

An Act to authorise the maintenance and use of a tramway which has been constructed from the Co-operative Mine, situate on the Wentworth Estate, in the parish of Hexham, county of Northumberland, in the Colony of New South Wales, to the screens above the Co-operative Railway-line, and which said tramway crosses various streets and ways in the Borough of Plattsburg; and to enable the executors of William George Laidley, or their assigns, to divert the course of Kenrick-street, between Wentworth-street and Fletcher-street, and giving them compulsory powers to acquire lands forming the site of the said tramway. [6th December, 1897.]

CO-OPERATIVE
COLLIERY
TRAMWAY.

WHEREAS the Honorable William George Laidley, Member of the Preamble. Legislative Council, was the proprietor under a lease dated the first day of June, one thousand eight hundred and seventy-six, made between Sarah Wentworth and Fitzwilliam Wentworth of the one part, and the said William George Laidley of the other part, of a mine called the Co-operative Coal-mine, situate in the parish of Hexham in this Colony, and was also proprietor of a tramway running from the pit's mouth of the said mine to the screens above the Co-operative railway line: And whereas Macquarie-street, in the borough of Plattsburg, crosses the said tramway by a bridge, and the said tramway crosses Wentworth-street, in the same borough, by a level crossing, and crosses Kenrick-street and Fletcher-street by an embankment: And whereas the said tramway was constructed by the said William George Laidley, in the year one thousand eight hundred and seventy-nine, in pursuance of a resolution passed by the council of the borough of Plattsburg, on the seventeenth day of September, one thousand eight hundred and seventy-nine, in the words and figures following: "That this council give full permission to William Laidley, Esquire, to run a tram road along and across the following streets, on a level crossing, namely, Macquarie, Wentworth, Kenrick, Fletcher, and all other streets and roads on the proposed route of tramway from the present screens at the old to the new tunnel; and to use the same for the

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the purpose of conveying coal, stone, timber, coke, and all other material, at the option of the said William Laidley, Esquire, for twenty years, without charge, let, or hindrance ; and the said William Laidley, Esquire, his heirs and executors, to be at liberty at any time to remove and renew all plant, material, and erections connected with the said tramway at any time he or they may think proper so to do : And it is further resolved that this council will at once erect and construct at the expense of the council all bridges and embankments necessary to carry the street traffic over the tramway " : Whereas it is alleged that the said council had no power or authority to grant such permission, and it is therefore expedient to authorise the maintenance and use of the said tramway : 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 :—

Short title.

1. This Act may be called and cited as the "Co-operative Colliery Tramway Act, 1897."

Legalisation of tramway.

2. The executors of William George Laidley or their assigns shall be deemed to have, from the commencement of this Act, the right to construct, maintain, and use the said tramway for the carriage of coal, coke, stone, timber, and all other materials over, under, or on the level of Macquarie-street, and all other streets or public ways in the route of the said tramway as at present constructed, or as authorised by this Act.

Power to carry tramway under, over, or on level of streets, &c.

3. Where the said tramway crosses any street or road below or above the level of such street or road, then either such road shall be carried over the tramway or the tramway shall be carried over such road by means of a bridge of the height and width with the ascent and descent by this Act in that behalf hereinafter provided ; and any such bridge, with the immediate approaches and all other necessary works connected therewith, shall be executed by, and be at all times thereafter maintained at the expense of, the executors of William George Laidley or their assigns ; and the executors of William George Laidley or their assigns shall be liable in damages for any accident that may happen through want of repair or otherwise of any such bridge or its immediate approaches as aforesaid.

Erection of fence and gates.

4. The executors of William George Laidley shall erect and maintain in good repair a substantial two-railed fence on each side of the tramline from Macquarie-street to the bridge at Spargo's lane, except at the Wentworth and Fletcher-street crossing ; and where the said tramway crosses Wentworth-street on the level, the executors of William George Laidley shall erect and maintain good and sufficient gates across the tramway on each side of the street, and shall employ at their expense a proper person to open and shut such gates, and such

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such gates shall be kept closed across the tramway, except when sets of skips are passing along the tramway across such street. And at the Fletcher-street crossing the executors of William George Laidley shall erect suitable gates for vehicular traffic.

5. It shall be lawful for the executors of William George Power to divert Kenrick-street. Laidley or their assigns, their servants, agents, and workmen, to alter or divert the course of Kenrick-street, between Wentworth and Fletcher streets, in order the more conveniently to carry the same by the side of the said tramway.

6. It shall be lawful for the executors of William George Power to tunnel under roads in route of tramway. Laidley or their assigns, their servants, agents, and workmen, to tunnel under the roads, streets, or ways in the route of the said tramway, or any of them, for the purpose of carrying the said tramway across the said roads, streets, or ways underground: Provided that in so doing the executors of William George Laidley or their assigns shall not, except temporarily for the purpose of constructing such tunnel or tunnels thereunder, interfere with or disturb the surface of the said roads, streets, or ways, and shall permanently secure the said surface by constructing proper supports thereunder; and the executors of William George Laidley or their assigns or their managers or agents shall be liable to a penalty of not less than two pounds per day for every day during which any wilful breach or neglect in carrying into effect any of the provisions of this Act shall continue, and the municipal council of the borough of Plattsburg, their officers or agents, may recover the aforesaid penalty in any court of competent jurisdiction.

7. This Act shall charge and make liable the executors of Liability of executors of W. G. Laidley. William George Laidley or their assigns for any accident or damage that may happen on the said streets or roads, in the borough of Plattsburg, over which the tramway passes, provided that the accident or damage shall be caused by, through, or in consequence of the said tramway, or the running of trucks or wire cables thereon.

8. Where the tramway crosses any road or street, on an Grade on roads passing under tramway. embankment, the descent made in the road or street, in order to carry the same under the tramway, shall not be more than one foot in twenty feet.

9. Every bridge erected for carrying any road or street over the tramway shall be built in conformity with the following regulations, that is to say:—There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet. The road over the bridge shall have a clear space between the fences thereof of thirty feet. The ascent shall not be more than one foot in twenty feet: Provided that this Act shall not apply to any bridge already constructed in the route of the said tramway.

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Tramway to be laid on general level of thoroughfares.

Power to purchase lands forming site of tramway. Notice to be given.

Service of notices.

Vesting of lands required to be purchased.

Arbitration clause.

10. Where the tramway traverses any street or road, on a level, it shall be laid at about the general level of such thoroughfares, and so that the rails or wire cables shall not project above the surface thereof more than is absolutely necessary in the due working of the tramway.

11. If the executors of William George Laidley or their assigns shall be desirous of purchasing any land or interest in land forming the site or part of the site of the said tramway as at present constructed, it shall be lawful for the executors of William George Laidley or their assigns, as the case may be, within ten years from the commencement of this Act, to give notice of the land so required to be purchased to all the parties interested in the said land, or to such of them as shall be known to the executors of William George Laidley or their assigns. Every such notice shall state—(a) the particulars of the land so required as aforesaid; (b) that the executors of William George Laidley or their assigns are willing to treat as to the compensation to be made to all parties for the land required, and the damage sustained or to be sustained by them by the exercise of the powers conferred by the Act; and (c) shall demand in the said notice from such parties, and the said parties are hereby required to deliver forthwith to the executors of William George Laidley or their assigns the particulars of their estate and interest in such land and of the claims made by them in respect thereof, and such other particulars in such form as may be prescribed, together with an abstract of their title to such land, and if they claim in respect of damage the nature of the damage which they have sustained or will sustain by reason of the taking of such land.

12. All notices required to be served upon or given by the executors of William George Laidley or their assigns to the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or affixed in a conspicuous position upon the said land, and a copy of the said notice shall be published once a week for four consecutive weeks in a Plattsburg newspaper and similarly in the Government Gazette.

13. On the publication in the Government Gazette of the first of such notices the land specified in the said notice shall without any conveyance vest in the executors of William George Laidley or their assigns, as the case may be, for the purposes of the tramway for an estate in fee simple, and the estate and interest of every person entitled to such land or any part thereof shall be taken from the date aforesaid to have been converted into a claim for compensation in pursuance of the provisions hereinafter contained.

14. If for twenty-eight days after the service of such notice the persons whose land is required to be taken or any of them omit to state the particulars of their or his claim in respect of such land, or fail

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fail to agree as to the amount of compensation to be paid by the executors of William George Laidley or their assigns, for the interest in the said lands of such persons 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, but the persons or person claiming compensation shall not be at liberty to institute any proceeding for the recovery of the amount of his claim until after the expiration of fourteen days from the delivery of the particulars required by this Act to be furnished by them or him.

15. When any question of disputed compensation, or any other dispute shall have arisen, then, 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 arbitrator or arbitrators or umpire, if appointed as hereinafter provided, shall be final.

16. If after any such dispute or other matter shall have arisen, and after a request in writing setting forth the matter to be referred to arbitration shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail for a period of fourteen days to appoint such arbitrator, then upon such failure it shall be lawful for the party making such request, 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.

17. 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 in that behalf from the other party he fails 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.

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Umpire.

Supreme Court
judge to appoint
arbitrator on
refusal, &c.Death, &c., of single
arbitrator.If arbitrators fail to
make award within
twenty-one days
matter to go to
umpire.Power of arbitrators
to call for books, &c.Arbitrators and
umpire to make
declaration for faith-
ful discharge of
duties.

18. When 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, 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.

19. 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 any judge of the Supreme Court 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.

20. 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.

21. 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 or within such extended time (if any) as shall have been appointed for that purpose by both of such arbitrators under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

22. 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.

23. 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, herein determine the matters referred to me under the provisions of the Co-operative Colliery Tramway Act, 1897.

Made and subscribed in the presence of A. B.; and such declaration shall be annexed to the award when made, and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanour.

24.

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24. For the purpose of ascertaining the amount of compensation to be paid by the executors of William George Laidley or their assigns regard shall in every case be had by the arbitrators or their umpire (as the case may be) not only to the value of the land taken, but also to the damage (if any) to be sustained by the owner of the lands by reason of the severing of the lands taken from other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of any of the powers under this Act by the executors of William George Laidley or their assigns, and they shall assess accordingly.

25. All costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the executors of William George Laidley or their assigns, unless the arbitrators shall award the same sum as or a less sum than shall have been offered by the executors of William George Laidley or their assigns, in which case each party shall bear his own costs incident to the arbitration, and the cost of the arbitrators shall be borne by the parties in equal proportions, unless the amount awarded shall be one-fourth less than the amount claimed, in which case the whole costs shall be paid by the claimant, and the arbitrators shall direct the payment thereof accordingly: 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.

26. The arbitrators shall deliver their award in writing to the executors of William George Laidley or their assigns, who shall retain the same, and shall forthwith, on demand, 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.

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

28. 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.