint in 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 so to do by the arbitrators or either of them, they shall forthwith after such death, refusal, or neglect appoint another umpire in his place, and the decision of every such umpire upon the matters so referred to him shall be final.

Appointment of umpire.

12. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after request of either party to such arbitrators 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

Neglect to appoint umpire.

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arbitration to appoint an umpire, and the decision of such umpire on the matters on which the arbitrators differ or which shall be referred to him under this Act shall be final.

In case of disability of single arbitrator.

13. If, when 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.

Arbitrators failing to make their award, matters referred to umpire.

14. If, when more than one arbitrator shall have been appointed, and when neither of them shall die, become incapable, refuse, or neglect to act as aforesaid, such arbitrators shall fail to make their award within fourteen days after the day on which the last of such arbitrators shall have been appointed, or within such extended term (if any) as 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.

Arbitrators may order production of documents, &c.

15. The said arbitrator or arbitrators, or his 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.

Declaration by arbitrators or umpire.

16. Before any arbitrator or umpire shall enter upon the consideration of any matter 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 the “Rutland Flux Tramway Act.”

Made and subscribed in the presence of

C.D.

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.

17. All the costs of any such arbitration and incident thereto shall be in the discretion of the arbitrators, and the costs of the arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth or more less than the amount which shall have been offered by the said Robert Stewart, his heirs, executors, administrators, and assigns, in which case the whole costs of the arbitration, and also the costs of and incident to the said arbitration, shall be paid by the claimant: Provided that, if either party shall be dissatisfied with the costs allowed by the said 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.

Costs may be taxed.

Arbitrators or umpire to deliver award to Robert Stewart, his heirs, executors, administrators, and assigns.

18. The arbitrator, arbitrators, or umpire shall deliver their or his award in writing to the said Robert Stewart, his heirs, executors, administrators, and 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 the award.

Compensation to be paid within sixty days after publication of award.

Submission may be made a rule of Supreme Court.

19. 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 to be set aside for irregularity.

20. 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.

21.

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21. The said Robert Stewart, his heirs, executors, administrators, and 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 owners and occupiers of the lands through which the said tramway shall pass by the non-performance or negligent performance by the said Robert Stewart, his heirs, executors, administrators, and assigns of any of the matters or things hereby required or authorised to be performed by them. Compensation in cases of negligence.

22. In every case where the said Robert Stewart, his heirs, executors, administrators, and assigns shall take temporary possession of lands by virtue of the powers hereby granted, it shall be incumbent on him or them, within three months after entry upon such land, upon being required so to do, to pay to the occupier of said lands the value of any crop or dressing that may be thereon, and damaged or injured by such entry, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of such entry, and 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 twelve months after such entry, pay to such owners and occupiers, 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. Compensation in cases of temporary possession.

23. If the owner of any lands required to be taken for the construction of the said tramway is absent from the Colony, or cannot upon diligent inquiry be found, or is under disability, or if any such lands are vested in persons who have respectively only limited or qualified interests therein, and who cannot enter into binding agreements with the said Robert Stewart, his heirs, executors, administrators, and assigns for the purchase of such lands, or join in submitting their claims for compensation to arbitration as hereinbefore provided, the purchase money or compensation payable by the said Robert Stewart, his heirs, executors, administrators, and assigns, in respect of such lands shall be determined by the valuation of a surveyor, to be nominated as hereinafter mentioned. Proceedings in absence of owner.

24. Upon application by the said Robert Stewart, his heirs, executors, administrators, and assigns to two Justices, and upon such proof as may be satisfactory to them that there is no person in the Colony or to be found who can enter into a binding contract with the said Robert Stewart, his heirs, executors, administrators, and assigns, or join with the said Robert Stewart, his heirs, executors, administrators, and assigns in submitting his claims for compensation to arbitration in respect of any lands required to be taken for the construction of the said tramway, such Justices shall by writing under their hands nominate a licensed surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof. Justices to appoint surveyor in certain cases.

25. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall in the presence of such Justices or one of them make and subscribe the following declaration at the foot of such nomination, that is to say:— Declaration by surveyor.

I, A.B., do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

Made and subscribed in the presence of

A.B.
And

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And if any such surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Production of valuation, &c.

26. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the said Robert Stewart, his heirs, executors, administrators, and assigns; and they shall at all times produce the said valuation and documents on demand to all parties interested in the lands comprised in such valuation.

Cost of valuation how borne.

27. All the expenses of and incident to any such valuation shall be borne by the said Robert Stewart, his heirs, executors, administrators, and assigns.

Compensation not exceeding £50 how to be dealt with.

28. If the amount of compensation determined by any such surveyor does not exceed the sum of fifty pounds, it shall, except in the cases where the owner is absent from the Colony, or cannot be found, be paid by the said Robert Stewart, his heirs, executors, administrators, and assigns to the person or persons for the time being entitled to the rents and profits of lands in respect whereof the same shall be payable for their own use and benefit, or in the case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such persons, then such money shall be paid for their use to their respective husbands, guardians, committees, or trustees of such persons.

Compensation how dealt with in absence of owner.

29. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the cases where the owner is absent from the Colony, or cannot be found, whether it exceeds the sum of fifty pounds or not, it shall be paid by the said Robert Stewart, his heirs, executors, administrators, and assigns into the hands of the Master in Equity of the Supreme Court in the matter of this Act, in trust for the parties interested in the lands in respect of which it is paid in; and a certificate from the Master of the fact of the money being so paid in shall be a sufficient discharge to the said Robert Stewart, his heirs, executors, administrators, and assigns, for the money so paid: Provided that all moneys so paid in shall be dealt with by the Supreme Court in the same manner in all respects as moneys paid in under an Act passed in the twenty-first year of Her present Majesty, and entitled "*An Act for better securing Trust Funds, and for the relief of Trustees.*" And shall be subject, in all respects, to the provisions of the said Act, and all rules of the said Court made thereunder.

Cases of dispute Sheriff may issue warrant.

30. If in any case in which, according to the provisions of the Principal Act or of this Act, the said Robert Stewart, his heirs, executors, administrators, and assigns is authorized to enter upon and take possession of any lands required for the purposes of the said tramway, the owner or occupier of any such lands, or any other person, shall refuse to give up possession thereof, or hinder the said Robert Stewart, his heirs, executors, administrators, and assigns from entering upon or taking possession of the same, it shall be lawful for the said Robert Stewart, his heirs, executors, administrators, and assigns to issue his or their warrant to the Sheriff to deliver possession of the same to the persons appointed by the said Robert Stewart, his heirs, executors, administrators, and assigns in such warrant to receive the same, and upon receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant to be settled by the Sheriff shall be paid by the party so refusing to give possession, and the amount of such costs shall be deducted and retained by the said Robert Stewart, his heirs, executors, administrators, and assigns from the compensation, if any, then payable to such person refusing to give possession, or if no such compensation shall be payable to such person,

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person, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond the amount of such compensation, if not paid on demand, shall be levied by distress, and upon application to any Justice of the Peace for that purpose he shall issue his warrant accordingly.

31. All notices required to be served by the said Robert Stewart, his heirs, executors, administrators, and assigns upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found), and in case any such parties shall be absent from the Colony, or cannot be found after diligent inquiry, shall be left with the occupier of such lands, or if there be no such occupier shall be affixed upon some conspicuous part of such lands. Service of notice on owners of lands.

32. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such tramway, upon giving to the said Robert Stewart, his heirs, executors, administrators, and assigns, 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 said Robert Stewart, his heirs, executors, administrators, and assigns, the amounts shall be ascertained by assessment in terms of the "Public Lands Acquisition Act." Power of purchase of railway by Government.

33. It shall be lawful for the said Robert Stewart, his heirs, executors, administrators, and assigns at any time, by any deed or instrument in writing, to assign and transfer all the rights, powers, privileges, benefits, and advantages conferred upon him or them by this Act to any person or persons or to any duly incorporated company, and upon any such transfer or assignment being signed or executed the person or persons or duly incorporated company in whose favour such transfer or assignment is made shall then stand in the place of the said Robert Stewart, his heirs, executors, administrators, and assigns, and shall have all the rights, powers, benefits, privileges, and advantages conferred upon the said Robert Stewart, his heirs, executors, administrators, and assigns by this Act. Power to assign.

34. The said Robert Stewart, his heirs, executors, administrators, and assigns shall not be entitled to any of the rights and privileges conferred upon them by this Act unless they shall have commenced the said tramway within the period of six months, and completed the same within the period of two years from the passing of this Act. Commencement and completion of work.

35. This Act may for all purposes be cited as the "Rutland Flux Tramway Act of 1891." Short title.

SCHEDULE.

Commencing on the Silverton Tramway, at about the thirty-four miles twenty chain peg; and thence north-westerly about one hundred and five chains; thence north-easterly about one hundred and twenty-two chains thirty-five links; thence north-westerly about one hundred and fifty-seven chains, passing through measured portion number thirty, parish of Naradin, county of Yancowinna; thence north-easterly about four hundred and fifty-five chains, passing through measured portions numbered forty-nine and sixty-four, parish of Naradin aforesaid; thence north-westerly about three hundred and eighty chains, passing through measured portions numbered one hundred and eighteen and two hundred and sixty-six, parish of Stephen, county of Yancowinna; thence northerly about forty-five chains, passing through measured portions numbered two hundred and seven and forty-six, parish of Lewis, in the county aforesaid; thence westerly about twenty-five chains, passing through measured portions numbered two hundred and twenty and fifty, parish of Lewis aforesaid; thence north-westerly about seven hundred and forty chains, passing through measured portion numbered two hundred and ninety, parish of Lewis aforesaid, and measured portion two hundred and forty-seven, parish of Purnamoota and county aforesaid, and measured portions numbered seventy-five and seventy-six, reserve numbered nine thousand three hundred and

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and thirty-six, measured portions numbered eighty-four, two hundred and thirteen, one hundred and three, one hundred and four, and two hundred and two, parish of Robe and county aforesaid; thence easterly about sixty chains to the western boundary of the Rutland Flux Company's mineral lease, being measured portion numbered one hundred and eight; thence through the said Company's mineral leases, being measured portions numbered one hundred and ten, one hundred and eleven, and fifty-nine, parish of Robe, county of Yancowinna aforesaid,—a total distance of about twenty-six miles ten chains.
