

Capertee Tramway.

An Act to authorise John Lang, of Sydney, in the Colony of New South Wales, merchant, his heirs, executors, administrators, and assigns, or any company duly registered for that purpose by agreement with the said John Lang, his executors, administrators, or assigns, to construct and maintain a Tramway from a point near the north-east corner of lease number twenty, in the parish of Gindantherie, county of Cook, to the Mudgee Railway; and to use steam or other motive power upon the said Tramway, and to carry passengers, goods, live stock, ore, and other things over the said Tramway, for hire, for the public generally. [29th December, 1899.]

CAPERTEE
TRAMWAY.
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WHEREAS the agricultural and pastoral lands to the west of the Mudgee line, in the valleys of the Capertee, Coco, and neighbouring streams, are of such value and extent that they would be greatly convenienceed and rendered of greater value and utility and enabled to produce crops that, owing to the difficulty of transit, are not at present put in, but would be if railway accommodation were provided, while the extensive mineral deposits known to exist in the mountain ranges would be explored and developed: And whereas John Lang, merchant, is desirous of constructing a tramway from mineral lease number twenty, parish of Gindantherie, county of Cook, to the Mudgee Railway: And whereas it is proposed to construct such tramway through certain lands, streets, and roads described in the Schedule hereto, but the said tramway cannot be constructed without legislative authority: And whereas it is expedient to confer upon the said John Lang authority to construct, maintain, and use the said tramway subject to the provisions hereinafter contained: And whereas it is expedient that power should be conferred upon the said John Lang to transfer and assign his rights, powers, authorities, obligations, and liabilities under this Act to any company duly incorporated for that purpose: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent

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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 tramway.

1. It shall be lawful for the said John Lang, his heirs, executors, administrators, and assigns, or any company duly registered for that purpose by agreement with the said John Lang, his heirs, executors, administrators, or assigns, upon the terms and conditions and subject to the provisions hereinafter contained, to make, construct, control, and maintain a tramway for the carrying of minerals, fuel, goods, live stock, and other things for hire, also passengers, from a point near the north-east corner of mineral lease number twenty, parish of Gindantherie, county of Cook, as aforesaid, as also along the line of tramway, by the route, and over, across, and along the roads, streets, rivers, water-courses, lands, and reserves, both public and private, described in the Schedule hereto ; and to use so much of the said roads and streets, and to take and use so much of the lands and reserves, both public and private, as may be necessary for the purposes of such tramway, but so that the same shall not occupy in part thereof on public or private lands a greater space in breadth than ninety-nine 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 and a half miles, and the said tramway shall be constructed in a proper and workmanlike manner to the satisfaction of the Engineer-in-Chief for Railway Construction and the Railway Commissioners.

Gauge, levels of line, repairs, &c.

2. The gauge of the said tramway shall be at the option of the said John Lang, his heirs, executors, administrators, or assigns from two feet to four feet eight and a half inches, and where it traverses public thoroughfares shall be laid and maintained at about the general level of such thoroughfares and so that the rails shall not project above the surface thereof ; and the said John Lang, his heirs, executors, administrators, or assigns shall maintain in perfect order and repair the said tramway, and the ballasting 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 construct and maintain all necessary bridges and causeways in connection with the said tramway : Provided that such repairs, construction, and maintenance shall be carried out to the satisfaction of the Railway Commissioners, who may at any time call upon the said owner to provide such additional works as may, in the opinion of the Railway Commissioners, be necessary for the proper and safe working of the branch line, and should the said owner fail to carry out such works the Governor, with the advice of the Executive Council, may declare the line to be closed, until such time as the works specified have been carried out, and if the line should be worked during

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during such closure, the said John Lang, his heirs, executors, administrators, or assigns shall be subject to a penalty not exceeding one hundred pounds per day for each and every day the line is so worked.

3. The said John Lang, his heirs, executors, administrators, or assigns shall construct and at all times maintain the following works for the safety of the public and the accommodation of the owners and occupiers of lands adjoining the said tramway, that is to say:—

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the side of, or leading to or from the said tramway, as shall be necessary for the purpose of making good any interruptions caused by the said tramway to the use of the lands through which the said tramway shall be made; and such works shall be made forthwith after the part of the said tramway passing over such lands shall have been laid out or formed, or during the formation thereof.

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the said tramway from the adjoining lands not taken, and protecting such lands from trespass, or the horses or cattle of the owners or occupiers thereof from straying thereout by reason of the said tramway, together with all necessary gates made to open towards such adjoining lands and not towards the said tramway; and all necessary stiles, and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be.

Also all necessary arches, tunnels, culverts, drains, or other passages either over or under, or by the sides of the said tramway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the said tramway as before the making of the said tramway, or as nearly so as may be, and such works shall be made from time to time as the said tramway works proceed:

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

4. If any person omit to shut and fasten any gate set up at either side of the tramway for the accommodation of the owners or occupiers of the adjoining lands, so soon as he and the carriages, cattle, or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding ten pounds.

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Authorised persons
to have rights over
streets.

5. The said John Lang, his heirs, executors, administrators, and assigns, and all other persons duly authorised, 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, and for the erection, maintenance, and repair, and all necessary sidings and buildings in connection therewith: Provided that there shall be no interference with ordinary traffic beyond what is reasonable and necessary for such purpose.

To carry passengers,
&c., for hire.

6. It shall be lawful for the said John Lang, his heirs, executors, administrators, and assigns, his agents, or servants, to carry passengers, goods, live stock, minerals, material, and other things over and along the said tramway for hire for the public. The maximum tolls, rates, fares, and charges to be fixed by any by-laws made hereafter shall not exceed the following, that is to say—

Rates of fares and
charges.

- (1) For passengers, a sum not exceeding twopence each per mile.
- (2) For goods and merchandise a sum not exceeding fivepence per ton per mile, with such minimum rate for parcels as may be fixed by the by-laws: Provided postal mail-bags shall be carried on the same conditions as provided by the Government railways.
- (3) For live stock a sum not exceeding sixpence per head per mile for horses or horned cattle, and for sheep a sum not exceeding one penny per head per mile, with a minimum charge of fifteen shillings in either case.
- (4) For ores, kerosene shale, and other minerals not exceeding threepence per ton per mile per truck load.

Tramway for use of
public.

7. The tramway shall be for the use of the public and for the conveyance for hire of passengers, goods, minerals, and live stock: Provided that all tolls be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers and of all goods, minerals, live stock, or carriages of the same description, and conveyed or propelled by a like carriage or engine passing only over the same portion of line of tramway under the same circumstances; and no reduction or advance in any such tolls shall be made, directly or indirectly, in favour of or against any particular company or person travelling upon or using the tramway.

To employ steam or
other motive power.

8. It shall be lawful for the said John Lang, his heirs, executors, administrators, and assigns, to use and employ steam or other motive power, and carriages, waggons, or trucks to be drawn thereby upon the said tramway: Provided that all rolling stock before and during use shall be subject to the approval of the Railway Commissioners: Provided further that if any rolling stock be used without such approval, the said John Lang, his heirs, executors, administrators, or assigns shall be subject to a penalty not exceeding one hundred pounds.

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9. It shall be lawful for the said John Lang, his heirs, executors, administrators, and assigns, and his and their workmen and servants to enter upon the Railway Commissioners' property at a point on the Mudgee line, and run a line parallel with the existing line for any necessary distance the point of entry, parallel line, the plans and work to be approved by the Railway Commissioners, and such payment to be made for the use of any land or station as may, in the opinion of the Railway Commissioners, be deemed reasonable. All works necessary in connection with the junction of railway line to be done by the Railway Commissioners at the expense of the said John Lang.

Authority to enter upon Railway Commissioners' property and construct line of railway.

10. 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 John Lang, 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 John Lang, his heirs, executors, administrators, or assigns shall, within fourteen days after such entry, make a report to the Railway Commissioners, 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 Railway Commissioners 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.

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

11. The said John Lang, his heirs, executors, administrators, and assigns shall not be entitled to any mines of coal, slate, or other minerals under any land whereof the surface only 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 authorised, and such mines shall not be deemed to vest in the said John Lang, his heirs, executors, administrators, and assigns.

John Lang, his heirs, executors, administrators, and assigns not entitled to minerals.

12. It shall be lawful for the Minister for Lands, with the consent of the Governor, with the advice of the Executive Council, to grant to the said John Lang, his heirs, administrators, or assigns, a lease of such Crown lands as may be necessary for the purposes of this Act at an annual rental of ten pounds per year; and such lease as aforesaid shall operate and take effect merely as a license to the said John Lang to construct and maintain the works hereby contemplated, and shall terminate when the Government shall have resumed the tramway.

Lease of Crown lands may be granted.

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Compensation for
resumptions, &c.

13. Before proceeding with the construction of the said tramway extension or any section thereof, the said John Lang, his heirs, executors, administrators, or assigns shall give notice of the lands taken or required for the said tramway in manner hereinafter provided. Every such notice shall state the particulars of the lands so taken or required as aforesaid. That the said John Lang, his heirs, executors, administrators, or assigns is or are willing to treat as to the compensation to be made to all parties for the lands taken or to be taken, and the damage sustained or to be sustained by them by the exercise of the powers conferred by the Act, and shall demand in the said notice from such parties, and the said parties are hereby required to deliver forthwith to the said John Lang, at the cost of the said John Lang, his heirs, executors, administrators, or assigns, the particulars of their estate and interest in such lands, and of the claims made by them in respect hereof, 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 lands.

Service of notice on
owners of lands.

14. Subject to the provisions hereinafter contained as to compensation to absent owners, all notices required to be served by the said John Lang, his heirs, executors, administrators, and assigns upon the parties interested in or entitled to sell any such lands shall either be served personally upon 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 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; and a copy of such notice shall be published by and at the expense of the said John Lang once a week for four consecutive weeks in a Sydney newspaper, and similarly in the Government Gazette, and shall also be posted and kept posted at the post office nearest to the land to which such notice refers for a period of one month.

Compensation to be
settled by arbitration.

15. If within sixty days of the commencement of this Act the said persons other than the Railway Commissioners through whose land the tramway shall pass, or any of them, and the said John Lang, his heirs, executors, administrators, or 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

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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 or 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: Provided that the said John Lang shall compensate owners for all lands taken at such price as may be agreed upon or awarded by the arbitrators, together with interest at the rate of six pounds per centum per annum from date of resumption.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 Capertee 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.

Damage and severance to be considered by arbitrators.

23. For the purpose of ascertaining the amount of compensation to be paid by the said John Lang, his heirs, executors, administrators, or 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 to be 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 said John Lang,

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Lang, his heirs, executors, administrators, or assigns, and they shall assess the same according to what they shall find to have been the value of such lands, estate, or interest at the time notice was given of such lands being required or having been taken : Provided always that in ascertaining the amount of such compensation, the arbitrators or their umpire shall take into consideration by way of set off or abatement any enlargement in the value of any land belonging to such owner, and so severed as aforesaid by the construction of the railway extension or any section thereof.

24. The amount of 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 John Lang, his heirs, executors, administrators, or 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.

Cost of arbitration, how to be borne.

Costs may be taxed.

25. The arbitrator, arbitrators, or umpire shall deliver their or his award in writing to the said John Lang, his heirs, executors, administrators, or assigns, who shall retain the same, and shall forthwith, on demand, at his or 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.

Arbitrators or umpire to deliver award to John Lang, his heirs, executors, administrators, and assigns.

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

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

Submission may be made a rule of Supreme Court.

27. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

Award not to be set aside for irregularity.

28. The said John Lang, his heirs, executors, administrators, or assigns shall make compensation and satisfaction, to be ascertained and recovered in case of difference in the manner hereby provided, for temporary, permanent, or recurring 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 John Lang, his heirs, executors, administrators, or assigns of any of the matters or things hereby required or authorised to be performed by them.

Compensation in cases of negligence.

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Compensation in cases of temporary possession.

29. In every case where the said John Lang, his heirs, executors, administrators, or 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 two months after such entry, pay to such owners and occupiers, or deposit in a 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.

Proceedings in absence of owner.

30. 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 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 John Lang, 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 John Lang, his heirs, executors, administrators, or assigns, in respect of such lands, shall be determined by the valuation of a surveyor, to be nominated as hereinafter mentioned.

Justices to appoint surveyor in certain cases.

31. Upon application by the said John Lang, his heirs, executors, administrators, or assigns to two justices, and upon such evidence 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 John Lang, his heirs, executors, administrators, and assigns, or join with the said John Lang, his heirs, executors, administrators, or 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, and that the provisions as to services of notices have been complied with, 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.

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32. 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—

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 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.

33. 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 John Lang, his heirs, executors, administrators, or 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.

34. All the expenses of and incident to any such valuation shall be borne by the said John Lang, his heirs, executors, administrators, or assigns.

35. 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 John Lang, 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, idiotcy, 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.

36. 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 John Lang, his heirs, executors, administrators, or 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 John Lang, his heirs, executors, administrators, and assigns, for the money so paid: Provided that all moneys so paid in shall be dealt with

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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 intituled "*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.

37. If in any case in which, according to the provisions of this Act, the said John Lang, his heirs, executors, administrators, and assigns is authorised 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 John Lang, his heirs, executors, administrators, or assigns from entering upon or taking possession of the same, it shall be lawful for the said John Lang, 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 John Lang, his heirs, executors, administrators, or 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 shall be settled by the Sheriff and 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 John Lang, 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, 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.

Power of purchase
of tramway by
Government.

38. At any time, after two years from the commencement of this Act, the Governor, with the advice of the Executive Council, may, if he think fit, purchase such tramway, upon giving to the said John Lang, his heirs, executors, administrators, and assigns, six 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 John Lang, his heirs, executors, administrators, and assigns, the amounts shall be ascertained by assessment in terms of the Lands for Public Purposes Acquisition Act: Provided that the cost of resumption shall not exceed by ten per centum the original cost of construction: Provided further that on such resumption taking place, the lands on which the tramway has been constructed shall be held to have reverted to the Crown.

Running powers over
tramway to Railway
Commissioners.

39. In the event of the line being constructed on the four feet eight and a half inches gauge, the Railway Commissioners shall have running

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running powers over the tramway to enable them to obtain supplies of any coal, wood, stone, gravel, clay, or other material that may be required by the Railway Department for its own use. That for such privilege the department shall pay the said John Lang, his heirs, executors, administrators, or assigns, at the rate of one half-penny per ton per mile on such material. That the weight of engines used by the Railway Commissioners, and their speed be not greater than that used or approved of by the said John Lang, his heirs, executors, administrators, or assigns.

40. It shall be lawful, after the tramway has been duly constructed, for the said John Lang, his heirs, executors, administrators, or 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 registered company, and upon any such transfer or assignment being signed or executed the person or persons or duly registered company in whose favour such transfer or assignment is made shall then stand in the place of the said John Lang, his heirs, executors, administrators, or assigns, and shall have all the rights, powers, benefits, privileges, and advantages conferred upon the said John Lang, his heirs, executors, administrators, and assigns by this Act. Power to assign.

41. The hire and charges to be made under this Act by the said John Lang, his heirs, executors, administrators, or assigns shall be in such terms and amounts, and shall be paid to such persons upon or near to the tramway, or in such manner and under such regulations as the said John Lang, his heirs, executors, administrators, or assigns shall by notice appoint. Hire to be paid as described by the said John Lang, his heirs, &c.

42. Nothing in this Act contained shall be deemed to authorise the said John Lang, his heirs, executors, administrators, or assigns to take or enter upon any land belonging to the said Commissioners, or to alter or to interfere with the Mudgee Railway, or any of the works thereof, between the said railway and tramway, without the previous consent, under seal in every instance, of the said Commissioners. Not to interfere with railway.

43. The said Commissioners shall from time to time, at the expense of the said John Lang, his heirs, executors, administrators, and assigns, as they may deem necessary, erect such signals and conveniences incident to the junction either upon their own lands or on the lands of the said John Lang, his heirs, executors, administrators, or assigns, and may from time to time appoint and remove such watchmen, switchmen, or other persons as may be necessary for the prevention of danger to, or interference with, the traffic at or near the junction. Erection of signals, &c.

44. The working and management of the trains at the junction with the Government railways, and of such signals and conveniences Management of signals.

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wherever situate shall be carried out under arrangement with the Railway Commissioners, and under such conditions as they may approve. Such sums shall be charged to the said John Lang, his heirs, executors, administrators, or assigns, as in the opinion of the Railway Commissioners shall be reasonable for such service.

Power to make
by-laws.

45. The said John Lang, his heirs, executors, administrators, and assigns shall, from time to time, when so required by the Railway Commissioners, make and submit for the approval of the said Railway Commissioners, and subject to the provisions and restrictions in this Act contained, regulations or by-laws for the following purposes, that is to say :—

For regulating the times of the arrival and departure of the waggons and carriages, and the number of persons limited to be carried therein respectively. For regulating the loading or unloading of such waggons and carriages. For preventing the smoking of tobacco and the commission of any nuisance in or upon such waggons or carriages, or any of the tramway stations, waiting-rooms, or premises, and generally for regulating the travelling upon, or using, and working the said tramway, and the maintenance of good order, and for regulating the conduct of the tramway officers and servants, and for providing for the due management of the said tramway, and the protection thereof, and the waggons and carriages, and other plant and machinery, and waiting-rooms, offices, and premises from trespass and injury. For regulating and enforcing the payment of the hire and charges to be made under the Act by the said John Lang, his heirs, executors, administrators, or assigns, as aforesaid. For fixing rates and regulating the carriage of minerals, ore, goods, and live-stock, and other things on the said tramway.

And for better enforcing the observance of all or any of such regulations it shall be lawful for the said John Lang, his heirs, executors, administrators, or assigns, to make by-laws for all or any of the aforesaid purposes, and from time to time to repeal or alter such by-laws and make new by-laws: Provided that such by-laws be not repugnant to the laws of the Colony or to the provisions of this Act: And the substance of such by-laws shall be painted on boards, or printed on paper and affixed to boards and places, and maintained in a legible state in some conspicuous part of every station or place of business occupied or used in connection with the tramway, according to the nature and subject matter of such by-laws, so that notice thereof may be given to all parties affected thereby, and no penalty imposed by any such by-law shall be recoverable unless the same shall have been published and kept published as aforesaid. And such by-laws shall specify penalties, which

Publication of
by-laws.

Penalties under
by-laws

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which shall in no case exceed the sum of ten pounds, and all penalties recoverable thereunder and under this Act may be proceeded for and recoverable under the provisions of the Act eleventh and twelfth Victoria, chapter forty-three: Provided always that such by-laws must be first approved of by the Governor, with the advice of the Executive Council: Provided always that the said John Lang, his heirs, executors, administrators, and assigns, his or their employees or servants, shall, when using or when upon the premises of the said railway, be liable and subject to the railway by-laws.

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

47. The said Commissioners may from time to time appoint any person to be inspector, for the purpose of inspecting the tramway and of making any inquiry with respect to the condition of the works, or into the cause of any accident, provided that no person so appointed shall exercise any powers of interference in the affairs of the said John Lang, his heirs, executors, administrators, or assigns, and every inspector under this Act shall, for the purpose of any inspection or inquiry which he is directed by the Railway Commissioners to make or conduct, have the following powers, that is to say:—

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

Where, in or about the tramway, or any of the works or buildings connected with such tramway, or any building or place, whether open or enclosed, occupied by the said John Lang, his heirs, executors, administrators, or assigns, working such tramway, any of the following accidents take place in the course of working, that is to say:—

- (1) Any accident attended with loss of life or personal injury to any person whomsoever.
- (2) Any collision where one of the trains is a passenger train.
- (3) Any passenger train, or any part of a passenger train, accidentally leaving the rails.

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- (4) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused, or to be likely to cause, loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Railway Commissioners.

The said John Lang, his heirs, executors, administrators, or assigns, working such tramways shall send notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby, to the Railway Commissioners.

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

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

Commencement and completion of work.

48. The said John Lang, his heirs, executors, administrators, or assigns shall not be entitled to any of the rights and privileges conferred upon them by this Act unless they shall within six months from the commencement of this Act have lodged the sum of two thousand pounds with the Colonial Treasurer, which said sum shall be forfeited and form part of the Consolidated Revenue Fund if the tramway be not commenced within the period of two years and completed within three years from the commencement of this Act.

Penalty for not carrying out work.

49. Unless the tramway hereby authorised shall be completed and brought into use within two 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 promoters shall cease. If the tramway hereby authorised shall cease to be worked as a tramway by the promoters for two years, the site and permanent-way thereof shall, on proclamation by the Governor, with the advice of the Executive Council, vest in and become the absolute property of the Crown, without making any allowance or compensation or paying any consideration in respect thereof to the promoters.

Tramway to revert to Crown if left unused for period of three years.

Short title.

50. This Act may for all purposes be cited as the "Capertee Tramway Act."

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THE SCHEDULE.

Route No. 1.—Starting from or near the 132 mile post on the Wallerawang and Mudgee Branch Government Railway, and taking an easterly direction through railway reserve 180, parish of Capertee, passing along south boundaries of railway reserves 6423 and railway reserve 6424, and south of reserve 1742-35; then crossing Genowlan Creek; then to the north of Genowlan Mountain and passing south of reserve 1638-28; then to the Cook's or Coco Creek crossing same at point, reserve No. 84, passing through northern portion of same; and then in a south-easterly direction 77, Edward Hughes' 40 acres and 76 Edward Hughes' 80 acres; then in an easterly direction through the Canobla Gap, and easterly through 4,000 acres block of Sir John Jamieson's; and terminating in mineral lease 20,640 acres,—being a distance of about 21 miles; or

Route No. 2.—Starting from about 127½ miles on the Mudgee Branch Government Railway, going in an easterly direction through gold-field reserve 62; then in a south-easterly direction through railway reserve 180, crossing the Watch-house Creek, and then easterly across the Coco Creek; then in a north-easterly direction through 52 John McLean's c. 146; then north-easterly through Nos. 48 and 49 Murray Davidson, and in same direction through the Canobla Gap; and thence as per route as described in Route No. 1,—being a distance of about 21 miles; or

Route No. 3.—Starting at Ben Bullen, and going in a south-easterly direction through village Reserve 7562 and 211—reserve 258; then in same direction through mineral lease 123, railway reserve, to Rowan's Gap; then north-easterly through 41, Walter Rowan, and 40, Walter Rowan; then through railway reserve 180, passing between 54 and 55 John McLean and Jonathan McLean respectively; then easterly across Sapling Flat Creek; then north-easterly between 81 and 82, John Nicholson, on the Red Rock Creek; then through the Canobla Gap; and thence as per route No. 1 as above described,—making a distance of about 24 miles.

The limits of deviation are in each case one and a half miles on each side of route as shown.