

THE ASHTONFIELDS COAL- MINES RAILWAY ACT,

An Act to enable William Longworth and Thomas George V.
Longworth, of Sydney, in the State of New
South Wales, to construct a railway from coal
lands at Buttai, in the parish of Maitland,
county of Northumberland, to the Great
Northern Railway at Thornton, in the parish
of Alnwick. [Assented to, 7th December,
1921.]

WHEREAS William Longworth and Thomas Preamble.
Longworth, both of Sydney, in the State of
New South Wales, are owners of coal mines upon the
lands situated at Buttai, in the parishes of Alnwick,
Maitland, and Stockrington, in the county of Northum-
berland, near Thornton, and in order to facilitate com-
munication between the said coal mines and the Great
Northern Railway the said William Longworth and
Thomas Longworth, hereinafter designated the pro-
moters, are desirous of constructing a railway from their
said coal mines to the Great Northern railway at or
about the Thornton railway station; but as part of such
railway and sidings are intended to be made upon and
pass through land believed to be the property of the
Crown, bodies corporate, and private persons respec-
tively, the same cannot be made without Legislative
authority: And whereas the said coal mines are likely
to prove beneficial to the State, and the public are con-
cerned in promoting such increase in and facilities for
the supply of coal for local consumption, steam naviga-
tion, and export, as would result from the construction
of

George V. of the said proposed railway and sidings, and traffic on the Great Northern railway would be increased thereby, it is therefore desirable to authorise by Legislative enactment the construction of the said railway and sidings, subject to the provisions hereinafter contained, upon payment of compensation to the several parties through whose land the same shall pass for such portion of their respective lands as may require to be taken and occupied thereby: Be it therefore enacted by the King's Most Excellent Majesty, by and with the 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 said promoters to make and construct a railway which shall be of the same gauge as the Government Railways, namely, four feet eight and a half inches, from a point commencing in the lands of the promoters bearing north-east ten chains from the south-west corner of portion twenty-five in the parish of Maitland, county of Northumberland, and bearing thence about north-east to a point about eight chains south from the north-east corner of the said portion, thence through lands of John Farrell, the trustees of the will of the late Henry Osborne, the trustees or beneficiaries in the estate of the late William Fane de Salis, across the main northern road, Newcastle to Maitland, lands of said trustees or beneficiaries of the late William Fane de Salis, and land of promoters, to a point on the Great Northern railway, connecting therewith at a point about fourteen miles north of Newcastle and adjacent to the Thornton railway station, and which lands and route are particularly described in the Schedule hereto, such railway to be in the direction described in the Schedule, but so that the same shall not occupy at any part thereof a greater space in breadth than sixty-six feet, and to make and construct such loop lines, stations, and sidings as may be necessary for the safe and convenient use of the railways to be constructed as aforesaid, and to take and use so much of the lands of private persons mentioned in the Schedule as the promoters may require for their said railway, loop lines, stations, and sidings, but so that the same shall not occupy at any part thereof a greater space in breadth than

than sixty-six feet. The said railway shall be constructed in a proper and workmanlike manner, to the satisfaction of the Secretary for Public Works and the Railway Commissioners. George V.

2. The ground and soil of so much of the site of the railway and sidings as passes over or includes the lands of the Crown, bodies corporate, and private persons as aforesaid, together with such rights of ingress, egress, and regress upon the adjacent land as may be necessary for the making and repair of such railway shall, so far as is necessary for the purpose of this Act, be vested by virtue of this Act and without the necessity of any conveyance in the promoters for the purposes of the railway : Site of railway and sidings vested in promoters.

Provided that no lands vested in the Railway Commissioners shall by virtue of this Act be vested in the promoters, and nothing herein contained shall prevent the said owners from carrying on any mining operations beneath the said railway which shall not interfere with the safety of the said railway and the traffic thereon; and the promoters shall have no further rights 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 that the said railway shall be constructed and brought into use within five years after the passing of this Act, and that in default thereof, or if after its completion the said railway shall cease to be used for three years continuously, all the said lands and all the said promoters' interest and estate therein shall revert without any conveyance to the original owners thereof, their heirs and assigns respectively :

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 so as to render it impassable for or dangerous or inconvenient to the persons entitled to the use thereof, the promoters shall before the commencement of any such operations at their own expense cause a sufficient road to be made instead of any road interfered with, and shall at their own expense maintain such substituted road to the satisfaction of the shire council or councils responsible for the administration of that area. And the promoters before they

George V. use the said lands of the owners of the land for 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 owners or occupiers of such roads and lands and the promoters as to the necessity for such fences and gates, then the said promoters shall put up and erect such fences and gates as any two justices of the peace after inquiry shall deem necessary for the purpose aforesaid on application being made to them.

Railway
open to the
public.

3. The railway shall be open to the public use for the conveyance of coal and goods upon payment of a toll to the promoters for the conveyance of coal of a sum not exceeding one penny per ton per mile, with a minimum charge of threepence per ton in respect of every ton of coal for every transit, the person seeking transit supplying and loading his own trucks or on the Commissioners' waggons, and the promoters or Commissioners 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 promoters to supply locomotive power unless the party seeking the transit guarantee and bring one hundred tons at least during the twelve working hours, and give notice of same at least twenty-four hours previously. The railway shall at all times be open to the public for the conveyance of coal and goods upon payment of a toll to the promoters for the conveyance of coal of a sum not exceeding one halfpenny per ton per mile, with a minimum charge of twopence per ton in respect of every ton of coal for every transit and for goods of a sum not exceeding one penny halfpenny per ton per mile in respect of every ton of goods for every transit, if the party seeking transit supply the locomotive power as well as the trucks and waggons :

Provided

Provided that so long as the promoters shall be willing to supply locomotive power no other person shall use locomotive power on the line other than the Railway Commissioners: George V.

Provided that if the railway shall be damaged by the parties who shall themselves use the railway for transit and supply locomotive power, the promoters 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 damages the promoters 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.

4. It shall be lawful for the owners or occupiers of the lands adjoining thereto or traversed by the said railway to lay down upon their own lands any collateral branches or railway to communicate with the said railway for the purpose of bringing carriages, trucks, and waggons to or from or upon the said railway, and the promoters 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 communications 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 promoters shall not take any rate, toll, or other moneys for the passing of any passengers, coal and goods, or other things along any branch so to be made by any such owner or occupier or other person. The promoters 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 promoters 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

George V. renew the off-set plates and switches according to the most approved plan adopted by the promoters under the direction of their engineer.

Power to
divert and
alter the
roads.

5. For the purposes and subject to the provisions hereinafter contained it shall be lawful for the promoters, their deputies, agents, servants, and workmen, and all other persons by them authorised and empowered, to divert or alter the course of any road 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 :

Provided always that any such work shall be carried out to the satisfaction of the shire council or councils responsible for the administration of that area, and all such diversions, alterations, and crossings, and the approaches thereto, shall hereafter be maintained and repaired by the promoters at their own expense, and to the satisfaction of the said shire council or councils responsible for the administration of that area.

Penalty for
not substituting
a road.

6. If the promoters do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, or if they fail to maintain and repair all such diversions, alterations, crossings, and the approaches thereto, and all fences and gates across any roads which are under the care, control, and management of the shire council or councils responsible for the administration of that area, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted, or during which such diversions, alterations, crossings, or approaches or fences or gates shall remain in a state of disrepair, and such penalty shall be paid to the said shire council or councils responsible for the administration of that area if a public road, and shall be applied for the purposes thereof, or, in case of a private road, the same shall be paid to the owner thereof ; and every such penalty shall be recoverable, with costs, by action in any court of competent jurisdiction.

Right to carry
passengers.

7. It shall be lawful for and, at the request of the Railway Commissioners, compulsory upon the said promoters, from time to time, and at all reasonable times, to carry passengers, goods, and live stock, upon the said railway,

railway, or any part thereof respectively, and to make, demand, take, receive, and recover such tolls or dues for carrying the same at such rate per mile, or other scale of charges, as shall be established from time to time by the promoters for or in respect of all such passengers, goods, and live stock, which shall be conveyed or transported upon such railway, or any part thereof respectively: And the promoters are hereby authorised to make such by-laws and regulations not inconsistent with this Act, and subject to the approval of the Railway Commissioners, as may be necessary for the regulation of such traffic, and such by-laws or regulations shall be binding upon all persons using or travelling upon the said railway; and any persons offending against such by-laws or regulations shall be liable to a fine not exceeding ten pounds for each offence, to be recoverable in a summary way before any two justices:

Provided that such by-laws and regulations shall as far as practicable be similar mutatis mutandis to the by-laws and regulations made under the Government Railways Act, 1912, respecting similar matters:

Provided also that the rates, tolls, and dues which may be established as aforesaid under and by virtue of this Act shall not exceed the rates, tolls, or dues charged for the time being for similar services under the Government Railways Act, 1912:

Provided always that if the rates, tolls, or dues that may be established as aforesaid, under and by virtue of this Act, shall be found excessive, it shall and may be lawful for the Executive Council, on the petition of any person, to reduce the said rates, tolls, or dues, and to revise them in such a manner as may seem most proper and advisable.

8. If in any calendar year the profits of the working of the said railway after payment of all working expenses and provision for reasonable depreciation exceed fifteen per centum upon the capital expended upon the construction and equipment of the said railway the amount of the excess shall be paid into the Consolidated Revenue.

Excess profits
paid to
Consolidated
Revenue.

9. If in the course of making the railway the promoters shall use or interfere with any road, they shall, from time to time, make good all damage done by them to such roads to the satisfaction of the said shire council

Road repairs.

George V. council or councils responsible for the administration of that area ; and if any question shall arise as to the damage done to any such road by the promoters or as to the repair thereof by them, such questions shall be referred to the determination of two justices, and such justices may direct such repairs to be made in the state of the roads in respect of damage done by the promoters, and within such period as they may think reasonable, and may impose on the promoters for not carrying into effect such repairs, any penalty, not exceeding ten pounds per day, as to such justices shall seem fit, and any such penalty shall be paid to the said shire council or councils responsible for the administration of that area if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof.

Owner's
crossing.

10. Until the promoters 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 and the railway, and no longer, the owners and occupiers of such lands, and any other person 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 arrangement with the promoters received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner, occupier, or those claiming under him shall not be entitled so to cross the railway.

Provisions in
cases where
roads are
crossed on a
level.

11. If the railway cross any public road on a level, the promoters shall erect or construct and at all times maintain to the satisfaction of the said shire council or councils responsible for the administration of that area, cattle-stops or good and sufficient gates across such railway on each side of the road where the same shall communicate therewith, and shall employ

employ proper persons to open and shut such gates, and such gates shall be kept constantly closed across such railway on both sides of the road, except during the time when engines or railway vehicles, passing along the same, shall have to cross such road, and such gates shall be of such dimensions and so constructed as when closed to fence in the road 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 engines or railway vehicles shall have passed through the same, under a penalty not exceeding forty shillings for every default therein, to be recoverable before any two justices in a summary way.

George V.

12. When, in the opinion of the shire council or councils responsible for the administration of that area, it is necessary for the public convenience that any new public road crossing or bridge should be provided over the said railway the said council may require the promoters to provide, construct, maintain, and repair such road crossing or bridge. The promoters shall comply with such requirements. The provisions of this Act with respect to road crossings and bridges shall apply to road crossings and bridges provided under this section.

Maintenance of road crossing or bridge across line.

13. 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 promoters and their workmen and servants to enter upon the land 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 promoters shall within forty-eight hours of 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 or for the repair and maintenance of the said line:

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

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

George V. 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 hereafter 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 bridges
over roads.

14. 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 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 space of twelve feet if the arch be over a public road and in such case the clear height at the springing of the arch shall not be less than twelve feet, the clear height of the arch for a 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 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:

Provided always that every such bridge shall be erected to the satisfaction of the Railway Commissioners and the Secretary for Public Works.

Construction
of bridges
over railways.

15. 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.

The

The road over the bridges shall have a clear space **George V.** between the fences thereof of thirty-five feet if the road be a public road, and twelve feet if a private road.

The descent shall not be more than one foot in thirty feet if the road be a public 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 :

Provided always that every such bridge shall be erected to the satisfaction of the said shire council or councils responsible for the administration of that area and the said Secretary for Public Works :

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 point 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 be not of less width in case of a public road than twenty feet : The width of the bridges need not exceed the width of the road in certain cases.

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 promoters 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 said shire council or councils responsible for the administration of that area, 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 :

Provided also that if the mean inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may be preserved to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the promoters, then the promoters may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than Existing inclination of roads crossed or diverted need not be improved.

George V. than the said mean 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.

Works for
benefit of
owners.

16. The promoters 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:—

Gates,
bridges, &c.

Such and so many convenient 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, or during the formation thereof.

Fences.

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 land, if the owners thereof shall so require, and the said other works as soon as conveniently may be.

Drains.

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, 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 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 work proceeds.

Watering-
places.

Also proper watering places for cattle or compensation in lieu thereof, where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived
of

of access to their former watering-places. And George V. such watering-places shall be so made as to be at all times sufficiently supplied with water as theretofore, and as if the railway had not been made, or nearly so as may be. And the said promoters shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places :

Provided always that the promoters shall not be required to make such accommodation works in such 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 of them.

17. If any person omit to shut and fasten any gate set up 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 same, he shall forfeit for every such offence a sum not exceeding five pounds, to be recoverable in a summary way before any two justices. Penalty on persons omitting to fasten gates.

18. The promoters shall not be entitled to any 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 said promoters. Minerals not to pass.

19. If, within ninety days after the passing of this Act, the said persons through whose lands the railway shall pass, or any of them, and the promoters shall not agree as to the amount of compensation to be paid by them for the said lands belonging to the said parties, and 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 arbitration in manner herein-after 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 Appointment of arbitrators.

George V. 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 failed 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.

20. 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 remainder or other arbitrators 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.

21. 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

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. George V.

22. 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. Attorney-General to appoint umpire on neglect.

23. 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 matter to begin de novo.

24. 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 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.

25. 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. If arbitrators fail to make their award within twenty-one days, the matter to go to the umpire.

26. The said arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party which he or they 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. Powers of arbitrators to call for books, &c.

27.

George V. **27.** 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 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 Ashtonfields Coal-mines Railway Act of 1921.

Made and subscribed in the presence of

Penalty of misconduct.

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.

Costs of arbitration, how to be borne.

28. 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 incidental 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: 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.

Awards to be delivered to the promoters.

29. 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 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.

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

31.

31. 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. George V.
Award not
void through
error in form.

32. The promoters 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 inconveniences which may in anywise be occasioned to the said owners or occupiers by the non-performance by the said promoters of any of the matters and things hereby required to be performed by them or otherwise. Compensation for
temporary or
permanent or
recurring
injuries.

33. In every case where the promoters shall take temporary possession of lands by virtue of the powers hereby granted, it shall be incumbent on them within one month after their entry upon such lands, upon being required to do so, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their taking possession of such lands; and they shall from time to time during their occupation of their said lands pay half yearly to such occupier or to the owners 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 or occupier, 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. Compensation to be
made for
temporary
occupation.

34. It shall be lawful for the Secretary for Public Works on behalf of the Government, at any time, by notice in writing, to require the said promoters to sell, and thereupon the said promoters shall sell to the Government the said railway, upon the terms of paying the Power for
Government
to purchase
railway.

George V. the then value (exclusive of any allowance for compensation for compulsory sale) of the said railway and all lands, buildings, works, materials, and plant of the said promoters suitable to and used by them for the purposes of the said railway; such value in case of difference to be ascertained by arbitration in the manner provided by the Public Works Act, 1912, for settling cases of disputed compensation and subject to the terms and conditions therein contained. And when any such sale shall have been made to the said Government, the said railway, lands, buildings, works, materials, plant, and premises shall vest in the Railway Commissioners who shall have all the rights, powers, and authorities of the said promoters in respect of the said railway so sold:

Provided that the sum to be paid by way of purchase shall in no case exceed the total cost of the construction of the railway and related works, land, and buildings.

Promoters
may make
by-laws.

35. For the purpose of regulating the conduct of the officers and servants of the promoters, and for providing for the due management of the affairs of the promoters in all respects, it shall be lawful for the promoters, 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 State or to the provisions of this Act; and such by-laws shall be reduced into writing and shall have affixed thereto the names of the promoters, and a copy of such by-laws shall be given to every officer and servant of the promoters affected thereby, and such by-laws may specify a maximum and a minimum penalty for any breach thereof, such penalty to be proceeded for and recovered under the provisions of the Justices Act, 1902:

Provided always that any by-laws of the said promoters relating to penalties must be first approved by the Executive Council, and published in the Government Gazette; and the production of the Gazette containing such by-laws of the promoters shall be sufficient evidence of such by-laws in all proceedings under the same.

36.

36. (1) The provisions of any award made under the Industrial Arbitration laws for the time being in force, such award being applicable to employees of the Railway Commissioners, shall apply mutatis mutandis to the promoters and to their employees.

George V.
Awards made
under
Industrial
Arbitration
Act.

(2) The methods of train-working, signalling, maintenance, and repairing of the railways vested in the Railway Commissioners as prescribed by rules, regulations, or by-laws for the time being in force under the Government Railways Act, 1912, in respect of branch railways similar in character to the railway to be constructed under this Act, shall apply mutatis mutandis to the railway to be constructed under this Act, and the promoters and their employees shall be bound by the said rules, regulations, and by-laws. This provision may be enforced by the recovery of penalties as provided in the said rules, regulations, and by-laws, or, where there is no penalty provided, by mandamus. The Railway Commissioners shall from time to time at the request of the promoters or otherwise direct which of the said rules, regulations, and by-laws in force under the Government Railways Act, 1912, are applicable to the said railway under this section.

Methods of
train-
working, &c.

37. The Railway Commissioners may from time to time appoint any person to be inspector for the purpose of inspecting the railway, and of making any inquiry with respect to the condition of works or into the cause of any accident :

Railway
Com-
missioners
may appoint
inspectors.

Provided that no person so appointed shall exercise any powers of interference in the affairs of the promoters, 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 railway and all 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 promoters, and whom he thinks fit to call before him and examine for the said purpose, and

George V.

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 promoters which he considers important for the said purpose.
- (4) If after any such inspection the Railway Commissioners deem the railway to be unsafe for the carriage of passengers, they may by notice in writing require the promoters to desist from carrying passengers until any repairs or alterations mentioned in the notice are effected, and thereupon and until the requirements of such notice have been complied with it shall not be lawful for the promoters to carry any passengers upon the said railway.

Accidents.

Where in or about the railway or any of the works or buildings connected with such railway or any buildings connected with such railway or any buildings or place, whether open or enclosed, occupied by the promoters, any of the following accidents takes 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;
- (4) any accident of a kind not comprised in the foregoing descriptions but which is of such a kind as to have caused, or 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 promoters shall send notice of such accidents and 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

accident takes place. If any accident on the said railway causes loss of life or serious bodily injury to any person the promoters shall send to the Railway Commissioners notice by telegraph immediately after such accident takes place. Failure to comply with the provisions of this section shall render the promoters liable for each offence to a penalty not exceeding twenty pounds.

38. It shall be lawful for the promoters at any time by any deed or instrument in writing to assign and transfer all the rights, powers, privileges, benefits, and advantages conferred upon 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 promoters, and shall have all the rights, powers, benefits, privileges, and advantages conferred upon the said promoters by this Act.

George V.

Power to assign.

39. Nothing herein contained shall alter, repeal, or otherwise affect the Public Works Act of 1912, or the Government Railways Act of 1912, or any Act amending the same.

Public Works and Government Railways Act of 1912 not altered or repealed.

40. In this Act the word "justices" shall mean justices of the peace in and for the State of New South Wales, and when any matter shall be authorised or required to be done by two justices the expression "two justices" shall mean two justices assembled and acting together in petty sessions or a stipendiary or police magistrate; the word "owner" shall mean any person who under the provisions of this Act would be able to sell land to the promoters; the word "promoters" shall mean and include the said William Longworth and Thomas Longworth, and the survivor of them, and the heirs, executors, or administrators of such survivor or their or his assigns.

Interpretation clause.

41. Nothing in this Act shall be deemed to authorise the said promoters to take or enter upon any lands belonging to the Railway Commissioners, or to alter or to interfere with the Great Northern railway or any of the works thereof without the previous consent in writing in every instance of the Railway Commissioners.

Lands belonging to the Railway Commissioners not to be taken.

42.

George V.

Railway
Commis-
sioners may
erect signals,
and appoint
watchmen
and switch-
men.

42. The Railway Commissioners may from time to time erect such signals and conveniences incident to such junction either upon their own lands or on the lands of the promoters, and 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 promoters.

Working of
signals to be
under regu-
lations of
Railway
Commis-
sioners.

43. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the Railway Commissioners, and such sum may be charged to the promoters as the said Commissioners may deem reasonable for such services.

Short title.

44. This Act whenever cited shall be sufficiently described as "The Ashtonfields Coal-mines Railway Act of 1921."

SCHEDULE.

COMMENCING at a point on portion 25, parish of Maitland, county of Northumberland, the lands of William Longworth and Thomas Longworth, such point bearing north-east about 10 chains from the south-west corner of the said portion 25, and running thence about north-east to a point about 8 chains south from the north-east corner of the said portion; thence in a north-easterly direction through portion 32, parish of Maitland, the property of John Farrell; thence in a northerly, north-easterly, and easterly direction through portion 8, parish of Maitland, the property of the trustees of the will of the late Henry Osborne; thence in an easterly direction through part of portion 46, parish of Alnwick, county of Northumberland, the property of the trustees or beneficiaries in the estate of the late William Fane de Salis, across the Newcastle to Maitland road by a level crossing, said road being under the control of the shire council or councils responsible for the administration of that area, and again in an easterly direction through part of the said portion 46; and thence north-easterly through portion 47, parish of Alnwick, the property of applicants, to a junction with the Great Northern railway at a point approximately 15 chains north from Thornton railway station.
