

An Act to enable a Company, called the
“Scottish Australian Mining Company
(Limited),” to construct a railway from
their Durham colliery, in the parish of
Kahibah, to communicate with the Great
Northern Railway. [13th June, 1893.]

SCOTTISH
AUSTRALIAN
MINING COMPANY
(LIMITED) RAILWAY.
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WHEREAS the “Scottish Australian Mining Company (Limited)”
(hereinafter designated “the Company”) have opened coal-
mines and established collieries on lands situate in the parish of
Kahibah, in the county of Northumberland, and, in order to facilitate
communication between the said coal-mines and colliery and the Great
Northern Railway, are desirous of constructing a railway from the
said coal-mines to the said Great Northern Railway; but as part of
such proposed railway is intended to be made upon and pass through
lands

Preamble.

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lands of the said county believed to be the property of the Crown, bodies corporate, and private persons respectively, the same cannot be made without legislative authority: And whereas the said coal-mines and colliery are likely to prove beneficial to the Colony, and the public are concerned in promoting such an increase in and facilities for the supply of coal for local consumption, steam navigation, and export as would result from the construction of the said proposed railway, and the traffic on the Great Northern Railway would be increased thereby, it is therefore advisable to authorise 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 portion of their respective lands as may be required to be taken and occupied thereby: 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,
and connect same
with Great Northern
Railway.

1. It shall be lawful for the Company to make, construct, and maintain a railway from its Durham colliery, in the parish of Kahibah, to communicate with the Great Northern Railway, that is to say, a line of railway to commence at a point outside the boundary of the Great Northern Government Railway from Sydney to Newcastle, distant from Newcastle about six miles seventy-seven chains, in portion number eighty-nine, parish of Kahibah, county of Northumberland; and continuing thence south-westerly through portion number thirty-nine, selected by Vincent Stone, to the southern boundary; thence southerly and south-easterly through portions eighty-five A, selected by Thomas Phillips and James Edwards, to the southern boundary of same; thence south-easterly through portion forty-four, once the property of J. J. Hill and since subdivided, across allotments and roads to road on southern boundary of same; thence southerly through portion one hundred and twenty-six, leased to John Robyns and others, to the northern boundary of portion one hundred and six, leased to Messieurs Robyns, Hill, Price, and Williams; thence southerly to western boundary of portion one hundred and five, leased to Messieurs Robyns, Hill, Price, and Williams; thence southerly and south-easterly and across road to northern boundary of part of mineral leases eighteen thousand six hundred and seventy-six and eighteen thousand seven hundred and sixty-one, once occupied by the Australasian Coal Company, now B. J. Finck; thence south-easterly to the western boundary of portion number one hundred and seven, the property of the Waratah Coal Company; thence south-easterly to western boundary of portion number six, selected by D. O'Brien; thence south-easterly to southern boundary of same across road to northern boundary of portion number one hundred and nineteen, leased to the "Scottish Australian Mining Company (Limited)"; thence south-easterly across road and easterly to western boundary of portion number one hundred and fourteen, leased to the "Scottish Australian Mining Company (Limited)"; thence easterly to northern boundary of portion number one hundred and fifteen, leased to the "Scottish Australian Mining Company (Limited)"; thence south-easterly and southerly to northern boundary of portion number one hundred and sixteen, leased to "South Burwood Coal Mining Company (Limited)"; thence south-easterly to northern boundary of portion number one hundred and thirteen, leased to the "Scottish Australian Mining Company (Limited)"; thence south-easterly and easterly to the terminus upon said last-mentioned portion. It shall also be lawful for the Company to contract with the Railway Commissioners

of

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of New South Wales as the constructing authority to effect a communication between the railway hereby authorised and the said Great Northern Railway in the manner provided for in the one hundred and twelfth section of the "Public Works Act of 1888," such railway to be in the direction described in the Schedule, but so that the same shall not at any place occupy in any part thereof (except near its junction with the said Great Northern Railway) a greater space in breadth than one hundred and thirty-two feet. And also that the Company may, within three years after the passing of this Act, take and occupy five acres of land or any lesser area at the junction of the said railway with the aforesaid Great Northern Railway, but not so as to encroach on or include any property now vested in the said Railway Commissioners.

2. The ground and soil of so much of the site of the railway as passes over the lands of the said owners of lands respectively and over Crown lands, together with such rights of ingress, egress, and regress upon the adjacent land as may be necessary for the making and repair thereof, and also the aforesaid five acres of land or lesser area when separated and fenced in, shall, subject to the payment of compensation as herein provided for, be vested by virtue of this Act and without the necessity of any conveyance in the Company for the purposes of the railway: Provided that no lands or rights over any lands vested in the Railway Commissioners of New South Wales shall by virtue of this Act be vested in the Company, and nothing herein contained shall prevent the said owners from carrying on any mining operations beneath the said railway hereby authorised which shall not interfere with the safety of such railway and the traffic thereon, and the Company shall have no further right to the soil of the said lands beneath the surface than shall be requisite for the formation and repairs of the said railway by cutting, embanking, sinking wells, or otherwise: Provided also, that if in the exercise of the powers hereby granted, it be found necessary to cross-cut through, sink, raise, or use any part of any road, whether carriage road or horse road, so as to render it impassable for or dangerous or inconvenient to the persons entitled to the use thereof, the Company shall, before the commencement of any such operations, cause a sufficient road to be made instead of any road 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 of the said owners of land and the said Crown lands respectively 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 then the said Company shall put up and erect such fences and gates as any two Justices of the Peace shall deem necessary for the purposes aforesaid on application being made to them.

Site of railway shall be vested in the Company without conveyance.

3. The railway shall, when constructed, be maintained and kept in repair, and shall be open to the public use upon payment of a toll to the Company of a sum not exceeding twopence per ton per mile on freight for every transit, the party seeking transit supplying and loading and unloading his own trucks or waggons and the Company supplying locomotive power, and all trucks when emptied shall be conveyed on their return free of charge: Provided always that it shall not be compulsory on the Company to supply locomotive power unless the party seeking transit guarantee and bring one hundred tons

Railway open to the public.

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of freight at least during the eight working hours and give notice of same at least twenty-four hours previously. The railway shall at all times be open to the public upon payment of a toll to the Company of a sum not exceeding one penny half-penny per ton per mile on freight for every transit, except in the case of the Railway Commissioners, the party seeking transit supply the locomotive power as well as the trucks and waggons, and load and unload the same, such toll to cover the return of empty trains: Provided that so long as the Company shall be willing to supply locomotive power no other person, except as aforesaid, 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. In case the Railway Commissioners shall make use of the railway hereby authorised or any branch railway the tolls payable by them shall be one-half of the above rates.

Branch railways.

4. And be it enacted that it shall be lawful for the owners or occupiers of the lands traversed by the said railway or for the Company, with the sanction of the Governor and Executive Council, to lay down upon their own lands any collateral branches of railway 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 lines of railway 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, and the Company shall not take any rate or toll or other moneys for the passing of any passengers, goods, or other things along any branch so to be made by any such owner or occupier or other person, but this enactment shall be subject to the following restrictions and conditions, that is to say,—

No such branch railway shall run parallel to any line of Government railway or to the said railway hereby authorised. The Company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge nor in any tunnel.

The persons making or using such branch railways shall be subject to all by-laws and regulations of the Company from time to time made with respect to passing upon or crossing the railway and otherwise, and the persons making or using such branch railways shall be bound to construct, and from time to time as need may require, to renew the off-set plates and switches according to the most approved plan adopted by the Company under the direction of their engineer.

Power to divert or alter roads.

5. 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 authorised and empowered to divert or alter the course of any road, street, or way crossing the railway, or to raise or sink any road or way in order the more conveniently to carry the same over or under or by the side of the railway.

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6. If the Company do not cause another sufficient road or street to be so made before they interfere with any such existing road or street as aforesaid they shall forfeit ten pounds for every day during which such substituted road shall not be made after the existing road or street shall have been interrupted, and such penalty shall be paid to the trustees, commissioners, surveyor, or other persons having the management of such road or street, if a public road, and shall be applied for the purposes thereof, or in case of a private road or street the same shall be paid to the owner thereof, and every such penalty shall be recoverable with costs by action in the Supreme Court. Penalty for not substituting a road.

7. If in the course of making the railway the Company shall use or interfere with any road or street they shall from time to time make good all damage done by them to such road or street, and if any question shall arise as to the damage done to any such road or street by the Company, or as to the repair thereof by them, such question shall be referred to the determination of two Justices, and such Justices may direct such repairs to be made in 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 directions any penalty not exceeding five pounds per day as to such Justices shall seem fit, and any such penalty shall be paid to the Commissioners for Roads, or other person or authority having the management of the road or street interfered with by the Company, if a public road, and be applied for the purposes of such road or street, or if a private road or street 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 or street in the course of the using thereof. Road repairs.

8. 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 railway 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 railway 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 railway or to damage the same, nevertheless, if the owner or occupier of any such lands 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 railway. Owners crossing.

9. If the railway cross any 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 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 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 not exceeding forty shillings for every default therein: Provided always that it shall be lawful for the Secretary for Public Works in any case Provisions in case where roads are crossed on a level.

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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 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 in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

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

10. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the said railway, it shall be lawful for the Company and their workmen and servants to enter upon the land adjoining thereto, except land vested in the Railway Commissioners, at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works thereon as may be necessary for the purpose, but in every such 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 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 arbitration 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 railway.

Construction of bridge over roads.

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

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

The 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 the 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 feet 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 railroads.

12. 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.

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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 feet 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.

13. 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 railway 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 railway 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 railway.

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

14. Provided also that if the mesne inclination of any road within two hundred and fifty yards of the points 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 railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne 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.

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

15. The Company shall make, and at all times thereafter maintain, the following works for the accommodation of the owners and occupiers of lands adjoining the railway, that is to say:—

Works for benefit of owners.

Such and so many 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 during the formation thereof.

Gates, bridges, &c.

All 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 cattle of the owners or occupiers thereof from straying thereon 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.

Fences.

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions

Drains.

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dimensions as will be sufficient at all times to convey the water as clearly from the lands laying near or affected by the railway 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 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 railway, 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 the making them.

Penalty on persons omitting to fasten gates.

16. 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 carriage, cattle, or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding ten pounds.

Minerals not to pass.

17. The Company shall not be entitled to any mines of coal, iron, stone, slate, or other minerals under any land whereof the surface is 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 authorised. And such mines shall not be deemed to vest in the Company.

Compensation clause.

18. If within twenty-eight days after the passing of this Act the said persons, through whose lands the railway shall pass, or any of them, and the Company, shall not agree as to the amount of compensation to be paid by the Company, for the said lands belonging to the said parties or any of them, or for any damage that may be sustained by them or him by reason of the execution of the works, or if any other question as to compensation shall rise 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 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 under the hand of 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 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 an arbitrator to act on behalf of the other party. And such arbitrators may proceed to hear and determine the matters which shall be in dispute. And in such case the award or determination of such arbitrators shall be final and conclusive.

Appointment of arbitrators.

Vacancy of arbitrator to be supplied.

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 that purpose he fail to do so the remaining or other arbitrators may proceed alone.

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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 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, 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 on the matters so referred to him shall be final. Appointment of umpire.

21. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for the Attorney-General for the time being, on the application of either party to such arbitration, to appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this Act, shall be final. Attorney-General to appoint umpire on neglect.

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

23. If when more than one arbitrator shall have been appointed either of the arbitrators shall refuse or for seven days neglect to act the other arbitrator may proceed alone, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties. If either arbitrator refuse to act the other to proceed ex parte.

24. If when more than one arbitrator shall have been appointed, and when neither of them shall die, refuse, or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both of such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be so appointed as aforesaid. If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

25. The said arbitrator or 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 the witnesses on oath and administer the oaths necessary for that purpose. Powers of arbitrators to call for books, &c.

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

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 “Scottish Australian Mining Company (Limited), Railway Act of 1893.”

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 misdemeanour. Penalty for misconduct.

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Cost of arbitration,
how to be borne.

27. All the costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Company, unless the arbitrators shall award the same or a less sum than shall have been offered by the Company, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions unless the amount awarded shall be one-fourth less than the amount claimed, in which case the whole costs shall be paid by the claimant: Provided that if either party shall be dissatisfied with the costs allowed by the arbitrators as aforesaid, the costs may be taxed by the Prothonotary or other proper officer of the Supreme Court, and the amount allowed by such officer shall be the amount of costs to be paid.

Award to be
delivered to the
Company.

28. The arbitrator, arbitrators, or umpire shall deliver their or his award in writing to the Company who shall retain the same, and shall forthwith on demand, at their own expense, furnish a copy thereof to the other party, and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose, and the amount awarded shall be paid within sixty days after the publication of such award.

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 or per-
manent or recurring
injuries.

31. 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 for 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.

Compensation to be
made for temporary
occupation.

32. 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 three months 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 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 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.

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

33. If the person or persons through whose lands the railway shall pass shall be under any disability or incapacity, or shall be entitled only to a partial or qualified interest in the said lands or not entitled to dispose of the same absolutely for his or their own benefit, or shall be absent from this Colony, the amount of compensation to be paid by the Company as aforesaid shall be ascertained, and when so ascertained shall be paid into the Supreme Court of New South Wales, to be applied for and obtained by the parties legally entitled thereto.

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

Sheriff authorised to give possession of certain lands.

35. 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 resolution of any general meeting of shareholders, and such by-laws shall be reduced into writing, and shall be duly executed by 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 Governor and Executive Council, and shall be published in the New South Wales *Government Gazette*.

Company may make by-laws.

36. The production of the *Government Gazette* containing a printed copy of the by-laws of the Company purporting to be duly executed by the Company, and approved as aforesaid, shall be sufficient evidence of such by-laws in all proceedings under the same.

37. Nothing in this Act shall be deemed to authorise the said Company to take or enter upon any lands belonging to the Railway Commissioners of New South Wales, or to alter or to interfere with the Great Northern Railway or any of the works thereof.

Lands belonging to Railway Commissioners not to be taken.

38. For the purpose of affecting communication between the Railway authorised by this Act and the Great Northern Railway, the one hundred and twelfth section of the Public Works Act shall apply, and the Railway Commissioners shall be deemed the Constructing Authority thereunder.

Application of one hundred and twelfth section of Public Works Act.

39. The said Railway Commissioners shall from time to time, at the expense of the Company, erect such signals and conveniences incident to the aforesaid communication either upon their own lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, and other persons as may be necessary for the prevention of danger to or interference with the traffic at or near the junction, and in all cases at the expense of the Company.

Railway Commissioners may erect signals and appoint watchmen and switchmen.

40. The erection, working, and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation

Working of signals to be under regulations of Railway Commissioners.

Scottish Australian Mining Company (Limited) Railway.

regulation of the said Railway Commissioners; but all costs, charges, wages, and expenses incidental or arising thereout shall be defrayed by the Company.

"Government Railway Act of 1888" and "Public Works Act of 1888" not altered or repealed.

Right to carry passengers.

41. Nothing herein contained shall alter, repeal, or otherwise affect the "Government Railways Act of 1888" and the "Public Works Act of 1888."

42. The Company shall, at the request of the Railway Commissioners, from time to time and at all times, carry passengers and live stock upon the said railways, or either of them or any part thereof respectively, and be at liberty to demand, take, receive, and recover such tolls and 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 said Railway Commissioners for or in respect of all such passengers and live stock which shall be so carried as aforesaid. The Company is hereby authorised to make such by-laws and regulations as may be deemed necessary for regulating such traffic, and for enforcing and recovering such tolls and dues; and such by-laws and regulations, upon approval of the Governor and Executive Council, shall, after publication in the *Gazette*, be binding upon all persons using or travelling upon the said railways. Any person 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 of the Peace assembled and acting together in Petty Sessions.

Company not to be liable to a greater extent than common carriers.

43. Nothing in this Act contained shall extend to charge or make liable the Company, when acting as carriers, further or in any other case than when, according to the laws of this Colony, stage-coach proprietors or common carriers would be liable, nor shall extend in any degree to deprive the Company of the protection or privilege which stage-coach proprietors or common carriers 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.

Penalty for not carrying out work.

44. Unless the railway hereby authorised shall be completed and brought into use within three years from the passing of this Act, or within such extended time as the Governor and Executive Council may allow, the rights and privileges hereby conferred on the Company shall cease.

Interpretation clause.

45. In this Act the word "Justices" shall mean Justices of the Peace in and for the Colony of New South Wales; and when any matter is authorised or required to be done by, or any penalty or forfeiture is recoverable before two Justices, the expression, "two Justices" shall mean two Justices assembled and acting together in Petty Sessions, or a Stipendiary or Police Magistrate; and the word "Owner" shall mean any person or corporation who under the provisions of this Act is authorised to sell land to the Company.

Short title.

46. This Act whenever cited shall be sufficiently described as the "Scottish Australian Mining Company (Limited) Railway Act of 1893."

THE SCHEDULE HEREINBEFORE REFERRED TO.

Commencing at a point to be fixed by the Company in portion number one hundred and thirteen, in the parish of Kajibah, county of Northumberland; and running thence westerly and north-westerly through that portion to a point one thousand one hundred and fourteen links westerly from south-west corner of water reserve number four; thence north-westerly through portion number one hundred and sixteen to a point thirty chains and fourteen links westerly from south-east corner of portion number one hundred and fifteen; thence north-westerly through portions number one hundred and fifteen and one hundred and fourteen; thence north-westerly through part of portion number one hundred and nineteen; thence across a road one chain wide and again through other part of portion number one hundred and nineteen; thence across another road one chain wide to a point two chains and twenty-six and a half links westerly from the

Menindie and Broken Hill Tramway.

the south-east corner of portion number six; thence north-westerly through that portion and the north-eastern angle of portion number one hundred and nineteen to a point forty-eight links westerly from north-east corner of that portion; thence north-westerly through portion number one hundred and seven and part of mineral leases numbers eighteen thousand six hundred and seventy-six and eighteen thousand seven hundred and sixty-one to southern boundary of portion number one hundred and five at a point one thousand one hundred and ninety-four links westerly from its south-east corner; thence across a road one chain wide; thence northerly through part of portions numbered one hundred and five and one hundred and six; thence north-westerly through portion number one hundred and twenty-six; thence across a road one chain wide; thence north-westerly through portion number forty four and a road one chain wide intersecting same to a point three hundred and eight links westerly from south-east corner of portion number eighty-five A; thence north-westerly and northerly through that portion to a point two hundred and seventy-five links easterly from south-western corner of portion number thirty-nine; and thence about north-easterly through part of that portion to a point on the south-western boundary of the Great Northern Government Railway from Sydney to Newcastle about two hundred and one links southerly from southern boundary of portion number eighty-nine.
