

An Act to enable the Sydney Harbour Collieries (Limited) to drive two headings to cross underneath certain public streets and private lands at Balmain, and under the reserved portion of lands surrounding Goat Island.

[5th December, 1903.]

SYDNEY HARBOUR
COLLIERIES
(LIMITED).

WHEREAS the Sydney Harbour Collieries (Limited), being a Preamble. company incorporated in New South Wales under the Companies Act of 1899, is possessed of or entitled to certain lands situate at Balmain, near Sydney, and is entitled by virtue of certain mining permits and authorities to mine under certain lands underlying the water of Sydney Harbour and extending to Cremorne, on which there are extensive fields of valuable coal: And whereas there have been sunk two shafts on their said land at Balmain, called the Birthday and Jubilee shafts, respectively: And whereas the said company in order to facilitate communication between its said shafts and the principal area of its said coal-fields at Cremorne, and in order to obtain a direct route for its main haulage roads, is desirous of driving two headings from the said shafts. The headings from the said shafts to begin at the points and take the direction hereinafter mentioned: And whereas the said coal is likely to prove beneficial to the State, and the public is 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 driving of the said proposed headings, it is therefore desirable to authorise by legislative enactment the driving of the said headings, subject to the provisions hereinafter contained: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. It shall be lawful for the Sydney Harbour Collieries (Limited), Authority to drive headings. to drive the two following headings, that is to say, the said heading from the said Birthday Shaft to begin at a point on the south-east boundary of

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of the freehold property of the Sydney Harbour Collieries (Limited), at a distance of about fifty links from the corner of Water-street and Birchgrove-road; thence passing in an easterly direction under Birchgrove-road; thence in an easterly direction under the north-east corner of land bounded on the north-west by Birchgrove-road, on the south-west by Macquarie-terrace, on the south-east by Thomas-street, and on the north-east by Spring-street; thence in an easterly direction under Spring-street; thence in an easterly direction under the south-west corner of land bounded on the north-west by Birchgrove-road, on the south-west by Spring-street, on the south-east by Thomas-street, and on the north-east by Cove-street; thence in an easterly direction under Thomas-street; thence in an easterly direction under land bounded on the north-west by Thomas-street and Grove-street, on the south-west by Spring-street, on the south-east by Gipps-street, and on the north-east by Cameron-street; thence in an easterly direction under Gipps-street; thence in an easterly direction under land bounded on the north-west by Gipps-street, on the south-west by Spring-street, on the south-east by Rountree-street, and on the north-east by Cameron-street; thence in an easterly direction under Cameron-street and Rountree-street; thence in an easterly direction under land bounded on the north-west by Rountree-street, on the south-west by Cameron-street, on the south-east by Short-street, and on the north-east by Bay-street; thence in an easterly direction under Short-street and Bay-street; thence in an easterly direction under the property of Mort's Dock and Engineering Company (Limited); thence in an easterly direction under land underlying the reserved portion of the waters of Waterview Bay; thence in an easterly direction under the eastern corner of the property of Mort's Dock and Engineering Company (Limited); thence in an easterly direction under Yeend-street; thence in an easterly direction under land bounded on the north and north-east by Ballast Point road, on the south-west by Yeend-street, on the south by the waters of Waterview Bay, and on the east by Ronald-street; thence in an easterly direction under Ronald-street; thence in an easterly direction under land bounded on the north by the waters of Snail's Bay, on the west by Ronald-street, and on the south and east by the waters of Waterview Bay; thence in an easterly direction under land underlying the reserved portion of the waters of Waterview Bay; thence in an easterly direction under land underlying the waters of Sydney Harbour (the right to mine under such land being held by the Sydney Harbour Collieries, Limited); thence in an easterly direction under land underlying the reserved portion of the waters of Sydney Harbour surrounding Goat Island; thence in an easterly direction under Goat Island; thence in an easterly direction under land underlying the reserved portion of the waters of Sydney Harbour surrounding Goat Island: And the said heading from Jubilee

Shaft

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Shaft to begin at a point on the south-east boundary of the freehold property of the Sydney Harbour Collieries (Limited), at a distance of about two hundred and twenty-six links from the corner of Water-street and Birchgrove-road; thence passing in an easterly direction under Birchgrove-road; thence in an easterly direction under land bounded on the north-west by Birchgrove-road, on the south-west by Macquarie-terrace, on the south-east by Thomas-street, and on the north-east by Spring-street; thence in an easterly direction under Thomas-street; thence in an easterly direction under land bounded on the north-west by Thomas-street, on the south-west by Macquarie-terrace, on the south-east by Gipps-street, and on the north-east by Spring-street; thence in an easterly direction under the south-west corner of land bounded on the north-west by Thomas-street and Grove-street, on the south-west by Spring-street, on the south-east by Gipps-street, and on the north-east by Cameron-street; thence in an easterly direction under Gipps-street; thence in an easterly direction under land bounded on the north-west by Gipps-street, on the south-west by Spring-street, on the south-east by Rowntree-street, and on the north-east by Cameron-street; thence in an easterly direction under Rowntree-street; thence in an easterly direction under the north-east corner of land bounded on the north-west by Rowntree-street, on the south-west by Spring-street, on the south-east by Short-street, and on the north-east by Cameron-street; thence in an easterly direction under Cameron-street; thence in an easterly direction under land bounded on the north-west by Rowntree-street, on the south-west by Cameron-street, on the south-east by Short-street, and on the north-east by Bay-street; thence in an easterly direction under Short-street; thence in an easterly direction under the north-east corner of land bounded on the north-west by Short-street, on the south-west by Cameron-street, on the south-east by Phillip-street, and on the east by Bay-street; thence in an easterly direction under Bay-street; thence in an easterly direction under the property of Mort's Dock and Engineering Company (Limited); thence in an easterly direction under land underlying the reserved portion of the waters of Waterview Bay; thence in an easterly direction under the eastern corner of the property of Mort's Dock and Engineering Company (Limited); thence in an easterly direction under Yeend-street; thence in an easterly direction under land bounded on the north and north-east by Ballast Point road, on the south-west by Yeend-street, on the south by the waters of Waterview Bay, and on the east by Ronald-street; thence in an easterly direction under Ronald-street; thence in an easterly direction under land bounded on the north by the waters of Snail's Bay, on the west by Ronald-street, and on the south and east by the waters of Waterview Bay; thence in an easterly direction under land underlying the

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reserved portion of the waters of Waterview Bay; thence in an easterly direction under land underlying the waters of Sydney Harbour (the right to mine under such land being held by the Sydney Harbour Collieries, Limited); thence in an easterly direction under land underlying the reserved portion of the waters of Sydney Harbour surrounding Goat Island; thence in an easterly direction under Goat Island; thence in an easterly direction underlying the reserved portion of the waters of Sydney Harbour surrounding Goat Island, the length of the said proposed headings through land under which the said company has not authority to mine being about sixty-three chains each, the bearing of both headings to be between south eighty-nine degrees east and north eighty-nine degrees east, the maximum width to be twelve feet and the maximum height eleven feet, the distance between the centres of the said proposed headings to be not more than thirty yards, and the depth from low-tide level in Sydney Harbour to the floor of the said headings at the points of commencement to be not less than two thousand seven hundred feet: Provided that it shall be lawful to drive cut-throughs between the two headings at a distance of about seventy yards apart for ventilation purposes, the maximum width of same to be eight feet: Provided also, that it shall be lawful to deviate from the said routes as described as aforesaid to a distance of one chain from either side thereof respectively, but not to any greater distance without the previous sanction of Parliament.

Rights vested in
company without
conveyance.

2. The exclusive right of ingress, egress, and regress along the headings so proposed to be driven for the purpose of working the said coal-fields shall be vested in the Sydney Harbour Collieries (Limited) (or in such person or persons or corporation as shall for the time being be entitled to work the said coal-fields), by virtue of this Act, and without the necessity of any further consent whatsoever: Provided that no compensation shall be allowed or awarded unless—

- (a) the surface of the overlying soil is disturbed;
- (b) the support to such surface is destroyed or injuriously affected by the construction of such headings;
- (c) any mines or underground workings in or adjacent to such land are thereby rendered unworkable, or are so affected as aforesaid:

Provided also, that it shall be obligatory upon the said Sydney Harbour Collieries (Limited), or other the person or persons or corporation for the time being entitled to use the said proposed headings, to construct and maintain the same in such manner as they shall not in any way interfere with the surface of the said lands through which the said proposed headings shall be driven. And in case of any claim by the owner or owners of the said lands for any interference or damage to the said surface, such person or persons, corporation or corporations, shall be entitled to be compensated in manner hereinafter appearing.

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3. No mining operations shall be carried on, permitted, or suffered, nor any excavations made, permitted, or suffered by the Sydney Harbour Collieries (Limited), or any such person or corporation aforesaid, or by the successors, lessees, tenants, or assigns of the Sydney Harbour Collieries (Limited), or by the successors, lessees, tenants, or assigns of any such person or corporation, or any person on their or either of their behalf under the waters of Mort's Bay within the area comprised between the foreshores and an imaginary line drawn from the present ferry wharf at Yeend-street and Ronald-street to the present ferry wharf at Thames-street; nor shall any mining operations be carried on, permitted, or suffered as aforesaid, or excavations made, permitted, or suffered as aforesaid within a radius of three hundred yards from the centre of the mouth of Woolwich Dock, Woolwich.

4. It shall not be lawful for the Sydney Harbour Collieries (Limited), or any such person or corporation, or such successors, lessees, tenants, and assigns aforesaid, or any person on their or either of their behalf to use any explosive of any description whatsoever in carrying out the work in connection with the said headings immediately under any portion of the property belonging to Mort's Dock and Engineering Company (Limited).

5. In the event of any damage being caused to the said surface by the driving of the said headings, or if the support to the said surface be injuriously affected, or if any mines or underground workings adjacent to the said land are thereby affected, the person or persons, corporation or corporations so affected as aforesaid shall, within twenty-eight days from the receipt of knowledge by them of such damage, give notice in writing of such damage to the said Sydney Harbour Collieries (Limited); and in the event of their giving no such notice as aforesaid, they shall be deemed to have waived any rights they might have had to any compensation under or by virtue of this Act.

6. If, within one calendar month from the lodging of the notice of such damage as aforesaid, the said parties shall be unable to agree as to the amount of compensation to be paid by the said Sydney Harbour Collieries (Limited) for any damage that may be sustained by the said parties as aforesaid, or if any other question of compensation shall arise, the amount of such compensation shall be settled by arbitration 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

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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, on application of the party who has himself appointed an arbitrator, to appoint such arbitrator to act on behalf of both parties. And such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final and conclusive.

Vacancy of arbitrator to be supplied.

7. 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 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.

Appointment of umpire.

8. 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 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.

Attorney-General to appoint an umpire on neglect.

9. 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, 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.

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

10. 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

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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.

11. If, where 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.

12. 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 matters referred to them shall be determined by the umpire to be so appointed as aforesaid.

13. 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, [REDACTED] 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 Sydney Harbour Collieries (Limited) Act of 1903.

Made and subscribed in the presence of [REDACTED]
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.

14. All the costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the promoters, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters, 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.

15. The arbitrators shall deliver their award in writing to the promoters, 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

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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

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

Award not void through error in form.

17. 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 permanent or recurring injuries.

18. The Sydney Harbour Collieries (Limited) 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 all other damage, loss, costs, charges, and inconvenience which may in any wise be occasioned to the said owners or occupiers by the non-performance by the said Sydney Harbour Collieries (Limited) of any of the matters and things hereby required to be performed by it, or otherwise.

Short title.

19. This Act may be cited as the "Sydney Harbour Collieries (Limited) Act of 1903."